

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

State of Ohio

Court of Appeals No. S-11-002

Appellee

Trial Court No. 10 CR 504

v.

Joseph P. Reidling

DECISION AND JUDGMENT

Appellant

Decided: May 25, 2012

* * * * *

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

Diana L. Bittner, for appellant.

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HANDWORK, J.

{¶ 1} This case is before the court on appeal from the judgment of the Sandusky County Court of Common Pleas which, following a guilty plea, found appellant guilty of complicity to commit theft, in violation of R.C. 2913.02(A)(1) and 2923.03, a felony of the fifth degree. On January 14, 2011, appellant was found not amenable to community

control and was sentenced to serve a term of imprisonment of 11 months, pay the costs of prosecution, make restitution to Walmart in the amount of \$1,372.48, and forfeit his 2003 Dodge Ram 1500 pickup truck. On appeal, appellant asserts in his sole assignment of error that “Defendant-appellant’s guilty plea was not made knowingly, voluntarily, and intelligently, in full understanding of the potential sentence he could face.”

{¶ 2} Appellant raises three areas of contention: (1) “the court’s words at the time of the plea hearing manifested an intent to abide by the terms of the plea agreement,” (2) “the court did not fully comply with the requirements of Crim.R. 11(C) at the time of the plea hearing,” and (3) “the court indicated to defendant-appellant at the time of the plea that restitution would likely not be ordered, and no basis was presented in the record that justified an order to the contrary at sentencing.” The state responds that the trial court fully complied with Crim.R. 11(C) and, if appellant believed that the terms of the plea agreement had been breached, he could have raised the issue at the time of sentencing and requested that his plea be withdrawn pursuant to Crim.R. 32.1. Having done nothing at the time of sentencing, the state asserts that appellant waived his right to claim that his plea was not knowingly and voluntarily made because the terms of his plea agreement were allegedly breached.

{¶ 3} Because a defendant gives up significant constitutional rights by entering a guilty plea, compliance with Crim.R. 11(C) is required to ensure that the plea is knowingly, intelligently, and voluntarily made. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 7-8, limited on other grounds by *State v. Barker*, 129

Ohio St.3d 472, 2011-Ohio-4130, 953 N.E.2d 826, ¶ 15. For a defendant's plea to be valid,

“[a] trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination.” *Id.* at syllabus.

{¶ 4} However, a court need only substantially comply with the portion of Crim.R. 11 that concerns nonconstitutional rights, such as the right to be informed of the maximum possible penalty, the eligibility for community control sanctions, and the effect of the plea. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 31.

“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.” *Veney* at ¶ 15, quoting *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

{¶ 5} If a trial court fails to substantially comply with Crim.R. 11 regarding a nonconstitutional right, then the reviewing court must determine whether the trial court failed to comply or only partially complied. *Clark* at ¶ 32. Partial compliance only requires the plea to be vacated if the defendant also demonstrates a prejudicial effect. *Id.*, citing *Nero* at 108. “To demonstrate prejudice in this context, the defendant must show that the plea would otherwise not have been entered.” *Veney* at ¶ 15.

{¶ 6} A defendant's failure to object to an alleged breach of a plea agreement waives his right to appeal the breach, absent plain error. *State v. Fetty*, 11th Dist. No. 2010-P-0021, 2011-Ohio-3894, ¶ 22, citing *State v. Dudas*, 11th Dist. Nos. 2006-L-267 and 2006-L-268, 2007-Ohio-6739, ¶ 53. *See also* Crim.R. 52(B). An alleged error constitutes plain error only if the error is obvious and, but for the error, the outcome of the trial clearly would have been different. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, 767 N.E.2d 216, ¶ 108. "A trial court does not err by imposing a sentence greater than that forming the inducement for appellant to plead guilty when the court forewarns appellant of the applicable penalties." *State v. Taylor*, 12th Dist. No. CA2007-12-037, 2009-Ohio-924, ¶ 33, citing *State v. Walker*, 12th Dist. No. CA2005-12-519, 2006-Ohio-5197, ¶ 9.

{¶ 7} Based upon a thorough review of the record, we find that the trial court strictly complied with Crim.R. 11 when addressing appellant's constitutional and nonconstitutional rights with him. Additionally, we find that appellant failed to object to any alleged breach of his plea agreement at the time he was sentenced. As such, appellant waived all but plain error in this regard. *See Fetty* at ¶ 22. Moreover, we find that the trial court did not err in ordering a term of incarceration and restitution when it informed appellant of the applicable penalties at the time of his plea. *See Taylor* at ¶ 33. Because appellant was forewarned of the potential penalties, we find that the trial court's statements that restitution might not be granted, and that community control might be, were not instrumental in inducing appellant to enter a guilty plea. Accordingly, we find

that no plain error exists and that appellant's plea was knowingly, intelligently, and voluntarily made. *See Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, at ¶ 7.

{¶ 8} Appellant's sole assignment of error, therefore, is found not well-taken. On consideration whereof, this court finds that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Sandusky County Court of Common Pleas is affirmed. Appellant is 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.

JUDGE

Mark L. Pietrykowski, J.

Thomas J. Osowik, J.
CONCUR.

JUDGE

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>
