

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

State of Ohio

Court of Appeals No. L-10-1205

Appellee

Trial Court No. CR0200902136

v.

Duane E. Williams

**DECISION AND JUDGMENT**

Appellant

Decided: February 18, 2011

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Bruce J. Sorg, Assistant Prosecuting Attorney, for appellee.

Rhys B. Cartwright-Jones, for appellant.

\* \* \* \* \*

SINGER, J.

{¶ 1} Appellant appeals from a judgment of conviction for drug possession entered on a finding of guilt on a no contest plea in the Lucas County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} On February 5, 2009, Toledo police executed a search warrant at the home of appellant, Duane E. Williams. According to police, when they entered the home, they observed appellant run into the kitchen and attempt to flush a white powdery substance down the garbage disposal. Analysis of the substance revealed that it was crack cocaine with a total weight of 66.89 grams. Appellant was later named in a four count indictment, charging two counts of drug trafficking, both first degree felonies, and two counts of possession, one a first degree felony, one a second degree felony.

{¶ 3} Appellant initially pled not guilty to all charges, but following negotiations with the state later agreed to plead no contest to a single count of attempted possession of crack cocaine, a second degree felony. At the change of plea hearing, the court engaged appellant in a Crim.R. 11 plea colloquy, finally stating to him:

{¶ 4} "Now, sir, you are waving your right to have the State prove you guilty beyond a reasonable doubt to each and every element of the charge. In all likelihood I will be making my decision of guilt based solely on the statements made by the prosecutor as to what evidence he would have presented at trial and what facts are alleged in the indictment. Knowing that, sir, do you still wish to enter your plea?"

{¶ 5} Appellant responded, "yes."

{¶ 6} Following this, in open court, appellant signed a plea document which stated, "[b]y pleading no contest I understand the Court will decide my guilt on offenses to which I have pled based upon the facts as set forth in the indictment and upon the prosecutor's statement about the evidence which would have been presented at trial."

{¶ 7} The trial court accepted appellant's plea, found him guilty and, following a presentence investigation, imposed a mandatory five year term of imprisonment.

{¶ 8} Appellant now brings this appeal, setting forth the following single assignment of error:

{¶ 9} "The trial court erred in taking a plea of no-contest without informing Mr. Williams of the effect thereof."

{¶ 10} Appellant's sole assertion of impropriety is the manner the plea relates to the court's comments concerning the effects of a no contest plea. According to appellant, the court's statements were insufficient to advise him of the effects of his no contest plea and confusing, as a matter of law, as to the meaning of a no contest plea.

{¶ 11} Crim.R. 11 governs the manner in which a court will accept a plea. Crim.R. 11(C)(2) requires, prior to accepting a plea of guilty or no contest, the court personally address the defendant, determine that the plea is voluntary and that the defendant understands the charges and potential penalties. The court must also advise the defendant of the constitutional rights he is waiving by entering such a plea. Crim.R. 11(C)(2)(a) and (c). Additionally, the court must inform the defendant of, and determine that the defendant understands, the effect of the guilty or no contest plea. Crim.R. 11(C)(2)(b).

{¶ 12} Strict compliance with the rule is required with respect to a defendant's waiver of constitutional rights. *State v. Gibson*, 8th Dist. No. 93878, 2010-Ohio-3509, ¶ 13, citing *Boykin v. Alabama* (1969), 395 U.S. 238. When the rights involved are not

constitutional, however, substantial compliance with the rule is sufficient. *State v. Nero* (1990), 56 Ohio St.3d 106, 108. "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." *Id.*

{¶ 13} In this matter, appellant directs our attention to the definition of a no contest plea found in Crim.R. 11(B)(2), which provides:

{¶ 14} "The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint \* \* \*."

{¶ 15} Appellant insists that, because the trial court did not read this definition during the plea colloquy, it did not satisfy its duty to explain the effects of the plea. Moreover, according to appellant, since the rule requires no consideration of a prosecutor's recitation of the evidence, the court misinformed appellant of the effect of the plea, causing confusion as a matter of law. For this latter proposition, appellant relies on *State v. Gibson*, 8th Dist. No. 93878, 2010-Ohio-3509.

{¶ 16} Appellant provides no authority that would require Crim.R. 11(B)(2) to be read verbatim. Such a requirement would be beyond even strict compliance. Here the trial court's statement that "\* \* \* you are waiving your right to have the State prove you guilty beyond a reasonable doubt to each and every element of the charge," in substance conveys the import of the plea. Thus, appellant's assertion that an explanation of the effect of the entry of the plea was omitted is not supported by the record.

{¶ 17} With respect to any confusion engendered by the inclusion of a reference to the prosecutor's recitation of the evidence, we find such a reference, at worst, superfluous. As the state points out, an "explanation of the circumstances of the offense" may be used for a finding of guilt on a no contest plea in a misdemeanor case. R.C. 2937.08. The inclusion of such an explanation in a felony plea is not inherently harmful and may actually be of value should the elements charged and the explanation fail to coincide.

{¶ 18} With respect to the question of confusion, in *Gibson*, at ¶ 18, the case upon which appellant relies, the court told the defendant, "\* \* \* there will be a recitation of the facts by the State of Ohio with regard to a factual basis for the plea. The court will then make a determination as to whether you're guilty or not and then proceed forward. Do you understand?" The appellate court found that this explanation was confusing and may have created the expectation by the defendant that he would be receiving a bench trial. Id. at ¶ 23.

{¶ 19} We find the language in *Gibson* materially different than the statements of the court at issue in this matter. Here the court told appellant that he was waiving the right to require the prosecution to prove the elements of his offense beyond a reasonable doubt. This cautionary statement substantially complies with Crim.R. 11 and, in our view, did not have the capacity to confuse appellant. Accordingly, appellant's sole assignment of error is not well-taken.

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

<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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