

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

IN THE MATTER OF: : Case No. 17CA23
: :
K.B. : DECISION AND JUDGMENT
: ENTRY
ADJUDICATED DELINQUENT :
CHILD. : **Released: 05/07/18**

APPEARANCES:

Timothy P. Young, Ohio State Public Defender, and Lauren Hammersmith, Assistant Ohio State Public Defender, Columbus, Ohio, for Appellant.

Kevin A. Rings, Washington County Prosecuting Attorney, and Amy Graham, Washington County Assistant Prosecuting Attorney, Marietta, Ohio, for Appellee.

McFarland, J.

{¶1} Appellant, K.B., appeals the trial court’s judgment that (1) adjudicated him a delinquent child for committing assault, in violation of R.C. 2903.13(A) and (C)(4)(a), a fifth degree felony if committed by an adult, and (2) committed him to the Ohio Department of Youth Services for institutionalization for an indefinite term consisting of a minimum of six months and a maximum period not to exceed his twenty-first birthday. Appellant raises three assignments of error, but we find his first dispositive. In his first assignment of error, Appellant asserts that the trial court violated his due process rights by accepting his admission to the complaint without

ensuring that he entered it in a knowing, intelligent, and voluntary manner. In particular, he asserts that the court's failure to adequately inform him of the nature of the allegations, the consequences of his admission, and the rights he waived by entering an admission means that he did not knowingly, intelligently, and voluntarily enter his admission. We agree with Appellant that the court's failure to adequately inform him of the rights he waived by entering an admission means that he did not knowingly, intelligently, and voluntarily enter his admission. Thus, we must deem Appellant's admission invalid and reverse the trial court's judgment so that Appellant may plead anew.

I. FACTS

{¶2} The State charged Appellant with being delinquent for committing assault, and the parties later reached an agreement regarding adjudication and disposition. Appellant agreed to admit to assault as charged in the complaint, and in exchange, the State agreed to dismiss a probation violation filed in a prior case. Additionally, the state agreed to recommend that the court commit Appellant to the Ohio Department of Youth Services (DYS) for a period of six months to the age of twenty-one.

{¶3} At a hearing, Appellant indicated that he understood the terms of the parties' agreement. The court further explained to Appellant:

“They’re saying that they will dismiss this one case on a probation violation, * * * and you’re going to enter a plea to [assault], which is a fifth degree felony, and there is only one sentence or one disposition * * * by law for a felony of the fifth degree, and that’s an indefinite sentence of six months to age twenty-one.”

{¶4} The court then asked Appellant if “that’s what you intend to do here today,” and Appellant responded affirmatively. The court asked Appellant if he had “any questions about anything,” and Appellant indicated that he did not. The court asked Appellant’s counsel if he believed that “there’s a sufficient basis in fact for the Court to accept this plea,” and counsel stated, “Yes.” Appellant’s counsel then entered an admission on K.B.’s behalf.

{¶5} The court subsequently adjudicated Appellant a delinquent child for committing assault and committed him to the legal custody of DYS for institutionalization for an indefinite term consisting of a minimum of six months and a maximum period not to exceed his twenty-first birthday.

{¶6} The court also found that Appellant was not entitled to any confinement credit. The court determined that Appellant was not confined in connection with the delinquency-assault complaint.

II. ASSIGNMENTS OF ERROR

{¶7} Appellant timely appealed and raises three assignments of error.

First Assignment of Error:

“K.B.’s admission was not knowing, intelligent, and voluntary, in violation of the Fifth and Fourteenth Amendments to the United States Constitution; Article I, Sections 10 and 16 of the Ohio Constitution; and Juvenile Rule 29.”

Second Assignment of Error:

“The trial court committed plain error when it granted K.B. zero days of confinement credit, in violation of his right to equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.”

Third Assignment of Error:

“K.B. was denied the effective assistance of counsel when trial counsel failed to object to the juvenile court’s insufficient plea colloquy and to the trial court’s inaccurate calculation of confinement credit.”

