

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

State of Ohio

Court of Appeals No. L-11-1102

Appellee

Trial Court No. CR0201003033

v.

Brandon Johnson

DECISION AND JUDGMENT

Appellant

Decided: August 24, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarret, Assistant Prosecuting Attorney, for appellee.

Judy A. Flood, for appellant.

* * * * *

OSOWIK, J.

{¶1} This is an appeal from a March 24, 2011 judgment of the Lucas County Court of Common Pleas, which found appellant guilty of one count of felonious assault with a corresponding firearm specification. Appellant was sentenced to five years

incarceration for the felonious assault charge, with an additional mandatory year of incarceration for the firearm specification, for a total term of incarceration of six years. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶2} Appellant sets forth the following assignment of error:

1. THE TRIAL COURT ERRED IN ADVISING DEFENDANT, AT THE TIME OF HIS PLEA, THAT HE WOULD BE ELIGIBLE FOR JUDICIAL RELEASE AFTER SERVING THE ONE YEAR MANDATORY PRISON TERM FOR A FIREARM SPECIFICATION.

{¶3} On November 1, 2010, the victim was visiting friends at a residence on Glenwood Avenue in Toledo, Ohio. The victim left the residence and drove south on Glenwood, turning onto Islington St. The victim saw appellant come out from behind a hedgerow armed with a shotgun. Appellant fired two shots at the victim's vehicle. The first shot missed the victim and struck the ground. The second shot hit the right rear quarter panel of the victim's car. The victim, who was previously acquainted with appellant, later positively identified appellant as the shooter. At the crime scene, investigators recovered an article of clothing matching the description furnished by the victim immediately after the incident, a loaded shotgun, and two spent shotgun shells.

{¶4} On November 12, 2010, appellant was indicted for felonious assault, a violation of R.C. 2903.11(A)(2), a felony of the second degree. The charge included a corresponding firearm specification. On March 24, 2011, appellant entered a plea of no

contest to the charge. At the plea hearing, the court engaged in a detailed colloquy with appellant. The trial court clearly informed appellant that a mandatory period of three years post release control would follow his term of incarceration.

{¶5} The record reflects that the trial court also fully informed appellant of the consequences of breaching the terms of his post release control. Appellant acknowledged that he understood. The trial court further explained, and the appellant again acknowledged that he understood, each of the constitutional rights he waived by entering the plea. The trial court fully answered appellant's questions about the nature of a motion to suppress and the plea's effect on the motion. Appellant argues that the trial court erred in advising him at the time of his plea that he may be eligible for judicial release.

{¶6} Based upon his conviction of felonious assault, in violation of R.C. 2903.11 (A)(2), a felony of the second degree, appellant faced a potential term of incarceration of two to eight years, in addition to the mandatory one-year term for the firearm specification. Appellant was ultimately sentenced to a five-year term of incarceration for the felonious assault conviction, in addition to the mandatory one year for the firearm specification.

{¶7} The record reflects that at the plea hearing the trial court stated that appellant may be eligible to file a motion for judicial release after serving the mandatory one year of incarceration for the firearm specification and also serving a period of incarceration on the felonious assault charge. However, this potential eligibility for filing for early release

is limited to sentences of less than five years. R.C. 2929.30(C)(3). Given appellant's sentence of five years of incarceration for the felonious assault charge, with an additional mandatory one year term for the firearm specification, appellant would not have been eligible to motion the court to be considered for possible judicial release.

{¶8} The Ohio Supreme Court has held that trial courts must strictly comply with the requirements of Crim.R. 11(C)(2)(c). However, the other provisions of Crim.R. 11(C)(2) are governed by a substantial compliance standard. *State v. Veney*, 120 Ohio St. 3d 176, 2008-Ohio-5200, 897 N.E.2d 621. 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.” *State v. Nero*, 56 Ohio St. 3d 106, 108, 564 N.E.2d 474, 476 (1990). In point of fact, Crim.R. 11(C)(2) does not require the trial court to advise appellant about judicial release.

{¶9} This court follows a two step process for reviewing a claim that the trial court failed to substantially comply with Crim.R. 11(C)(2)(a). First, the appellant must show that he was misinformed about the applicable law. If this prong is satisfied, appellant must next show that he was prejudiced by this misinformation. The appellant must demonstrate that, but for the misrepresentation, regarding the judicial release, appellant would not have entered the plea. *State v. Mitchell*, 11th Dist. No. 2004-T-0139, 2006-Ohio-618. We have carefully reviewed the record of evidence. At the plea hearing, neither the defendant nor his counsel made any statements or asked any questions

concerning judicial release. There is simply nothing in the record to support appellant's assertion that he relied on any statement by the court to his detriment prior to entering his plea.

{¶10} Wherefore, we find appellant's assignment of error not well-taken.

{¶11} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay costs of this appeal pursuant to App.R. 24. The clerk is ordered to serve all parties with notice of this decision.

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.

JUDGE

Thomas J. Osowik, 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>
