

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2010 CA 12
v.	:	T.C. NO. 09CR31
	:	(Criminal appeal from
JAMES M. WOMBLES	:	Common Pleas Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 27th day of August, 2010.

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Attorney for Plaintiff-Appellee

JAMES M. WOMBLES, #608-874, P. O. Box 69, London, Ohio 43140
Defendant-Appellant

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FROELICH, J.

{¶ 1} James M. Wombles pled guilty in the Greene County Court of Common Pleas to one count of felonious assault, one count of burglary, two counts of receiving stolen property, and one count of possession of criminal tools. In return, the State dismissed one count of failure to comply with an order or signal of a police officer. At the time of his plea

hearing, other charges were pending against Wombles in Miami County and he was on parole for a prior conviction in Kentucky.

{¶ 2} The trial court sentenced Wombles to ten years for felonious assault, five years for burglary, and twelve months for the other charges, “to be served concurrently to each other for a total sentence of 10 years, also to run concurrently to any sentence imposed by Miami County Case No. 09 CR 53 and the State of Kentucky ***.” Wombles was also ordered to pay restitution of \$764.20 and costs, and his driver’s license was suspended for fifteen years.

{¶ 3} Wombles, pro se, appeals from his convictions, claiming that his guilty pleas were not knowing, intelligent, and voluntary, in violation of Crim.R. 11. .

I

{¶ 4} In his sole assignment of error, Wombles claims that his guilty pleas were not made knowingly, intelligently, and voluntarily. He argues that he entered the guilty pleas after reaching an agreement that he would receive an eight-year sentence and that his sentence would run concurrently with the sentences imposed by Miami County and the Commonwealth of Kentucky. Wombles states that he was never informed that, if Kentucky did not take immediate custody of him, his Ohio sentences would run consecutively to any Kentucky sentence. Wombles claims that he would not have entered the guilty pleas if he had been told that the Ohio and Kentucky sentences would be concurrent only if Kentucky took immediate custody of him.

{¶ 5} In order for a plea to be knowing, intelligent, and voluntary, the trial court must comply with Crim.R. 11(C). *State v. Greene*, Greene App. No. 2005 CA 26,

2006-Ohio-480, ¶8. “Crim.R. 11(C)(2) requires the court to (a) determine that the defendant is making the plea voluntarily, with an understanding of the nature of the charges and the maximum penalty, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions; (b) inform the defendant of and determine that the defendant understands the effect of the plea of guilty and that the court, upon acceptance of the plea, may proceed with judgment and sentencing; and (c) inform the defendant and determine that he understands that, by entering the plea, the defendant is waiving the rights to a jury trial, to confront witnesses against him, to have compulsory process for obtaining witnesses, and to require the state to prove his guilt beyond a reasonable doubt at a trial at which he cannot be compelled to testify against himself.” *State v. Brown*, Montgomery App. No. 21896, 2007-Ohio-6675, ¶3. See, also, *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶27.

{¶ 6} The Supreme Court of Ohio has urged trial courts to literally comply with Crim.R. 11. *Clark* at ¶29. However, because Crim.R.11(C)(2)(a) and (b) involve non-constitutional rights, the trial court need only substantially comply with those requirements. E.g., *State v. Nero* (1990), 56 Ohio St.3d 106, 108; *Greene* at ¶9. The trial court must strictly comply with Crim.R. 11(C)(2)(c), as it pertains to the waiver of federal constitutional rights. *Clark* at ¶31.

{¶ 7} We have reviewed the transcript of the plea hearing and find nothing to support Wombles’s contention that his pleas were not made knowingly, intelligently, and voluntarily.

{¶ 8} During the trial court’s questioning of Wombles about his desire to plead

guilty, Wombles informed the court that he was 38 years old, had eleven years of schooling, and was able to read and understand English. Wombles denied taking any drugs or alcohol that might affect his ability to understand the plea hearing. He further denied that he had been coerced into entering a plea, and he agreed that he was making his decision voluntarily “without any improper influence of duress from anyone or any source.”

{¶ 9} Wombles told the court that he had discussed the nature of the charges with his attorney, he understood the crime of which he was accused, he had discussed the evidence against him and the possibility of defenses, and that he was satisfied with his counsel’s representation. The court explained that a guilty plea was a complete admission of guilt.

{¶ 10} Wombles acknowledged that he had signed a Crim.R. 11 waiver form and that he understood it. The court reviewed with Wombles – and Wombles agreed – that the form stated that he would be pleading guilty to felonious assault, burglary, possession of criminal tools, and two counts of receiving stolen property, and that one count of failure to comply would be dismissed. The court informed Wombles of the maximum prison sentence and fine and the required driver’s license suspension.

{¶ 11} In reviewing the plea form, the trial court read that the parties had stipulated to “an eight-year prison sentence to run concurrently with any time imposed by Miami County or the State of Kentucky. The Defendant is responsible for total restitution of \$1,528.58. The Defendant’s share being \$764.29.”¹ The parties agreed that the form reflected the entirety of the agreement. The court then had the following discussion:

¹Presumably, a co-defendant was responsible for the other half of the restitution.

{¶ 12} “THE COURT: All right. No, I will tell you that the Court will agree to this disposition. So there won’t be any more mystery to you, I will impose that sentence. I will also agree to run it concurrently, but currently you don’t have any of those other – either Kentucky or Miami County sentences imposed, is that correct?

{¶ 13} “MR. BARBATO [DEFENSE COUNSEL]: He does with Kentucky. He’s on parole out of Kentucky.

{¶ 14} “THE COURT: But they haven’t revoked that?

{¶ 15} “MR. BARBATO: That’s correct.

