

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-08-010

Appellee

Trial Court No. 2006CR0194

v.

Jason Wright

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2009

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Jacqueline M. Kirian, Assistant Prosecuting Attorney, for appellee.

William F. Hayes, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas. Briefly, the salient facts of this cause are as follows. Appellant, Jason E. Wright, and the victim, Kaori Shirasaki-Dunne, first met in Japan when appellant was in the military. After Wright returned to the United States, he convinced the victim to come to this country and to marry him. The rest of Kaori's family remained in Japan. At that time appellant was already married to another Japanese woman. He used white-out to

cover his wife's name in their marriage certificate, hand-printed Kaori's name in its place, added a new date and required information, and forged Kaori's signature on the document. He then told the victim he would run into the courthouse and get them married. When he returned, he showed her the forged marriage certificate. Appellant then proceeded to obtain several deposits of funds, totaling thousands of dollars, from Kaori and her family in the belief that these funds were supporting her and her "husband."

{¶ 2} On May 23, 2006, appellant was indicted on one count of tampering with records, a violation of R.C. 2913.42(A)(2), a felony of the third degree. He later pled guilty to one count of forgery, a violation of R.C. 2913.31(A)(3), a felony of the fifth degree. He was sentenced to one year in prison, ordered to pay restitution to the victim, and to pay the costs of prosecution. The court further subjected Wright to post release control. Appellant appeals his conviction and sets forth the following assignment of error:

{¶ 3} "The court failed to strictly comply with the constitutional requirements in Crim.R. 11(C)(2)(c) and explain all of the constitutional rights listed in the rule that the Defendant/Appellant waived by pleading guilty, in a manner reasonably intelligible to the Defendant/Appellant, including the right to have the state prove guilt beyond a reasonable doubt. As a result of this failure the plea of guilty tendered by Defendant/Appellant is invalid and should be vacated."

{¶ 4} Crim.R. 11(C) provides, in pertinent part:

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

{¶ 6} " * * *

{¶ 7} "(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."

{¶ 8} A trial court must strictly comply with the constitutional requirements referenced in Crim.R. 11(C)(2)(c) before accepting a guilty plea in a felony case by orally advising the defendant of those rights that he is waiving. *State v. Veney* (2008), 120 Ohio St.3d 176, syllabus. Although strict compliance is necessary, the court is not required to use the exact language contained in Crim.R. 11(C)(2)(c). *Id.* ¶ 27, quoting *State v. Ballard* (1981), 66 Ohio St.2d 473, paragraph two of the syllabus. A guilty plea need not be vacated so long as the trial court explains the constitutional rights that a defendant waives by pleading guilty in a manner reasonably intelligible to the defendant. *Id.*

{¶ 9} In the present case, the trial judge engaged in the following relevant colloquy with appellant:

{¶ 10} "THE COURT: If I accept your plea of guilty, then you need to know that you are giving up a number of constitutional rights. And I am going to recite some of these rights to you right now, and I want you to pay close attention. And if you have any question with regard to any of them, you let me know. Do you understand that?

{¶ 11} "THE DEFENDANT: Yes sir.

{¶ 12} "THE COURT: Whenever you're charged with a criminal offense you are presumed innocent unless and until you are proven guilty beyond a reasonable doubt by the prosecution in a trial. And you're entitled to a speedy and public trial. At that trial your guilt or innocence would be determined by a jury of twelve citizens of this county or by the Court, the Judge, and that would be up to you whether you have your trial or your guilt or innocence determined by the court or by a jury. Do you understand you would have that option? (Emphasis added.)

{¶ 13} "THE DEFENDANT: Yes, sir.

{¶ 14} "THE COURT: Prior to and throughout the trial you would have the assistance of your attorney. At that trial, you would be present to see, hear, confront and cross-examine all the witnesses called by the state to testify against you, and you could use the processes of this court to require people to come here and testify on your behalf, if you wanted them to, or to produce any evidence for you that you think they might have

that would assist you in your defense. At that trial, you could take this witness stand and testify in your own defense, if you wanted to, but you would not be required to. And if you determined after consultation with your attorney that your best interests were served by not testifying at this trial, then the fact that you did not testify should have no bearing on your guilt or innocence and a prosecutor could not comment on the fact that you did not testify * * *. Do you understand that?"

{¶ 15} Appellant stated that he did understand. The judge again asked appellant whether he understood these rights and whether he had questions. Appellant indicated that he understood and that he had no questions. Finally, the judge queried: "Do you understand, again, that if you enter a guilty plea and I accept it, you're waiving these constitutional rights, and you're waiving your right to appeal; is that what you want to do?" Appellant answered, "Yes, sir." The judge asked, "Are you sure?" and appellant again said, "Yes, sir."

{¶ 16} Based upon the foregoing, we find that the trial court strictly complied with the strictures of Crim.R. 11(C)(2)(c). Accordingly, appellant's sole assignment of error is found not well-taken. The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT AFFIRMED.
State of Ohio
v. Jason Wright
WD-08-010

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
