

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

State of Ohio

Court of Appeals No. OT-09-013

Appellee

Trial Court No. 09-CR-036

v.

Jesse Quinones, III

**DECISION AND JUDGMENT**

Appellant

Decided: February 12, 2010

\* \* \* \* \*

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

Sarah A. Nation, for appellant.

\* \* \* \* \*

HANDWORK, J.

{¶ 1} This accelerated appeal is from the June 8, 2009 judgment of the Ottawa County Court of Common Pleas, which sentenced appellant, Jesse Quinones, III, after acceptance of his guilty plea to charges of violating R.C. 4301.69 (furnishing alcohol to minors), unclassified; R.C. 2925.11 (possession of drugs), a felony of the fifth degree,

and R.C. 2905.03 (unlawful restraint), a misdemeanor of the third degree. 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} "I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO PROPERLY ADVISED [SIC] APPELLANT THAT HE WAS GIVING UP HIS CONSTITUTIONAL RIGHTS BY ENTERING A PLEA.

{¶ 3} "II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO CONSIDER R.C. 2929.13(B) IN SENTENCING APPELLANT."

{¶ 4} Appellant brought this appeal pursuant to R.C. 2953.08(A)(4) alleging that his sentence was contrary to law. A trial court must strictly comply with Crim.R. 11(C)(2) regarding federal constitutional rights before accepting a plea of guilty to ensure that a plea is knowingly, intelligently, and voluntarily made. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶ 29. In his first assignment of error, appellant argues that the trial court failed to strictly comply with Crim.R. 11(C)(2)(c) because the court did not advise appellant that he was waiving his right to have the state prove his guilt beyond a reasonable doubt and waiving the privilege against self-discrimination. Appellant acknowledges that the court specifically inquired whether appellant understood each of these rights. But, he argues, the court did not make it clear to appellant that he was waiving these rights by entering his plea.

{¶ 5} The following colloquy occurred between the court and appellant:

{¶ 6} Court: "I want to talk to you now about your Constitutional rights. You have the Constitutional right to a jury trial. If you enter a plea today, you are going to give up that right to a jury trial. A jury trial would be where twelve people sit in the box and make a decision whether or not you are guilty. All twelve of those persons must agree. Do you understand that?"

{¶ 7} Appellant: "Yes, sir."

{¶ 8} Court: "Do you understand that the State has to prove each and every element of an offense beyond a reasonable doubt in a jury trial?"

{¶ 9} Appellant: "Yes, sir."

{¶ 10} Court: "Do you understand that you are giving up the right to cross examine any witnesses that might be presented during the course of a jury trial?"

{¶ 11} Appellant: "Yes sir."

{¶ 12} Court: "Do you understand that you are giving up compulsory process? That means the right to subpoena people to testify on your behalf."

{¶ 13} Appellant: "Yes sir."

{¶ 14} Court: "Do you understand that if there were a jury trial, that you couldn't be forced to testify against yourself?"

{¶ 15} Appellant: "Yes sir."

{¶ 16} Court: "Do you understand that if you decide not to testify in a jury trial, that can't be used against you?"

{¶ 17} Appellant: "Yes sir."

{¶ 18} Court: "And do you waive the right to a jury trial?"

{¶ 19} Appellant: "Yes sir."

{¶ 20} It is clear from this colloquy that appellant understood that he was giving up his right to a jury trial by entering a guilty plea. Furthermore, it was clear that, along with the right to a jury trial, appellant also necessarily gave up his additional rights to have the state prove each and every element of an offense beyond a reasonable doubt and the privilege against self-discrimination. The written guilty plea also made this fact clear to appellant.

{¶ 21} We find the case before us distinguishable on its facts from those in *State v. Strebler*, 7th Dist. No. 08 MA 108, 2009-Ohio-1200, cited by appellant. In the *Strebler* case, the trial court never indicated in any manner that the defendant was waiving his constitutional rights by entering a plea. In the case before us, the court made it clear to appellant that by entering a plea, appellant gave up his right to a jury trial. We find that the court identified appellant's further constitutional rights that arise out of a jury trial and, within the context of the entire colloquy, made it clear that appellant was waiving all of those rights by entering a plea and giving up a right to a jury trial.

{¶ 22} Certainly, no question of strict compliance can arise when a judge mirrors the language of Crim.R. 11(C). However, the purpose of the rule is to ensure that the defendant is informed and that the judge can determine that appellant entered the plea knowingly, intelligently, and voluntarily. *State v. Veney*, 120 Ohio St.3d 176,

2008-Ohio-5200, ¶ 18, and *State v. Ballard* (1981), 66 Ohio St.2d 473, 480. We find that this goal was satisfied in the case before us. Appellant's first assignment of error is not well-taken.

{¶ 23} In his second assignment of error, appellant argues that the trial court erred in sentencing appellant because it did not consider R.C. 2929.13(B). Appellant contends that there is no mention at the sentencing hearing or in the sentencing judgment that the trial court considered R.C. 2929.13(B) before imposing a prison term. Therefore, appellant argues, the sentence is contrary to law and must be vacated.

{¶ 24} Appellant's factual allegation is incorrect. The trial court specifically made a finding in this case that appellant was not amendable to community control and that a prison term would be consistent with the purposes of R.C. 2929.11. Furthermore, the court stated that it considered the factors of R.C. 2929.13.

{¶ 25} After *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, a trial court may impose a prison sentence or community control sanction for a fourth or fifth degree felony without making any R.C. 2929.13(B)(1)(a) through (i) finding. *Id.* at ¶ 42, 68-70, and 100; *State v. Moncoveish*, 11th Dist. No. 2008-P-0075, 2009-Ohio-6227, ¶ 24; *State v. Gilliam*, 7th Dist. No. 08 MA 96, 2009-Ohio-5914, ¶ 26; and *State v. Mayor*, 7th Dist. No. 07 MA 177, 2008-Ohio-7011, ¶ 53. Therefore, we find appellant's second assignment of error not well-taken.

{¶ 26} 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.

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JUDGE

Thomas J. Osowik, P.J.

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JUDGE

Keila D. Cosme, J.  
CONCUR.

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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: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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