

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

State of Ohio

Court of Appeals No. E-09-037

Appellee

Trial Court No. 2008-CR-105

v.

Joel Deleon

DECISION AND JUDGMENT

Appellant

Decided: May 7, 2010

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, Mary Ann Barylski
and Trevor M. Hayberger, Assistant Prosecuting Attorneys, for appellee.

Troy A. Murphy, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the sentence imposed upon him following a guilty plea on two counts of felonious assault in the Erie County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} On February 2, 2008, appellant, Joel Deleon, drove his 1993 Ford F-150 pickup truck through the wall of a motel and into a room occupied by his former

girlfriend and her 14 year-old son. The woman and her son were both struck with debris, but not seriously injured.

{¶ 3} Sheriff's deputies arrested appellant later at his home. Appellant admitted he had crashed through the wall at the urging of a friend to "get her back."

{¶ 4} On March 14, 2008, the Erie County Grand Jury named appellant in a five count indictment, alleging two counts of attempted murder, two counts of felonious assault and one count of vandalism. Appellant initially pled not guilty, but, following negotiations, agreed to plead guilty to two counts of felonious assault in return for dismissal of the remaining charges.

{¶ 5} The trial court accepted appellant's plea and, following a presentence investigation, sentenced him to a five year term of incarceration on each count. The court ordered that the sentences be served consecutively. Appellant appeals from this judgment of conviction and sets forth the following two assignments of error:

{¶ 6} "First Assignment of Error:

{¶ 7} "The trial court erred when it failed to conduct a hearing for the purpose of determining allied offenses of similar import pursuant to R.C. § 2941.25.

{¶ 8} "Second Assignment of Error:

{¶ 9} "Appellant was the recipient of ineffective assistance of counsel as trial counsel failed to object to the imposition of multiple sentences for allied offenses."

{¶ 10} R.C. 2941.25 provides:

{¶ 11} "(A) Where the same conduct by the defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

{¶ 12} "(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all them."

{¶ 13} "Our analysis of allied offenses originates in the prohibition against cumulative punishments embodied in the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and Section 10, Article I of the Ohio Constitution. However, both this court and the Supreme Court of the United States have recognized that the Double Jeopardy Clause does not entirely prevent sentencing courts from imposing multiple punishments for the same offense, but rather 'prevent[s] the sentencing court from prescribing greater punishment than the legislature intended.' Thus, in determining whether offenses are allied offenses of similar import, a sentencing court determines whether the legislature intended to permit the imposition of multiple punishments for conduct that constitutes multiple criminal offenses." *State v. Williams*, 124 Ohio St.3d 381, 2010-Ohio-147, ¶ 12 (citations omitted).

{¶ 14} This court and many others have repeatedly held that the legislature intended felonious assaults committed on more than one victim to be crimes of dissimilar

import. *State v. Gowdy*, 6th Dist. No. E-06-071, 2009-Ohio-385, ¶ 36; *State v. Gibson*, 6th Dist. No. S-02-016, 2003-Ohio-1996, ¶ 19. See, also, *State v. Franklin*, 97 Ohio St.3d 1, 2002-Ohio-5304, ¶ 48; *State v. Jones* (1985), 18 Ohio St.3d 116, 117-118.

Accordingly, appellant's first assignment of error is not well-taken.

{¶ 15} Since appellant's second assignment of error is predicated on trial counsel's purported ineffectiveness in failing to object in the trial court to the imposition of multiple sentences for allied offenses of similar import and we have concluded that there was no basis for such an objection, appellant's second assignment of error is not well-taken.

{¶ 16} On consideration whereof, the judgment of the Erie County Court of Common Pleas is affirmed. It is ordered that appellant pay the court cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, 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>.