[Cite as *State v. Anderson*, 2010-Ohio-489.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 08-CA-110
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CR-530
v.	:	
	:	(Criminal Appeal from
PAUL R. ANDERSON	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 12th day of February, 2010.

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FAIN, J.

{¶ 1} Defendant-appellant Paul R. Anderson appeals from his conviction and sentence, following a guilty plea, to Theft, in violation of R.C. 2913.02(A)(1), a felony of the fifth degree. Anderson contends that the trial court erred by accepting his guilty plea, because the trial court had not ascertained that his plea was knowing and

voluntary. We conclude that the record does not support Anderson's contention. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 2} Anderson was charged with one count of Theft, a felony of the fifth degree. He entered into a negotiated plea of guilty to the charge, wherein the State agreed to recommend community control sanctions, "with an assessment for inpatient drug – inpatient treatment."

{¶ 3} The trial court accepted Anderson's guilty plea. At a later hearing, following a pre-sentence investigation, the trial court sentenced Anderson to twelve months imprisonment, the maximum sentence for the offense. From his conviction and sentence, Anderson appeals.

II

{¶ 4} Anderson's sole assignment of error is as follows:

{¶ 5} "THE TRIAL COURT ERRED WHEN IT ACCEPTED A GUILTY PLEA THAT WAS NOT ENTERED INTO KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY AS REQUIRED BY LAW."

{¶ 6} Anderson argues, in support of his assignment of error, that: "The Trial Court did not adequately inform Appellant at his September 23, 2008 plea hearing that Trial Court was not bound by the recommendation by the State of Ohio that he be placed on community control sanctions with an assessment for inpatient treatment. (September 23, 2008 *Transcript of Guilty Plea*, p.8)." (Italics in original.)

{¶ 7} The transcript, beginning at the bottom of page 7, and continuing through all of page 8 – the page Anderson cites – and on to the top of page 9, includes the following colloquy:

{¶ 8} "THE COURT: Now, it's my understanding you and your counsel have negotiated a plea agreement with the State of Ohio.

{¶ 9} "A. Yes.

{¶ 10} "THE COURT: That agreement is that in return for your plea of guilty as charged in the indictment, the State recommends Community Control with an assessment for inpatient drug – inpatient treatment. Is that your understanding of the agreement between you and the State of Ohio?

{¶ 11} "A. Yes, sir.

{¶ 12} "THE COURT: Do you acknowledge and consent to that agreement?

{¶ 13} "A. Yes, sir.

{¶ 14} "THE COURT: Have there been any other agreements or promises made to you other than that agreement?

{¶ 15} "A. No, sir.

{¶ 16} "THE COURT: Do you understand that agreement is between you and the State of Ohio, it does not necessarily bind the Court to go along with that agreement. The Court can go along with it but is not required to go along with it.

{¶ 17} "A. Yes.

{¶ 18} "THE COURT: Do you understand once you enter a plea of guilty to an offense, the only remaining responsibility left for the Court is to impose sentence?

{¶ 19} "A. Yes, sir."

{¶ 20} Anderson cites *State v. Clark*, Pickaway App. No. 02CA12, 2002-Ohio-6684, for the proposition that a plea is not knowingly, voluntarily, and intelligently entered when the trial court fails to explain to the defendant that a sentencing recommendation that is part of the plea agreement is not binding on the trial court. We agree. But in that case, the existence of the agreed sentencing recommendation was not disclosed to the trial court at the time the plea was tendered and accepted, and the trial court did not advise the defendant that the sentencing recommendation was not binding on the trial court. In the case before us, by contrast, the agreed sentencing recommendation was disclosed and made part of the record at the plea hearing, and, most importantly, the fact that the sentencing recommendation was not binding on the trial court was explained to Anderson, and his affirmative acknowledgment of that fact was elicited by the trial court. At no time did Anderson register any confusion on that point.

{¶ 21} Later in Anderson's brief, he acknowledges that the non-binding nature of the agreed sentencing recommendation was communicated to him, but argues that he was still not informed of "alternative sentencing options":

{¶ 22} "While the Trial Court conveyed to Appellant Anderson that the plea agreement between him and the State of Ohio was not binding on the Court, the Trial Court did not inform Appellant at that time what alternative sentencing options the Court may impose."

{¶ 23} We find this argument impossible to reconcile with the following colloquy during the plea hearing:

{¶ 24} "THE COURT: Do you understand what the maximum possible

punishment is the Court can impose for this offense?

{¶ 25} "A. Yes, sir.

{¶ 26} "THE COURT: What is that, sir?

{¶ 27} "A. 12 months.

{¶ 28} "THE COURT: That's correct. And do you understand what the maximum possible fine is the Court could impose?

{¶ 29} "A. No, sir.

{¶ 30} "THE COURT: $2,500. Now, understanding the maximum possible punishment is 12 months in prison and a $2,500 fine, do you still wish to go forward with your plea?

{¶ 31} "A. Yes."

{¶ 32} The trial court then went on to explain that there is no reduction for "good time"; the concept of "bad time"; post-release control; and informed Anderson that he was eligible for community control, and that, if community control were imposed, he would be under the supervision of the Greene County Adult Probation Department. This reference to community control, and a subsequent reference to the prison sentence underlying community control, were clearly subject to the condition "if the Court were to grant you Community Control." At no time did Anderson express any confusion concerning these subjects.

{¶ 33} In short, we conclude that the record does not support Anderson's assignment of error. He acknowledged that the State's agreed sentence recommendation was not binding on the trial court, he correctly recited the maximum prison term to which he could be sentenced, and the concept of community control

was explained to him in conditional terms: "if" the trial court were to grant him community control.

{¶ 34} Anderson's sole assignment of error is overruled.

III

{¶ 35} Anderson's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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BROGAN and FROELICH, JJ., concur.

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