[Cite as *State v. Dudte*, 2010-Ohio-5816.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- JOSHUA DUDTE Defendant-Appellant	JUDGES: Hon. W. Scott Gwin, P.J. Hon. William B. Hoffman, J. Hon. Sheila G. Farmer, J. Case No. 10CA33 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Richland County Common Pleas Court, Case No. 2009CR0265
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	November 24, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JAMES J. MAYER, JR. PROSECUTING ATTORNEY RICHLAND COUNTY, OHIO By: KIRSTEN L. PSCHOLKA-GARTNER Assistant Richland County Prosecutor 38 South Park Street Mansfield, Ohio 44902	WILLIAM C. FITHIAN, III 111 North Main Street Mansfield, OHio 44902

Hoffman, J.

{¶1} Defendant-appellant Joshua Dudte appeals his conviction entered by the Richland County Court of Common Pleas. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE

{¶2} On April 9, 2009, Appellant was indicted on two counts of rape, felonies of the first degree and one count of sexual battery, a felony of the third degree. On February 1, 2010, Appellant entered a plea of guilty to one count of rape, a felony of the first degree, pursuant to a negotiated plea agreement. Pursuant to the plea agreement, the State dismissed the remaining two counts.

{¶3} On February 19, 2010, Appellant filed a motion to withdraw his plea. The trial court conducted a hearing on the motion on February 22, 2010. The court overruled the motion, and sentenced Appellant to a mandatory eight years in prison, five years of post-release control, and restitution. The trial court further ordered Appellant register as a Tier III Sex Offender.

{¶4} Appellant now appeals, assigning as error:

{¶5} "I. APPELLANT'S PLEA WAS NOT KNOWINGLY AND INTELLIGENTLY MADE. HE WAS NOT ADVISED ORALLY OR IN WRITING THAT HE MUST REGISTER AS A SEX OFFENDER.

{¶6} "II. APPELLANT WAS NOT SENTENCED IN ACCORDANCE WITH THE STATUTES OF THE STATE OF OHIO: RAPE (2907.02), PURPOSES OF FELONY SENTENCING (2929.11), AND SENTENCING FOR SEXUALLY VIOLENT PREDATOR SPECIFICATION (2971.03). APPELLANT WAS INCORRECTLY SENTENCED TO EIGHT YEARS OF 'MANDATORY PRISON' TIME."

I.

{¶7} In the first assignment of error, Appellant maintains the trial court erred in denying the motion to withdraw his plea because the plea was not knowingly and voluntarily made. A trial court's decision to allow a defendant to withdraw his plea is within the sound discretion of the trial court. *State v. Xie* (1992), 62 Ohio St.3d 521. However, a motion to withdraw a guilty plea shall be freely and liberally granted. *State v. Davison* 2008-Ohio-7037.

{¶8} Appellant asserts at no point during the colloquy pertaining to his guilty plea did the trial court discuss the potential registration requirement. Further, the "Admission of Guilt/Judgment Entry" standard form used by the trial court had a provision stating:

{¶9} "( ) I understand this is a sexually-oriented offense for which I will be required to register with the Sheriff. The Sheriff may be required to tell my community of my crime and address."

{¶10} The provision was not checked on the form.

{¶11} Ohio Criminal Rule 11 states, in pertinent part,

{¶12} "(C) Pleas of guilty and no contest in felony cases

{¶13} "***

{¶14} "(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

{¶15} "(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if

applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

{¶16} "(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

{¶17} "(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself."

{¶18} At the change of plea hearing, the trial court engaged in a colloquy with Appellant to ensure Appellant understood his rights and the potential penalties for the crime charged. The court invited Appellant to ask questions, and inquired of Appellant as to his present mental state. The trial court advised Appellant of his right to trial, as to the burden of proof, and his right to confront witnesses. As to potential penalties, the trial court informed Appellant:

{¶19} "The Court: Okay. Well, in any event, there was a lady who was at a bar. They are saying you took her back to her house, and then they are saying that there was oral sex, forcible oral sex. That's what they are talking about. Do you understand what it is you are accused of?

{¶20} "The Defendant: Yes, sir.

{¶21} "The Court: That's a first degree felony. It carries a maximum sentence of ten years in prison, and also a $20,000 fine. Do you understand the maximum sentence you can receive?

