

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

State of Ohio

Court of Appeals No. L-09-1112

Appellee

Trial Court No. CR0200801485

v.

Jaron Glen Reasonover

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael J. Loisel, Assistant Prosecuting Attorney, for appellee.

Matthew N. Fech, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Jaron Reasonover, appeals from a decision of the Lucas County Court of Common Pleas wherein his motion to suppress evidence was denied. For the reasons that follow, we affirm.

{¶ 2} On February 29, 2008, appellant was indicted on one count of aggravated burglary, with a gun specification, one count of felonious assault, with a gun specification, and one count of robbery. On March 31, 2008, appellant filed a motion to suppress arguing that his identification was unduly suggestive. A hearing commenced on April 30, 2008.

{¶ 3} Jeffrey Madigan testified that on February 14, 2008, he returned to his house at approximately 3:30 p.m. Once he was inside, he noticed that a radio he had left on was turned down and his couch cushions were disheveled. He testified that a man appeared, pointing a gun at him. The man fired the gun at Madigan, missing his head. Madigan immediately ran out of the house to his neighbor's house across the street. From his neighbor's porch, he saw the man leave his house from the side door and run into the backyard. Madigan's neighbor called the police.

{¶ 4} When the police arrived, they told Madigan that they had apprehended a suspect and they asked him to get in their patrol car so they could take him to identify the suspect. They drove around the corner where the police were holding the suspect. Madigan identified the suspect, appellant, as the man who had just shot at him.

{¶ 5} Sergeant Brent Scoble of the Toledo Police Department testified that he was on duty on February 14, 2008, when he was called to a burglary in progress. He drove Madigan to the location where other officers were holding appellant. Sergeant Scoble testified that Madigan identified appellant without hesitation.

{¶ 6} The trial court denied appellant's motion to suppress on October 27, 2008. On February 17, 2009, appellant entered no contest pleas to the indictment and was found guilty. Before sentencing, appellant filed a motion to withdraw his plea which was denied. He was sentenced to serve nine years in prison. Appellant now appeals setting forth the following assignments of error:

{¶ 7} "I. The trial court erred in denying appellant's motion to suppress because based upon the totality of the circumstances the one-on-one identification procedure used by the Toledo Police Department was unduly suggestive.

{¶ 8} "II. The trial court erred in denying appellant's motion to suppress because the in-court identification of appellant was tainted by the unduly suggestive identification of appellant in the one-on-one identification.

{¶ 9} "III. The appellant's sixth amendment right to effective counsel was violated when his trial attorney appeared late at the hearing on the motion to suppress the identification of appellant resulting in appellant being in the courtroom with the single eyewitness and counsel for appellant had requested appellant's presence at the hearing be waived.

{¶ 10} "IV. The trial court erred when it failed to properly advise appellant that the term of post-release control appellant was subject to following his release from prison was a mandatory period of five years.

{¶ 11} "V. The trial court erred in denying appellant's motion to withdraw his plea."

{¶ 12} In his first assignment of error, appellant contends that the court should have suppressed Madigan's initial identification of him as the procedure used was unduly suggestive.

{¶ 13} Review of a ruling on a motion to suppress involves a mixed question of law and fact. *State v. Davis* (1999), 133 Ohio App.3d 114, 117. The trial court acts as the trier of fact; therefore, that court alone weighs the evidence and determines the credibility of the witnesses. The reviewing court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Brooks* (1996), 75 Ohio St.3d 148, 154. Having accepted the facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the facts met the appropriate legal standard. *State v. Anderson* (1995), 100 Ohio App.3d 688, 691.

{¶ 14} The Ohio Supreme Court has noted that "[t]here is no prohibition against a viewing of a suspect alone in what is called a 'one-man showup' when this occurs near the time of the alleged criminal act; such a course does not tend to bring about misidentification but rather tends under some circumstances to insure accuracy." *State v. Madison* (1980), 64 Ohio St.2d 322, 332, quoting *Bates v. United States* (C.A.D.C.1968), 405 F.2d 1104, 1106. In determining whether an identification is reliable, a court must consider (1) the witness's opportunity to view the suspect at the time of the incident, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description, (4) the witness's certainty when identifying the suspect at the time of the confrontation,

and (5) the length of time elapsed between the crime and the identification. *State v. Waddy* (1992), 63 Ohio St .3d 424, 439.

