

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

State of Ohio

Court of Appeals No. OT-08-053

Appellee

Trial Court No. 07-CR-171

v.

Kimberly L. Gadd

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2010

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, for appellee.

Megan K. Mattimoe, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the October 20, 2008 judgment of the Ottawa County Court of Common Pleas, which sentenced appellant, Kimberly L. Gadd, after the court accepted her guilty plea and found her guilty of violating R.C. 2911.12(A)(3), burglary.

Upon consideration of the assignments of error, we affirm the decision of the lower court.

Appellant asserts the following assignments of error on appeal:

{¶ 2} "FIRST ASSIGNMENT OF ERROR: THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS EVIDENCE SEIZED IN VIOLATION OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION FOURTEEN OF THE OHIO STATE CONSTITUTION.

{¶ 3} "SECOND ASSIGNMENT OF ERROR: TRIAL COUNSEL DID NOT EFFECTIVELY ASSIST APPELLANT IN HIS DEFENSE IN VIOLATION OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO STATE CONSTITUTION."

{¶ 4} Appellant was arrested following an investigation of two burglaries. She moved to suppress evidence obtained as a result of the investigation of the burglaries, a warrantless entry of her home, and subsequent search pursuant to a warrant. Following the hearing, the court found that the officers had entered the premises because of the signs of mental illness and were justified in their belief. Therefore, the trial court denied the motion to suppress. Afterward, appellant entered a guilty plea and was convicted and sentenced by the court.

{¶ 5} On appeal, appellant argues that the trial court erred when it denied her motion to suppress. We cannot reach this issue because appellant's guilty plea precludes appellate review of "* * * constitutional violations not logically inconsistent with the

valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established." *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, ¶ 78, certiorari denied by *Fitzpatrick v. Ohio* (2005), 545 U.S. 1130. See, also, *Ross v. Common Pleas Court of Auglaize Cty.* (1972), 30 Ohio St.2d 323, 323-324, quoting *Crockett v. Haskins* (C.A.6, 1966), 372 F.2d 475 ("A defendant who enters a voluntary plea of guilty while represented by competent counsel waives all non-jurisdictional defects in prior stages of the proceedings."). Therefore, the entry of a guilty plea waives any possible error in the denial of a motion to suppress. *State v. Leasure*, 6th Dist. No. L-05-1260, 2007-Ohio-100, ¶ 7. Appellant's first assignment of error is not well-taken.

{¶ 6} In her second assignment of error, appellant argues that her counsel rendered ineffective assistance of counsel when he failed to clearly set forth the specific basis for her motion to suppress and remained silent when the trial court narrowed the scope of the motion.

{¶ 7} The right to effective assistance of counsel is guaranteed under Article 1, Section 10 of the Ohio Constitution and the Sixth Amendment to the United States Constitution. A guilty plea waives the right to claim the accused was prejudiced by constitutionally ineffective counsel, except to the extent that the defects complained of caused the plea to be less than knowing and voluntary. *State v. Kelley* (1991), 57 Ohio St.3d 127, 130, and *State v. Barnett* (1991), 73 Ohio App.3d 244, 248.

{¶ 8} In this case, appellant argues that her counsel allowed the prosecution and trial court to narrow her motion to suppress and to limit her appeal. Appellant argues that because the court did not have an opportunity to review all of the issues related to the warrantless entry and search pursuant to a warrant, the trial court wrongfully denied her motion to suppress and she was forced to enter a guilty plea.

{¶ 9} While appellant may have felt she had no choice but to enter a plea because of the trial court's denial of her motion to suppress, this fact does not establish that she did not knowingly, voluntarily, and intelligently enter her plea. Appellant presented no evidence or argument to support her claim that her counsel's ineffectiveness prevented her from entering a knowing, voluntary, and intelligent plea. *State v. Owens*, 181 Ohio App.3d 725, 2009-Ohio-1508, ¶ 56-59; *State v. Hurst*, 4th Dist. No. 08CA43, 2009-Ohio-3127, ¶ 73, and *State v. Nguyen*, 6th Dist. No. L-05-1369, 2007-Ohio-2034, ¶ 25. Therefore, we find that appellant waived her right to challenge the denial of her motion to suppress by entering a guilty plea. Appellant's second assignment of error is not well-taken.

{¶ 10} Having found that the trial court did not commit error prejudicial to appellant and that substantial justice has been done, the judgment of the Ottawa County Court of Common Pleas is affirmed. Appellant is hereby 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

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.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.