{¶ 16} “THE COURT: Okay. I can only run it concurrent to something you’ve already received. I have no problem saying that and putting it in the entry, but I guess my point is, if they choose not to do that, I don’t control those other authorities. Do you understand that?

{¶ 17} “THE DEFENDANT: (Nodding affirmatively.)

{¶ 18} “THE COURT: Okay. ***”

{¶ 19} Wombles was then informed that he would not be eligible for community control, that he would be subject to post-release control, and about the consequences of violating post-release control. The court informed Wombles of his constitutional rights and that he would be waiving those rights if he entered a guilty plea. Wombles stated that he understood and wanted to waive his constitutional rights.

{¶ 20} Wombles stated that he wished to enter guilty pleas. The court found that Wombles’s pleas were made knowingly, intelligently, and voluntarily and in compliance with Crim.R. 11. The court accepted the pleas and found him guilty of the charges. The

court indicated that it would impose the eight-year sentence at a subsequent hearing.

{¶ 21} Based on the record, the trial court complied with the requirements of Crim.R. 11 at the plea hearing. With respect to Wombles's anticipated sentence, the trial court informed Wombles that it could put in the judgment entry that his sentence would run concurrently to any sentence received in Miami County and Kentucky, but that the court had no control over those other authorities and it could only order the sentence to run concurrently to "something you've already received." Wombles acknowledged that he understood. The transcript of the plea hearing reflects that Wombles was aware that the trial court could not guarantee that his sentence in Greene County would, in fact, run concurrently with those later imposed by Miami County or the Commonwealth of Kentucky.

{¶ 22} At the subsequent sentencing hearing, Wombles informed the trial court that he had reached a plea agreement in the Miami County case in which he entered a plea to multiple counts of burglary and received an agreed sentence of ten years in prison. In light of that sentence in Miami County, Wombles requested that the court impose a ten-year sentence in the Greene County case, as well. Wombles's counsel explained:

{¶ 23} "And the reason for that is because, in my opinion, I have concerns that those two years, the two years' difference between your eight-year sentence here and the ten-year sentence that he received out of Miami County could cause him a problem in my attempt to help him get to Kentucky as quickly as possible to face the revocation process there.

{¶ 24} "I've explained that to James. I've explained that to James' family. I think they understand the reasoning behind that. I believe James understands the reasoning behind that.

{¶ 25} “He understands that you were – you made a promise to him about a sentencing agreement and that you are prepared to follow that agreement, but that at his request and my request as well, we’re asking you to increase that for the reason that I want the same sentence, ten years, out of both counties to run concurrent with each other because it’s my belief that will help him or at least streamline any attempt that he has to get to Kentucky as quickly as possible. That’s my request.”

{¶ 26} The trial court questioned Wombles directly about this request, and Wombles agreed that he wanted the trial court to impose a ten-year sentence rather than an eight-year sentence in the hopes of streamlining his attempt to return to Kentucky. The State indicated to the court that it was “willing to go along with Mr. Wombles’ request,” and it asked the court to ensure that Wombles was waiving any error in the proceedings.

{¶ 27} The court inquired whether Wombles was under the influence of drugs, alcohol, or medication, and if he had any mental or physical impairment that would affect his ability to think, reason, and understand the proceedings. Wombles responded, “No, sir.” The following colloquy occurred:

{¶ 28} “THE COURT: All right. And you understand that what’s been indicated here is that during the course of your plea there was an understanding that as part of the plea, an essential part of the plea, that the Court would impose an eight-year sentence and I told you that I would do that.

{¶ 29} “You are now, through Counsel, requesting that the Court impose a ten-year sentence under the circumstances that were discussed earlier. It’s important for this Court to make sure that the plea that you took on the 29th of June is a knowing, intelligent and

voluntary one, and the sentence that I told you you would receive is an integral part of that determination as to whether that's a knowing, intelligent and voluntary plea.

{¶ 30} “So the first question I will pose to you is – and, again, this is between you and me. You would rather have the Court impose a ten-year sentence stipulated as opposed to an eight-year sentence?”

{¶ 31} “THE DEFENDANT: Yes, sir.

{¶ 32} “THE COURT: And that you wish for the plea to remain a voluntary, intelligent and knowing plea with this change?”

{¶ 33} “THE DEFENDANT: Yes, sir.

{¶ 34} “THE COURT: And if there were to be any error in the process of this matter, you are willing to waive that and accept a ten-year sentence at this time?”

{¶ 35} “THE DEFENDANT: Yes, I am.”

{¶ 36} Wombles stated that he was not under any duress in making this choice. Wombles's counsel again requested that the trial court make the sentence concurrent to any sentence from Miami County and the Commonwealth of Kentucky. The court responded:

{¶ 37} “THE COURT: Let me understand, and I guess – and I'm going to presume this since I don't know Kentucky law, that's their call, not my call?”

{¶ 38} “MR. BARBATO: Absolutely. I just ask that in your entry you note that.”

{¶ 39} The court subsequently imposed an aggregate ten-year sentence, as described above. The court informed Wombles that “[t]hese sentences will be served concurrently to each other for a total of ten years, which will run concurrent to the sentence imposed by the Miami County Common Pleas Court, Case No. 09-CR-53, and the Court would recommend

pursuant to the agreement between the State and the Defense that these run concurrent with a sentence from the State of Kentucky.”

{¶ 40} Upon review of the sentencing hearing, Wombles’s pleas were knowingly, intelligently, and voluntarily made. He requested the increase from an eight-year sentence to a ten-year sentence and expressly waived any error related to this increase. Moreover, the court again discussed with Wombles and made clear in its sentencing that it could only recommend that Wombles’s sentence run concurrently with a sentence imposed by the State of Kentucky.

{¶ 41} Wombles’s assignment of error is overruled.

II

{¶ 42} The trial court’s judgment will be affirmed.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

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