{¶ 15} The record shows that Madigan looked appellant directly in the face as appellant attempted to shoot him. Madigan estimated that appellant was standing seven feet in front of him. This encounter occurred in the late afternoon, a time when it was still light outside. Madigan described the suspect to police as a light-skinned black male, standing approximately six feet tall, and wearing a black coat. Within 30 minutes of the shooting incident, Sergeant Scoble drove Madigan around the corner where appellant, who matched Madigan's description, was standing with police officers. Madigan immediately identified appellant as the man who attempted to shoot him. Madigan explained that he did not forget appellant's face because appellant had just tried to kill him.

{¶ 16} Given the fact that appellant, matching Madigan's description, was apprehended within a short period of time near Madigan's house, and given Madigan's unwavering insistence that appellant was the man who attempted to shoot him in his own house, we find that the one-on-one identification of appellant was not made under circumstances that were unduly suggestive, so as to create a substantial likelihood of misidentification. Accordingly, appellant's first assignment of error is found not well-taken.

{¶ 17} In his second assignment of error, appellant contends that Madigan's in court identification of him was tainted by the unduly suggestive one-on-one

identification procedure discussed in appellant's first assignment of error. Having already determined that Madigan's initial identification of appellant was not the result of an unduly suggestive procedure, appellant's argument is without merit. We also reject appellant's second contention that Madigan's in court identification of appellant was tainted because he had the opportunity to view appellant, in handcuffs, before the suppression hearing. As Madigan had already unequivocally identified appellant as the man he found in his house on February 14, 2008, we fail to see how appellant suffered prejudice. Appellant's second assignment of error is found not well-taken.

{¶ 18} In his third assignment of error, appellant contends he was denied effective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, appellant must show that counsel's conduct so undermined the proper functioning of the adversarial process that the trial court cannot be relied upon as having produced a just result. The standard requires appellant to satisfy a two-prong test. First, appellant must show that counsel's representation fell below an objective standard of reasonableness. Second, appellant must show a reasonable probability that, but for counsel's perceived errors, the results of the proceeding would have been different. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. This test is applied in the context of Ohio law that states that a properly licensed attorney is presumed competent. *State v. Hamblin* (1988), 37 Ohio St.3d 153.

{¶ 19} Appellant contends that because trial counsel was late for the suppression hearing, he was unable to prevent appellant from being brought into the courtroom

whereby Madigan could see him in handcuffs, ultimately tainting Madigan's future in court identification. In that we have already determined that appellant suffered no prejudice from the fact that Madigan saw him in court before the suppression hearing began, we cannot say that that counsel's representation fell below an objective standard of reasonableness. Appellant's third assignment of error is found not well-taken.

{¶ 20} In his fourth assignment of error, appellant contends that the court erred in failing to properly advise appellant at sentencing that he was subject to a mandatory five year period of postrelease control. Consequently, appellant contends he did not knowingly, intelligently, and voluntarily enter his pleas.

{¶ 21} "When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution." *State v. Engle*, 74 Ohio St.3d 525, 527.

{¶ 22} Pursuant to Crim.R. 11(C)(2), a trial court cannot accept a no contest plea from a defendant in a felony case without first addressing the defendant personally and informing him of the consequences of his plea. Crim.R. 11(C)(2)(a) requires a trial court to inform a criminal defendant of the maximum penalty for the offense. Postrelease control is part of the offender's sentence. R.C. 2929.14(F), *State v. Lamb*, 156 Ohio App.3d 128, 2004-Ohio-474, ¶ 15. (Citations omitted.) Therefore, a trial court must, at the time of sentencing or at a plea hearing, provide information pertaining to postrelease

control to a criminal defendant. *Woods v. Telb*, 89 Ohio St.3d 504, 2000-Ohio-171, paragraph two of the syllabus.