III. LEGAL ANALYSIS

{¶8} In his first assignment of error, Appellant asserts that the trial court violated his due process rights by failing to ensure that he entered his admission in a knowing, intelligent, and voluntary manner. Specifically, Appellant alleges that the trial court failed to comply with the requirements set forth in Juv.R. 29(D)(1) by failing to ensure that he understood (1) the substance of the complaint, (2) the nature of the allegations, and (3) the consequences of his admission before accepting his plea. Appellant argues that the trial court also failed to comply with the requirements set forth in Juv.R. 29(D)(2) by failing to ensure that he understood that entering an

admission waived his rights (1) to challenge the witnesses and evidence against him, (2) to remain silent, and (3) to introduce evidence.

{¶9} The State agrees that the trial court did not comply with Juv.R. 29(D).

{¶10} Juv.R. 29(D) prohibits a trial court from accepting an admission unless the court personally addresses the party and determines both of the following:

- (1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;
- (2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

{¶11} A juvenile's admission under Juv.R. 29 is similar to an adult's guilty plea under Crim.R. 11. *In re C.S.*, 115 Ohio St.3d 267, 2007–Ohio–4919, 874 N.E.2d 1177, ¶ 112; *In re D.A.G.*, 4th Dist. Ross Nos. 13CA3366 and 13CA3367, 2013–Ohio–3414, ¶ 20. “Juv.R. 29 and Crim.R. 11 require trial courts to personally address the offender on the record to ensure that the offender knowingly, voluntarily, and intelligently admits delinquency (in a juvenile matter) or guilt (in an adult criminal matter).” *D.A.G.* at ¶ 20, citing *C.S.* at ¶ 112, and *In re A.E.*, 5th Dist. Licking Nos. 10–CA–107 and 10–CA–108, 2011–Ohio–4746, ¶ 48, citing *In re Flynn*, 101 Ohio App.3d 778, 781, 656 N.E.2d 737 (8th Dist.1995). A juvenile's admission in a

delinquency case is unconstitutional if the juvenile did not enter the admission in a knowing, intelligent, and voluntary manner. *See State v. Montgomery*, 148 Ohio St.3d 347, 2016-Ohio-5487, 71 N.E.3d 180, ¶ 40; *State v. Riley*, 4th Dist. Washington No. 16CA29, 2017-Ohio-5819, 2017 WL 2988070, ¶ 18, quoting *State v. Sarkozy*, 117 Ohio St.3d 86, 2008–Ohio–509, 881 N.E.2d 1224, ¶ 7, quoting *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996).

{¶12} Thus, Juv.R. 29(D) places an affirmative duty upon the juvenile court to personally address the juvenile and determine that the juvenile understands the nature of the allegations and the consequences of entering the admission. *D.A.G.* at ¶ 21, citing *In re Beechler*, 115 Ohio App.3d 567, 571, 685 N.E.2d 1257 (4th Dist.1996). The court must “conduct an on-the-record discussion to determine whether the admission is being entered knowingly and voluntarily.” *In re Tabler*, 4th Dist. Lawrence No. 06CA30, 2007-Ohio-274422, ¶ 16, citing *In re West*, 128 Ohio App.3d 356, 359, 714 N.E.2d 988 (8th Dist.1998). “Moreover, the court must ‘determine that the [juvenile], and not merely the attorney, understands the nature of the allegations and the consequences of entering the admission.’ ” *D.A.G.* at ¶ 21, quoting *Beechler*, 115 Ohio App.3d at 571; *accord Montgomery* at ¶ 40, quoting *Boykin v. Alabama*, 395 U.S. 238, 244, 89

S.Ct. 1709, 23 L.Ed.2d 274 (1969) (“It is the trial court’s duty, therefore, to ensure that a defendant ‘has a full understanding of what the [admission] connotes and of its consequence.’ ”).

