[Cite as *State v. Suttles,* 2010-Ohio-846.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 23030
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2008-CR-119
v.	:	
	:	
ROBERT R. SUTTLES	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 5th day of March, 2010.

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BROGAN, J.

{¶ 1} Robert R. Suttles appeals from his conviction and sentence following a guilty plea to one count of felonious assault.

{¶ 2} Suttles advances two assignments of error on appeal. First, he contends the trial court erred by failing to "engage in a meaningful colloquy" about

the elements of his offense and the possible sentence. Second, he claims the trial court erred by sentencing him without a plea actually being entered.

{¶ 3} The record reflects that Suttles appeared before the trial court for a plea hearing on April 28, 2008. The prosecutor advised the trial court that Suttles was going to plead guilty in exchange for the State's recommendation of a five-year prison sentence. Defense counsel concurred in this representation. The trial court told Suttles it would "accept the five years" provided he cooperate with a pre-sentence investigation, appear later for sentencing, and commit no additional crimes. The trial court then engaged in a discussion with Suttles concerning his plea. Among other things, the trial court confirmed that he had reviewed a "waiver and plea" form and that he understood it. Suttles then waived a reading of the charge. Immediately thereafter, he affirmed his understanding of the charge against him, indicating that he had gone over it with his attorney.

{¶ 4} The trial court proceeded to the waiver-and-plea form and identified the rights Suttles was waiving by pleading guilty. With regard to his possible sentence, the trial court informed him, among other things, that he was eligible for community control, that he would be subject to post-release control if he went to prison, and that he faced a potential maximum prison term of eight years. After completing its discussion with Suttles, the trial court advised him: "If you understand the charge, the rights you are giving up, and the penalties you face, and you still wish to plead guilty I'm going to ask you to sign that [plea] form as your admission of guilt. If you have any questions though, please ask your counsel." Suttles proceeded to sign the form, indicating his entry of a guilty plea. The trial court accepted the written plea and

ordered it to be filed. Suttles later appeared for sentencing and received a five-year prison sentence. This appeal followed.

{¶ 5} In his first assignment of error, Suttles claims the trial court violated Crim.R. 11(C)(2)(a) and (b) during the plea hearing. In relevant part, the former provision obligates a trial court to determine that a defendant understands the nature of the charge, the maximum penalty, and, if applicable, that he is ineligible for community control. The latter provision obligates a trial court to ensure that a defendant understands the effect of his plea.

{¶ 6} Suttles contends the trial court violated Crim.R. 11(C)(2)(a) and (b) by giving him "mixed and confusing information." In particular, he criticizes the trial court for indicating its acceptance of a five-year sentence and then proceeding to tell him he was eligible for community control and that he would be subject to post-release control if he went to prison. In light of the trial court's agreement to a five-year sentence, Suttles reasons that community control was not possible and that post-release control was a certainty. Finally, he criticizes the trial court for failing to include a statement of facts, failing to explain the elements of felonious assault, and neglecting to have him enter his plea orally.

{¶ 7} Upon review, we find the first assignment of error to be unpersuasive. Although the trial court began the hearing by noting its conditional acceptance of a five-year sentence, Suttles had not yet been sentenced when the plea colloquy occurred. As he stood before the trial court, Suttles was eligible for community control and did face post-release control if he went to prison. The trial court did not err in advising Suttles of these facts. The existence of a pending five-year plea deal

means only that Suttles could not have been surprised when he later did not receive community control and instead received a five-year prison term. Indeed, the sentencing transcript does not reflect any surprise by Suttles or his counsel.

{¶ 8} Suttles' other arguments are equally unpersuasive. The trial court was not required to place a statement of facts on the record because he explicitly waived such a statement. Nor was the trial court required to explain the elements of the charge after Suttles indicated that he understood it and had reviewed it with his attorney. *State v. Fitzpatrick*, 102 Ohio St.3d 321, 329, 2004-Ohio-3167. Suttles contends we should hold otherwise because he did not receive "the proper information." The only information he cites in support, however, is the trial court's statement that he was eligible for community control. As set forth above, this information was accurate. Moreover, as a practical matter, we see nothing wrong with a trial court assuring a defendant's awareness that he is eligible for community control before accepting his guilty plea and a jointly recommended five-year prison sentence. Because Suttles has not shown any non-compliance with Crim.R. 11, the first assignment of error is overruled.

{¶ 9} In his second assignment of error, Suttles contends the trial court erred by sentencing him without a plea actually being entered. In support, he stresses that he never orally indicated a desire to plead guilty.

{¶ 10} Although Suttles did not orally enter a plea, the trial court engaged in a full plea colloquy and then asked him to sign the waiver-and-plea form if he still wished to plead guilty. Suttles proceeded to execute the form in the trial court's presence. The form, which is part of the record, bears his signature and reflects a

guilty plea to felonious assault, a second-degree felony.

{¶ 11} On appeal, Suttles provides no authority establishing that a defendant must enter a guilty plea orally. Although he cites Crim.R. 11, that rule generally requires a knowing, intelligent, and voluntary plea. It does not state that a plea must be entered orally rather than in writing. In fact, Crim.R. 11(A) suggests the opposite. It states: "A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas may be made orally." The fact that a simple guilty plea *may* be made orally implies that it also *may* be made in writing, and we see no reason why it cannot.

{¶ 12} For its part, the State cites *State v. Thompson* (Sept. 25, 1997), Franklin App. No. 96APA12-1679, for the proposition that Suttles' written guilty plea was sufficient. In *Thompson*, the defendant acknowledged in open court that he previously had signed a document setting forth his intention to plead guilty. The Tenth District held that this acknowledgment was equivalent to orally entering a plea.

{¶ 13} Suttles points out that, unlike the defendant in *Thompson*, he never acknowledged in open court that he had signed a plea form. This argument is specious. There was no need for Suttles to make such an acknowledgment because the trial court actually watched him sign the form. Immediately thereafter, the trial court stated: "The court finds the defendant appeared in open court and after being advised orally by the court of the contents of the plea from [sic] that he signed his name * * *." The bottom line is that Suttles appeared in open court and, after a full Crim.R. 11 hearing, signed his name to a form in which he pled guilty. By signing the form, Suttles entered a guilty plea. The second assignment of error is overruled.

{¶ 14} Based on the reasoning set forth above, the judgment of the Montgomery County Common Pleas Court is affirmed.

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DONOVAN, P.J., and FAIN, J., concur.

Copies mailed to:

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