

[Cite as *State v. Willis*, 2017-Ohio-4456.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 16CA3781
 :
 vs. :
 BRITTANI A. WILLIS, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

Timothy Young, Ohio State Public Defender, and Peter Galyardt, Assistant State Public Defender, Columbus, Ohio, for Appellant.

Mark E. Kuhn, Scioto Count Prosecuting Attorney, and Jay Willis, Scioto County Assistant Prosecuting Attorney, Portsmouth, Ohio, for Appellee.

CRIMINAL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 6-14-17
ABELE, J.

{¶ 1} This is an appeal from a Scioto County Common Pleas Court judgment of conviction and sentence. Brittani Willis, defendant below and appellant herein, raises the following assignments of error for review:

FIRST ASSIGNMENT OF ERROR:

"BRITTANI WILLIS WAS DEPRIVED OF HER RIGHT TO DUE PROCESS WHEN THE TRIAL COURT ACCEPTED AN UNKNOWING, UNINTELLIGENT, AND INVOLUNTARY GUILTY PLEA. FIFTH AND FOURTEENTH AMENDMENTS, UNITED STATES CONSTITUTION; SECTIONS 10 AND 16, ARTICLE I, OHIO CONSTITUTION. R.C. 2929.20. PLEA TR.

2-12."

SECOND ASSIGNMENT OF ERROR:

"BRITTANI WILLIS WAS DEPRIVED OF HER CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL. FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS, UNITED STATES CONSTITUTION; SECTIONS 10 AND 16, ARTICLE I, OHIO CONSTITUTION. R.C. 2929.20. PLEA TR. 2-12."

THIRD ASSIGNMENT OF ERROR:

"BRITTANI WILLIS'S CONSECUTIVE SENTENCES ARE CONTRARY TO LAW. R.C. 2929.14(C). SENTENCING TR. 2, 8-11. OCT. 5, 2016 SENTENCING ENTRY."

{¶ 2} On April 4, 2014, appellant was a passenger in a vehicle that had been stopped for a traffic violation. Subsequently, a law enforcement officer's execution of a search warrant uncovered two packages that contained 117 grams of heroin. The Scioto County Grand Jury returned an indictment that charged appellant with trafficking in heroin and the possession of heroin, both first degree felonies, and tampering with evidence, a third degree felony.

{¶ 3} On June 6, 2014, pursuant to the parties' agreement, appellant pled guilty to (1) trafficking in heroin, a first degree felony; (2) an amended charge of possession of heroin, a third degree felony; and (3) tampering with evidence, a third degree felony. The trial court accepted the parties' agreement that (1) provided for consecutive sentences for an aggregate term of ten years in prison; and (2) stated that appellant would be eligible to a judicial release at five and one-half years and that the appellee would agree to a judicial release at seven years. At the hearing the court also informed appellant that if she failed to return to the court for sentencing, the court would impose a

seventeen year prison term.

{¶ 4} Unfortunately, appellant failed to heed the trial court's warning and remained at large for approximately two years. After appellant appeared for sentencing on September 30, 2016, the trial court imposed an aggregate prison sentence of eleven years, rather than the original agreed sentence of ten years. This appeal followed.

{¶ 5} Appellant asserts that she did not enter a knowing, voluntary and intelligent guilty plea because she, the appellee and the trial court all believed that she would have the opportunity for a judicial release after five and one-half years in prison (and at a minimum after serving seven years pursuant to the appellee's express agreement). However, at that time the pertinent statutory structure precluded judicial release before appellant served nine years in prison. Appellant further argues that the record does not support the court's imposition of consecutive sentences.

{¶ 6} Appellee candidly and forthrightly concedes that the parties and the trial court misinterpreted (understandably, in our view) the statute (R.C. 2929.20(C)) concerning appellant's eligibility for judicial release. Appellee also cites, inter alia, *State v. Bryant*, 4th Dist. Meigs No. 11CA19, 2012-Ohio-3189 concerning a defendant's misunderstanding of the law surrounding potential criminal penalties. Thus, appellee agrees that appellant's convictions should be reversed and the case remanded for further proceedings.

{¶ 7} Based upon the foregoing, we agree with the parties' assessment of this case and agree that appellant's guilty pleas were not knowing, voluntary and intelligent. Consequently, we hereby reverse the trial court's judgment of conviction and sentence and remand this matter for further proceedings consistent with this opinion. We also wish to emphasize that the court truly appreciates appellee's forthrightness candor in this matter.

JUDGMENT REVERSED AND CASE
REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH THIS
OPINION.

JUDGMENT ENTRY

It is ordered that the judgment be reversed and case remanded for further proceedings consistent with this opinion. Appellant shall recover of appellee the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.