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

In re K.T.

Court of Appeals Nos. L-10-1364
L-11-1007

Trial Court Nos. 10208532-01
07177107 G2

<u>DECISION AND JUDGMENT</u>

Decided: May 18, 2012

* * * * *

Timothy Young, Ohio Public Defender, and Amanda J. Powell,
Assistant State Public Defender.

Julia R. Bates, Lucas County Prosecuting Attorney, and Thomas E.
Puffenberger, Assistant Prosecuting Attorney, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is a consolidated appeal from two judgments of the Lucas County Court

of Common Pleas, Juvenile Division, arising from a finding of delinquency in one case

and the revocation of appellant's parole in another case. For the reasons set forth below,

the judgments of the trial court are affirmed.

{¶ 2} The undisputed facts related to the two cases giving rise to this appeal are as follows. On February 21, 2008, 15-year-old appellant ("K.") was adjudicated delinquent for felonious assault (case No. 07177107—"first case"). On May 19, 2008, K. was committed to the Ohio Department of Youth Services ("DYS") where he remained incarcerated from May 20, 2008, until June 1, 2009, when he was released on parole. On October 1, 2010, K., then 17 years old, was charged with misdemeanor assault (case No. 10208532-01—"second case"). On October 15, 2010, K.'s parole officer filed a motion to show cause alleging that K. was in violation of his parole in the first case and asking the court for a hearing. K. was arraigned on the second charge on October 21, 2010. Both matters came before the juvenile court for adjudication and disposition on November 5, 2010. At the hearing, the trial court accepted K.'s admissions to a parole violation under the first case and to misdemeanor assault in the second case. As to disposition on the misdemeanor assault case, by judgment entry filed November 22, 2010, the trial court revoked K.'s parole and ordered him returned to DYS for a minimum of 90 days. As to K.'s parole violation in the first case, his parole was revoked as reflected in the judgment entry filed December 9, 2010. It is from those two judgments that appellant appeals.

{¶ 3} Appellant sets forth the following assignments of error:

{¶ 4} Assignment of Error I:

{¶ 5} The trial court committed plain error when it adjudicated [K.] delinquent of violating a court order in violation of R.C. 2152.02(F)(2) when [K.]

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had not been properly charged with committing a violation of court order. Fifth

and Fourteenth amendments to the United States Constitution; Section 16, Article

I of the Ohio Constitution; and, Juv.R. 29. (Nov. 5, 2010, T.pp. 24-56); (G-14).

{¶ 6} Assignment of Error II:

{¶ 7} The trial court committed plain error when it imposed a commitment

to the Department of Youth Services that is contrary to law in violation of R.C.

5139.52(F). (Nov. 5, 2010, T.pp. 24-56); (G-14).

{¶ 8} Assignment of Error III:

{¶ 9} [K.] was denied his constitutional right to the effective assistance of

counsel under the Fifth and Fourteenth Amendments to the United States

Constitution and Article I, Sections 10 and 16 of the Ohio Constitution. (Nov. 5,

2010, T.pp. 24-56); (G-14).

{¶ 10} In support of his first two assignments of error, appellant K. argues plain

error on the part of the trial court. Pursuant to Crim.R. 52(B), "* * * plain errors or

defects affecting substantial rights may be noticed although they are not brought to the

attention of the trial court." However, this court has held that "* * * notice of plain error

must be taken with the utmost caution, under exceptional circumstances, and only in

order to prevent manifest miscarriage of justice. In order to prevail on a claim governed

by the plain error standard, appellant must demonstrate that the outcome of his trial

would clearly have been different but for the errors he alleges." *State v. Jones*, 6th Dist.

No. L-05-1101, 2006-Ohio-2351, ¶ 72. (Citations omitted.) In the case before us, the errors claimed by appellant were not raised in the trial court; hence, his assertions of plain error.

{¶ 11} Because appellant's first and second assignments of error are interrelated, they will be addressed together. In support of his first assignment of error, appellant asserts that the trial court committed plain error when it adjudicated him delinquent of violating R.C. 2152.02(F)(2) because appellant had not been properly charged. Appellant claims that he should have been charged by complaint with violating a court order. In his second assignment of error, appellant asserts that his commitment to DYS was contrary to law and in violation of R.C. 5139.52(F). The basis of this claimed error is that the 90-day commitment actually was for the parole revocation. Appellant does not consider that the commitment was ordered as disposition for the finding of delinquency as to assault.