{¶ 23} Nonetheless, due to the fact that Crim.R. 11(C)(2)(a) does not involve the waiver of a constitutional right, substantial compliance with this portion of the rule is sufficient. *State v. Pitts*, 159 Ohio App.3d 852, 2005-Ohio-1389, ¶ 19, citing *State v. Stewart* (1977), 51 Ohio St.2d 86, 93, *State v. Franks*, 10th Dist. No. 04AP-362, 2005-Ohio-462, ¶ 8. (Citation omitted.) The Ohio Supreme Court has held that, "in conducting [the change of plea] colloquy, the trial judge must convey accurate information to the defendant so that the defendant can understand the consequences of his or her decision and enter a valid plea." *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶ 26. "[I]f the trial judge imperfectly explained nonconstitutional rights such as the right to be informed of the maximum possible penalty and the effect of the plea, a substantial-compliance rule applies." *Id.* at ¶ 31. "If the trial judge partially complied, e.g., by mentioning mandatory postrelease control without explaining it, the plea may be vacated only if the defendant demonstrates a prejudicial effect." *Id.* at ¶ 32. "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving." *State v. Nero* (1990), 56 Ohio St.3d 106, 108.

{¶ 24} Appellant pled no contest to aggravated burglary, a violation of R.C. 2929.11(A)(1) and a felony of the first degree. Pursuant to R.C. 2967.28(B), "[e]ach sentence to a prison term for a felony of the first degree * * * shall include a requirement

that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment." For a felony of the first degree, the period is five years. R.C. 2967.28(B)(1).

{¶ 25} Before accepting appellant's no contest pleas, the trial judge attempted to ensure that appellant was making knowing, voluntary, and intelligent pleas through a series of questions and explanations which addressed the rights he was waiving and the consequences of the plea. As for postrelease control, the trial judge stated in pertinent part: "If you go to prison, there will be a point in time when you will be released, and you will be placed out into the community under conditions of supervision imposed upon you by the parole authority. We'll ask for a maximum of 5 years."

{¶ 26} Appellant contends that the trial judge's use of the word "ask" erroneously implies that the five year period of postrelease control in his case is discretionary. While we agree that the trial judge could have used a better choice of word, we find no prejudice. The judge clearly mentioned postrelease control, and as such, partially complied with the rule. Moreover, appellant signed a plea form acknowledging that: "If I am sentenced to prison for a felony 1 or a felony sex offense, after my prison release I will have 5 years of postrelease control under conditions determined by the parole board." Based on the totality of the circumstances, appellant's fourth assignment of error is found not well-taken.

{¶ 27} In his fifth assignment of error, appellant contends that the court erred in denying his presentence motion to withdraw his pleas. It is well-established that in

reviewing a trial court's decision regarding a motion to withdraw a plea, we are required to weigh a number of nonexhaustive factors. *State v. Eversole*, 6th Dist. Nos. E-05-073, E-05-076, E-05-074, E-05-075, 2006-Ohio-3988, ¶ 13. These factors include:

(1) whether the prosecution would be prejudiced if the plea was vacated; (2) whether the offender was represented by highly competent counsel; (3) the extent of the Crim.R. 11 hearing; (4) whether there was a full hearing on the motion to withdraw the offender's guilty plea; (5) whether the trial court gave full and fair consideration to the motion; (6) whether the motion was made within a reasonable time; (7) whether the motion set forth specific reasons for the withdrawal; (8) whether the accused understood the nature of the charges and possible penalties; and (9) whether the accused was perhaps not guilty or had a complete defense to the crime. *State v. Fish* (1995), 104 Ohio App.3d 236, 240.

{¶ 28} The general rule is that "a presentence motion to withdraw a guilty plea should be freely and liberally granted." *State v. Xie* (1992), 62 Ohio St.3d 521, 527. Nevertheless, an offender has no absolute right to withdraw his plea prior to sentencing and, thus, the final decision is "within the sound discretion of the trial court." *Id.*

{¶ 29} Appellant contends that his motion should have been granted because it would only cause a short delay, thereby not prejudicing the state, and because he had a complete defense to the charges. Specifically, the questionable identification of appellant by Madigan.

{¶ 30} In this case, appellant's motion to withdraw received a hearing and full and fair consideration by the lower court. There is nothing in the record of this case

demonstrating that the state would be prejudiced if appellant was permitted to withdraw his pleas. However, we have already determined that Madigan's identifications of appellant were reliable. Based upon a complete review of all of the factors set forth above, we cannot say that the trial court's attitude in denying appellant's motion to withdraw his no contest plea was arbitrary, unreasonable, or unconscionable. Appellant's fifth assignment of error is found not well-taken.

{¶ 31} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs 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.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

<p>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.</p>