{¶22} "The Defendant: Yes, sir.

{¶23} "The Court: There could be restitution, too, if she had counseling or medical expenses. This is an offense which is mandatory incarceration, so when I sentence you to prison in this case, which I'm required to do, it will be a non-probationable offense, one in which you can't be released early. Do you understand that?

{¶24} "The Defendant: Yes, sir.

{¶25} "The Court: The question is whether your sentence will be three, four, five, six, seven, eight, nine or ten years, that's the discretion I have.

{¶26} "If you plead guilty I'm going to order a presentence investigation as your attorney has requested before I decide your sentence. Do you understand that?

{¶27} "The Defendant: Yes, sir."

{¶28} Tr. at 6-7.

{¶29} Where a trial court fully complies with Criminal Rule 11 in accepting a guilty plea, a defendant's mistaken belief or impression regarding the consequences of the plea is not sufficient to establish it was not knowingly and voluntarily made. *State v. Sabatino* (1995), 102 Ohio App.3d 483. A trial court is not required to inform a defendant of all the potential ramifications of his plea. *State v. Jefferson* (February 18, 1999), Cuyahoga App. No. 72400. Ohio courts have held a trial court need not inform a sex offender of the registration and notification requirements of R.C. Chapter 2950

before accepting a plea. The courts have repeatedly held registration and notification requirements are collateral consequences of a defendant's guilty plea to a sex offense, and are remedial, not punitive in nature. Id. *State v. Hiles* (Dec. 24, 1998) Delaware App. No. 98CAA04023; *State v. Hill* (July 24, 1998) Montgomery App. No. 16791. Therefore, a trial court's failure to inform a defendant of such requirements does not render a plea invalid.

{¶30} Based on the foregoing, we find the trial court did not err in denying Appellant's motion to withdraw his plea.

{¶31} Appellant's first assignment of error is overruled.

II.

{¶32} In the second assignment of error, Appellant asserts the trial court erred in imposing a mandatory eight year prison term in the sentencing entry.

{¶33} The trial court's February 23, 2010 sentencing entry reads:

{¶34} "The defendant is sentenced to the Ohio State PRISON system for the following terms

{¶35} "Count 2: 8 yrs. Mandatory Prison

{¶36} "***

{¶37} "This sentence includes 5 years mandatory post release control (PRC) with a condition to complete Richland County ReEntry Court if the defendant resides in Richland County. Violation of PRC could result in additional prison time up to 50% of this sentence. If the violation is a new felony, the defendant could receive a new prison term in this case of the greater of one year of the time remaining on the post-release control."

{¶38} R.C. 2929.13(F)(2) provides,

{¶39} "(F) Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, section 2929.142, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20 or 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the term or terms pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code for any of the following offenses:

{¶40} "(1) Aggravated murder when death is not imposed or murder;

{¶41} "(2) Any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been guilty of a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and would be sentenced under section 2971.03 of the Revised Code;"

{¶42} The judicial release statute, R.C. 2929.20 provides:

{¶43} "(A) As used in this section:

{¶44} "(1)(a) Except as provided in division (A)(1)(b) of this section, "eligible offender" means any person serving a stated prison term of ten years or less when either of the following applies:

{¶45} "(i) The stated prison term does not include a mandatory prison term.

{¶46} "(ii) The stated prison term includes a mandatory prison term, and the person has served the mandatory prison term."

{¶47} Based on the language of R.C. 2929.13(F)(2) and R.C. 2929.20, we find the trial court did not err in referring to the Appellant's eight year prison sentence as mandatory. Again, the trial court informed Appellant during the change of plea hearing, "[t]his is an offense which is mandatory incarceration, so when I sentence you to prison in this case, which I'm required to do, it will be a non-probationable offense, on in which you can't be released early." Tr. at 6-7. As noted in our discussion of Appellant's first assignment of error, the trial court had advised Appellant of the range of the possible sentence. At the hearing, Appellant indicated he understood the mandatory nature of his sentence, and proceeded to plead guilty to the offense.

{¶48} Accordingly, Appellant's second assignment of error is overruled.

{¶49} Appellant's sentence in the Richland County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Farmer, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JOSHUA DUDTE	:	
	:	
Defendant-Appellant	:	Case No. 10CA33

For the reasons stated in our accompanying Opinion, Appellant's conviction and sentence in the Richland County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER