

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

State of Ohio

Court of Appeals No. S-10-024

Appellee

Trial Court No. 09 CR 866

v.

Paul Biddwell

**DECISION AND JUDGMENT**

Appellant

Decided: April 22, 2011

\* \* \* \* \*

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,  
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Matthew E. Exton, for appellant.

\* \* \* \* \*

SINGER, J.

{¶ 1} Appellant appeals his conviction for two counts of attempted murder, one count of kidnapping, one count of aggravated burglary, and grand theft, entered on a guilty plea in the Sandusky County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} In the late night hours of July 2, 2009, three armed men invaded the rural Gibsonburg home of James and Mary Kohler. They found 74-year-old James Kohler asleep on a couch in the living room. The men beat him severely, smashing his head into a brick fireplace hearth.

{¶ 3} 76-year-old Mary Kohler was asleep in an upstairs bedroom. The intruders bound her hands and feet and pushed her down a flight of stairs. Both Kohlers were taken to a Fremont hospital, then, because of the seriousness of their conditions, transferred to a Toledo hospital. Both survived after a lengthy hospitalization. The burglars had taken nearly three dozen guns that James Kohler, a gun dealer, had in the house.

{¶ 4} A tip led police to investigate three men: Jimmy Houston, Ronald Ruby and appellant, Paul R. Biddwell. Eventually, all three were arrested. On July 30, 2009, appellant was named in a 43 count indictment, charging him with two counts of attempted murder, two counts of felonious assault, two counts of kidnapping, three counts of aggravated burglary with a firearm specification, 33 counts of grand theft, and tampering with evidence.

{¶ 5} Appellant was arraigned and entered a plea of not guilty to all counts. Counsel was appointed and requested a bill of particulars. On receipt, appellant's counsel moved to suppress statements appellant made to law enforcement officers on his arrest. Subsequent to the hearing of the suppression motion, but prior to a decision of the

motion, appellant appeared at a January 25, 2010 hearing that was supposed to have been for a change of plea.

{¶ 6} At that hearing, however, appellant's trial counsel advised the court that counsel had been advised by appellant that appellant no longer wanted him as his attorney. The court then addressed appellant, inquiring as to the reason for this request. Appellant replied, "I just don't feel like I'm being treated fair enough. Ineffective counseling, uhm, I haven't had any motions filed for me. I have had a plea that came to me that was outrageous, and I'm not – I just – I don't – I just want new counsel." After some discussion, the court refused to provide appellant with substitute appointed counsel, but did advise him that if he chose to obtain retained counsel, the court would entertain appointed counsel's request to withdraw.

{¶ 7} On January 25, 2010, appellant amended his plea to guilty to two counts of attempted murder, one count of kidnapping, one count of aggravated burglary with a firearm specification and one count of grand theft. The remaining charges were dismissed. The court accepted the plea and, following a presentence investigation, imposed a ten year term of incarceration for each attempted murder, ten years for kidnapping, ten years for the aggravated burglary, with an additional one year for the specification, and one year for the single count of grand theft. The court ordered the sentences for attempted murder to be served consecutively, but concurrent to the terms for kidnapping and burglary. The one year terms for the firearm specification and grand

theft were ordered served consecutive to each other and to the attempted murder sentences.

{¶ 8} From this judgment of conviction, appellant now brings this appeal.

Appellant sets forth the following three assignments of error:

{¶ 9} "I. The defendant-appellant was prejudiced when the trial court failed [sic] to hold a hearing regarding appointed counsel's motion to withdraw.

{¶ 10} "II. The defendant appellant was prejudiced when the trial court failed to grant court appointed counsel's motion to withdraw after breakdown of the attorney client relationship.

{¶ 11} "III. The trial court erred when it imposed consecutive sentences without making the findings of fact required by RC 2929.14(E)(4) [sic] as affirmed by the legislature subsequent to *Oregon v. Ice*."

{¶ 12} We shall discuss appellant's first two assignments of error together.

{¶ 13} "A guilty plea waives all claims of the deprivation of constitutional rights which might have occurred prior to the plea." *State v. Spates* (1992), 64 Ohio St.3d 269, 272. The only attack which may be launched following a guilty plea is on the voluntary and intelligent character of the plea itself. The inquiry " \* \* \* entails a review of the record to ensure that Crim.R. 11 was followed by the trial court upon the defendant's submission of the guilty plea." *Id.*, citing *State v. Kelley* (1991), 57 Ohio St.3d 127.

{¶ 14} "Crim.R. 11(C)(2) provides:

{¶ 15} "'In felony cases the court \* \* \* shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

{¶ 16} "'(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

{¶ 17} "'(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

{¶ 18} "'(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.'" *State v. Woodland*, 6th Dist. No. WD-03-044, 2004-Ohio-2772, ¶ 13-18.

{¶ 19} Appellant does not assert any facts that would suggest any manner in which the court's refusal to provide him substitute counsel affected whether his plea was voluntary or intelligently given. Indeed our own careful examination of the plea colloquy in this matter reveals that the court was in full compliance with the rule. Moreover,

appellant executed in open court a detailed written waiver of his rights. See *State v. Muniz*, 6th Dist. No. WD-03-032, 2004-Ohio-1659.

{¶ 20} Accordingly, appellant's first and second assignments of error are not well-taken.

{¶ 21} In his third assignment of error, appellant suggests that the decision of the United States Supreme Court in *Oregon v. Ice* (2009), 555 U.S. 160, revives the statutory requirement in R.C. 2929.14(E)(4) that a sentencing court make certain findings before imposing consecutive sentences. That provision was found unconstitutional and severed from the statute in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. A similar Oregon provision was found constitutional in *Ice*.

{¶ 22} Subsequent to the submission of appellant's brief in this matter, the Supreme Court of Ohio addressed this issue and found no such revival. *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, paragraph two of the syllabus.

{¶ 23} Accordingly, appellant's third assignment of error is found not well-taken.

{¶ 24} On consideration whereof, the judgment of the Sandusky County Court of Common Pleas is affirmed. It is ordered that appellant pay court 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.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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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>.