

**[Cite as *State v. Damron*, 2015-Ohio-2057.]**

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
CHAMPAIGN COUNTY**

STATE OF OHIO

Plaintiff-Appellee

**V.**

LINDA-JOY N. DAMRON

## Defendant-Appellant

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Appellate Case No. 2014-CA-15

Trial Court Case No. 2013-CR-318

(Criminal Appeal from  
Common Pleas Court)

## OPINION

Rendered on the 29th day of May, 2015.

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HALL, J.

{¶ 1} Linda-Joy N. Damron appeals from her conviction and sentence following a guilty plea to one count of theft by deception, a fifth-degree felony violation of R.C.

2913.02(A)(3) and (B)(2).

{¶ 2} In her sole assignment of error, Damron contends the trial court erred in accepting her guilty plea by failing to comply with Crim.R. 11 and *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

{¶ 3} The record reflects that the charge against Damron stemmed from allegations that she falsely had posed as an attorney and had charged an elderly victim \$5,000 to fill out Social Security disability paperwork that she never completed. Although Damron's indictment included factual allegations to this effect, the State removed those specific allegations as part of a plea agreement. The State also agreed, among other things, to recommend a "non-residential community control" sanction, contingent on its satisfaction with a presentence investigation report, and the imposition of restitution. (Plea Tr. at 2-4).

{¶ 4} During Damron's plea hearing, the trial court engaged in a full Crim.R. 11 colloquy with her. (*Id.* at 4). Near the end of that exchange, it asked whether she had "any defense" to the charge or "any reason why [she] should not be found guilty[.]" (*Id.* at 14). She responded: "What I did I did. And not intentionally to fraud somebody. I tried to help somebody is all I did, was tried to help somebody. And I didn't get what I need to help him. I didn't do it intentionally to take money from anybody." (*Id.*). In light of that response, the trial court observed that Damron seemed to be saying she did not commit theft by deception. (*Id.* at 14-16). The trial court added, "And if that's what you're saying, then the Court is unable to accept your plea of guilt." (*Id.* at 16). At that point, Damron consulted privately with her attorney. When the hearing resumed, defense counsel explained that

Damron was “confusing her fear of the repercussions of her behavior with an admission to the behavior.” (*Id.* at 17). Defense counsel also stated that Damron had “insisted that we go forward with the plea and would like to admit intent.” (*Id.*).

{¶ 5} The trial court then addressed Damron again and made a distinction between knowing *what* she had done and *why* she had done it. For purposes of the plea hearing, the trial court told her it was concerned with what she had done. It advised her that it could not accept her plea absent an admission that she was guilty of committing every element of the charged crime. (*Id.* at 18-25). Damron stated that she understood, that she wanted to enter a guilty plea, and that she had no defense to the charge. (*Id.*). She also specifically admitted that she had acted with the purpose to deprive the victim of property or services and had knowingly obtained or exerted control over the property or services by deception. She further admitted that the value of the property or services stolen was between \$1,000 and \$7,500, making the crime a fifth-degree felony. (*Id.* at 22). The trial court then accepted the guilty plea. (*Id.* at 25).

{¶ 6} At a subsequent sentencing hearing, however, Damron began to make apparent protestations of innocence. She told the trial court that she did not hold herself out as an attorney and that she simply had accepted money to help the victim complete Social Security disability forms. (Sentencing Tr. at 13, 24). According to Damron, she completed as much of the paperwork as she could but was unable to finish because the victim never consulted a doctor. She claimed she eventually burned the paperwork because she did not feel like “lugging it around anymore.” (*Id.* at 15). After hearing Damron’s version of events, which conflicted sharply with the prosecutor’s (*Id.* at 3-7), the trial court stated, “I’m trying to figure out what you did that is criminal in nature.” (*Id.* at 20).

Damron replied: “That is what I’m trying to figure out too, Your Honor. That is what I’m exactly trying to figure out too.” (*Id.*). The trial court then asked how Damron believed she had deceived the victim. She responded: “I’m not sure, Your Honor. I couldn’t tell you that.” (*Id.* at 21). Damron then suggested that she simply was “guilty” of taking money from the victim to fill out paperwork that she ultimately could not complete. (*Id.*).

{¶ 7} The trial court proceeded to impose a sentence that included two years of community control, restitution, and community service. The trial court made clear that it disbelieved Damron. It explained that it thought she should go to jail but that it would accept the prosecutor’s recommendation of no jail time. (*Id.* at 24-25). Damron’s conviction and sentence were memorialized in a March 21, 2014 judgment entry. (Doc. #22). This appeal followed.