{¶ 12} Pursuant to R.C. 2152.02(F)(2), "delinquent child" includes "[a]ny child who   violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under section 2151.87 of the Revised Code * * *."

{¶ 13} K.'s "Rules of Parole," attached to his DYS Unified Case Plan, specified in part that he was to "make regular contact with [his] parole officer as directed" and that he must "follow [his case] plan." K. does not argue that the June 3, 2009 "Rules of Parole" duly signed by his guardian, his parole officer and the trial court judge, did not constitute a "lawful order of the court" pursuant to R.C. 2151.02(F)(2). His parole officer charged

4.

in the motion that K. had been told in court that he could only leave home with one of his grandparents but had gone out alone with his girlfriend on one occasion. Further, the parole officer charged that K. had failed to contact or meet with him as required.

{¶ 14} The parole violation was addressed at the November 5, 2010 hearing as was the assault charge. After K. admitted to both the parole violation and the assault, the trial court found him delinquent in violation of R.C. 2152.02(F)(2) for violating court-ordered parole. Immediately thereafter, the trial court found K. delinquent in violation of R.C. 2903.13, misdemeanor assault. After hearing from K. and the mother of the assault victim, as well as from K.'s grandmother, attorney, parole officer and TASC case manager, the trial court revoked parole and ordered K. returned to DYS for a minimum of 90 days. Although appellant appears to argue that the 90-day sentence was intended to be a result of the parole violation, it is clear to this court, after reviewing the transcript of the hearing as well as the trial court's November 22, 2010 judgment entry, that the trial court essentially did two things: it revoked appellant's parole in case No. 07177107 and it separately sentenced him to 90 days incarceration for the finding of delinquency in case No. 10208532-01, misdemeanor assault.

{¶ 15} This court is unable to find any error, plain or otherwise, as a result of the trial court's disposition of either of appellant's cases. With regard to the parole violation, the record reflects that appellant's parole officer filed a motion alleging the violation. Pursuant to R.C. 5139.52(F), a hearing was scheduled and held on the alleged violation. The magistrate's December 9, 2010 decision/judgment entry states in part that on

November 5, 2010, appellant "admit[ed] that he did violate court ordered parole conditions * * *." Appellant was found to be delinquent in violation of R.C. 2152.02(F)(2) and his parole was revoked. At that point, the trial court moved on to disposition on the assault and ordered appellant returned to DYS for a minimum of 90 days.

{¶ 16} Based on the foregoing, this court finds that appellant has not demonstrated that the outcome of his trial would have been different but for the errors he alleges. We are unable to find error—plain or otherwise—and, accordingly, appellant's first and second assignments of error are not well-taken.

{¶ 17} In support of his third assignment of error, appellant asserts that he was denied effective assistance of trial counsel. Appellant argues that it was due to counsel's failures that he was adjudicated delinquent for the parole violation and committed to an improper term of confinement.

{¶ 18} *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), sets forth the standard for judgment of ineffective assistance claims as follows: "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Id*. at 687-688. Furthermore, "the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 694.

{¶ 19} Applying the first prong, we find that there is nothing in appellant's brief to show that counsel's representation fell below an objective standard of reasonableness. In fact, our review of the transcript of the November 5, 2010 hearing reveals that counsel demonstrated familiarity with the relevant law and that he had fully discussed relevant matters with his client. Further, based on our findings as to appellant's assignments of errors above, we are unable to find that appellant was denied effective assistance of counsel. Accordingly, appellant's third assignment of error is not well-taken.

{¶ 20} On consideration whereof, the judgments of the Lucas County Court of Common Pleas, Juvenile Division, are affirmed. Pursuant to App.R. 24, costs of this appeal are assessed to appellant.

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.   _____
                                                                      JUDGE

Arlene Singer, P.J.

                                                             _____
Thomas J. Osowik, J.   JUDGE
CONCUR.

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                                                                      JUDGE