

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

State of Ohio

Court of Appeals No. L-09-1054

Appellee

Trial Court No. CR0200702794

v.

Julius Cheers

DECISION AND JUDGMENT

Appellant

Decided: March 4, 2011

* * * * *

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

Clayton M. Gerbitz, for appellant.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of Common Pleas, following appellant's no contest plea to aggravated robbery. Because we conclude that the trial court did not strictly comply with Crim.R. 11(C)(2)(c) requirements, appellant's plea is vacated and the case is remanded.

{¶ 2} Appellant, Julius Cheers, was indicted in 2007 on two counts of aggravated robbery, in violation of R.C. 2911.01(A)(1), each with a firearm specification, in violation of R.C. 2941.145. Pursuant to a plea agreement, appellant ultimately pled no contest to one of the counts, was found guilty by the trial court, and sentenced to four years incarceration on the aggravated robbery count, and three years as to the firearm specification, to run consecutively.

{¶ 3} Appellant now appeals, arguing the following sole assignment of error:

{¶ 4} "Prior to accepting the appellant's plea, the trial court failed to orally inform the appellant of his constitutional right to compulsory process to obtain witnesses in his favor at trial."

{¶ 5} Crim.R. 11(C) governs the procedure that a trial court must follow in accepting a guilty plea. The rule requires the trial court to personally address the defendant. Crim.R. 11(C)(2)(c) further requires the trial court to inform the defendant and to determine that he understands that by entering a guilty plea, he is giving up certain rights, including the right to have compulsory process for obtaining witnesses in his favor. The right to compulsory process is a constitutionally protected right and thus is subject to strict compliance under Crim.R. 11(C)(2)(c). *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, syllabus. "When a trial court fails to strictly comply with this duty, the defendant's plea is invalid." *Id.*

{¶ 6} In this case, during its colloquy with appellant at the plea hearing, the trial court failed to orally advise appellant of his right to compulsory process to obtain

witnesses. Consequently, under *Veney*, the court did not strictly comply with the requirements of Crim.R. 11(C)(2)(c) when it accepted his no contest plea. Therefore, we conclude that appellant's plea was invalid.

{¶ 7} Accordingly, appellant's sole assignment of error is well-taken.

{¶ 8} The judgment of the Lucas County Court of Common Pleas is vacated and remanded for proceedings consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT VACATED.

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.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, 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>