{¶ 8} In her sole assignment of error, Damron claims the trial court “erred by accepting [her] guilty plea when it failed to comply with the procedural requirements of both Crim.R. 11 and *Alford*.” Specifically, Damron contends she protested her innocence, both before and after her plea, and that the trial court erred in failing to follow the proper procedure for accepting such an *Alford* plea. Alternatively, even if her plea was not an *Alford* plea, Damron asserts that she did not enter it knowingly, intelligently, and voluntarily as required by Crim.R. 11.

{¶ 9} Upon review, we find no merit in either argument. “An *Alford* plea represents a qualification to the assurances created by a proper Crim.R. 11(C) inquiry. It permits a plea of guilty when the defendant nevertheless denies a necessary foundation of criminal liability, either with respect to the truth of the act or omission charged or the degree of culpability which the offense requires.” (Citation omitted) *State v. Gibson*, 2d Dist. Clark

No. 2013 CA 112, 2014-Ohio-5573, ¶ 8. “Where the defendant interjects protestations of innocence into the plea proceedings, *and fails to recant those protestations of innocence*, the trial court must determine that the defendant has made a rational calculation to plead guilty notwithstanding his belief that he is innocent.” (Emphasis added) *State v. Padgett*, 67 Ohio App.3d 332, 338, 586 N.E.2d 1194 (2d Dist.1990). “This requires, at a minimum, inquiry of the defendant concerning his reasons for deciding to plead guilty notwithstanding his protestations of innocence; it may require, in addition, inquiry concerning the state’s evidence in order to determine that the likelihood of the defendant’s being convicted of offenses of equal or greater magnitude than the offenses to which he is pleading guilty is great enough to warrant an intelligent decision to plead guilty.” *Id.* at 338-339.

{¶ 10} In the present case, Damron initially did make protestations of innocence at the plea hearing. The trial court responded by engaging in a discussion with her and allowing her to consult privately with counsel. As set forth above, Damron’s counsel informed the court that he had clarified things with her and that she wanted to plead guilty. (Plea Tr. at 17). The trial court subsequently engaged in another discussion with Damron, making clear that it could not accept her plea absent an admission that she was guilty of committing every element of the charged crime. (*Id.* at 18-25). Damron indicated that she understood and wanted to plead guilty. She admitted having no defense and admitted that she had acted with the purpose to deprive the victim of property or services and had knowingly obtained or exerted control over the property or services by deception. She further admitted that the value of the property or services stolen was between \$1,000 and \$7,500. (*Id.* at 22). These admissions persuade us that Damron recanted her

protestations of innocence before pleading guilty. That being so, her plea was not an *Alford* plea, and the procedure for accepting *Alford* pleas did not apply. We note too that Damron's reliance on her later protestation of innocence at sentencing is misplaced. She cannot rely on post-plea statements or claims of innocence to establish that the trial court erred in accepting her plea. "[W]hen a defendant makes claims of innocence after a guilty plea has been accepted, a trial court has no duty to inquire into a defendant's reasons for pleading guilty." *State v. Reeves*, 8th Dist. Cuyahoga No. 100560, 2014-Ohio-3497, ¶ 13 (citing cases); see also *State v. Darks*, 10th Dist. Franklin No. 05AP-92, 2006-Ohio-3144, ¶ 17-18 (citing cases). The proper way to raise the issue at that point is a motion to withdraw the plea.

{¶ 11} Finally, we reject Damron's alternative argument that the trial court failed to comply with Crim.R. 11 when taking her plea. She asserts that her plea was not knowing, intelligent, and voluntary because "she was not aware of the facts in her case that corresponded to each essential element of the offense." (Appellant's brief at 9). She contends she "was oblivious to what exact conduct she engaged in that could or would be the sufficient basis for a finding of guilty." (*Id.*). In support of this argument, however, Damron relies exclusively on statements she made at sentencing. (*Id.* at 9-10). Again, she cannot establish a defect in her plea based on post-plea statements she made more than one month later at sentencing. Once Damron recanted her protestations of innocence at the plea hearing, the plea transcript reflects a knowing, intelligent, and voluntary plea with a complete admission of guilt. Damron cites nothing from the plea-hearing transcript to suggest otherwise.

{¶ 12} Based on the reasoning set forth above, we overrule the assignment of

error and affirm the judgment of the Champaign County Common Pleas Court.

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FROELICH, P.J., and FAIN, J., concur.

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