{¶13} “The best way for a juvenile court to ensure that it complies with Juv.R. 29(D) is for the court to use the language of the rule, ‘carefully tailored to the child’s level of understanding, stopping after each right and asking whether the child understands the right and knows he is waiving it by entering an admission.’ ” *D.A.G.* at ¶ 22, quoting *In re Miller*, 119 Ohio App.3d 52, 58, 694 N.E.2d 500 (2nd Dist.1997), citing *State v. Ballard*, 66 Ohio St.2d 473, 423 N.E.2d 115 (1981). Although the Ohio Supreme Court prefers that juvenile courts strictly comply with Juv.R. 29(D), a reviewing court may uphold an admission as voluntary as long as the juvenile court substantially complies with the rule and as long as no prejudice occurs. *C.S.* at ¶ 113. “[S]ubstantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the implications of his plea.” *Id.*; *D.A.G.* at ¶ 22. A juvenile court’s failure to substantially comply with Juv.R. 29(D) constitutes prejudicial error that warrants a reversal of the judgment so that the juvenile may admit anew. *C.S.* at ¶ 113; *D.A.G.* at ¶ 22; *Beechler*, 115 Ohio App.3d at 572. We conduct a *de novo* review to determine whether a trial court substantially complied with Juv.R. 29(D).

D.A.G. at ¶ 22; *In re C.K.*, 4th Dist. No. 07CA4, 2007–Ohio–3234, ¶15; *In re Elliot*, 4th Dist. Nos. 03CA65 and 03CA66, 2004–Ohio–2770, ¶ 17.

{¶14} Here, the transcript shows that the trial court did not substantially comply with Juv.R. 29(D)(2). The court’s discussion with Appellant consisted of the following:

“The Court: All right. And [K.B.], let me ask you some questions.

You’ve heard what the attorneys said. Is that what your understanding is here today?

The Juvenile: Yes, sir.

The Court: And do you understand what they’re talking about?

The Juvenile: Yes, sir.

The Court: Okay. They’re saying that they will dismiss this one case on a probation violation, 16DE662, and you’re going to enter a plea to 17DE326, which is a fifth degree felony, and * * * there’s only one disposition by law for a felony of the fifth degree, and that’s an indefinite sentence of six months to age twenty-one.

That’s the only thing there is in the statute.

So—and that’s what you intend to do here today, is that correct?

The Juvenile: Yes, sir.

The Court: All right. Do you have any questions about anything?

The Juvenile: No, sir.

The Court: Nothing? All right.”

{¶15} The trial court then asked Appellant’s counsel whether he “believe[s] there’s a sufficient basis in fact for the Court to accept this plea,” to which counsel responded, “Yes.” Appellant’s counsel then entered an admission on Appellant’s behalf.

{¶16} While the court engaged in a brief colloquy with Appellant before accepting his admission, the court did not ask him whether he understood that entering an admission to the complaint waived his right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing. Nowhere in the colloquy did the court engage Appellant in an on-the-record discussion to ensure that he understood the rights he waived by entering an admission to the complaint. Although we recognize that the court included language in its judgment entry to indicate that it did inform appellant of the rights he waived, the transcript shows that the court did not, in fact, so inform Appellant. Therefore, Appellant's admission cannot be deemed knowing, intelligent, or voluntary. Consequently, we must reverse the trial court's delinquency adjudication so that Appellant may plead anew. *Tabler* at ¶ 25; *accord In re A.C.*, 8th Dist. Cuyahoga No. 102351, 2015-Ohio-3673, 2015 WL 5269601, ¶ 6; *In re J.C.A.*, 12th Dist. Butler No. CA2013-10-188, 2014-Ohio-3879, 2014 WL 4402120, ¶ 6; *In re B.B.*, 7th Dist. Belmont No. 12 BE 18, 2013-Ohio-1958, 2013 WL 1965989, ¶ 7.

{¶17} Because we have concluded that the court failed to substantially comply with Juv.R. 29(D)(2) by failing to ascertain that Appellant understood that his admission waived the enumerated rights, we

need not address his remaining argument that the court failed to comply with Juv.R. 29(D)(1).

{¶18} Accordingly, based upon the foregoing reasons, we sustain Appellant's first assignment of error.

IV. CONCLUSION

{¶19} Our disposition of Appellant's first assignment of error renders his remaining assignments of error moot. Therefore, we need not address them. App.R. 12(A)(1)(c).

{¶20} Accordingly, we reverse the trial court's finding of delinquency, vacate Appellant's commitment, and remand this matter to the trial court so that Appellant may plead anew.

**JUDGMENT REVERSED
AND REMANDED.**

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED AND CAUSE REMANDED and that the Appellant recover of Appellee any costs herein.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

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

For the Court,

BY: _____
Matthew W. McFarland, 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.