[Cite as *State v. Gallant*, 2013-Ohio-3953.]

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

State of Ohio	Court of Appeals No. E-12-033
Appellee	Trial Court No. 2011-CR-207
v.	
Jeremy P. Gallant	**DECISION AND JUDGMENT**
Appellant	Decided: September 13, 2013

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, Mary Ann Barylski and Frank Romeo Zeleznikar, Assistant Prosecuting Attorneys, for appellee.

Loretta A. Riddle, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Jeremy Gallant, appeals the judgment of the Erie County Court of Common Pleas, convicting him of murder and tampering with evidence, and sentencing him to life in prison with the possibility of parole after 18 years.

A. Facts and Procedural Background

{¶ 2} On June 1, 2011, appellant attacked his wife Maria Vera Gallant. Approximately two weeks later, she passed away as a result of his actions. Appellant was initially indicted on one count of felonious assault in violation of R.C. 2903.11(A)(1), one count of attempted aggravated murder in violation of R.C. 2903.01(A) and 2923.02(A), and one count of tampering with evidence in violation of R.C. 2921.12(A)(1). After the death of Mrs. Gallant, appellant was indicted on additional counts of aggravated murder in violation of R.C. 2903.01(A), and grand theft in violation of R.C. 2913.02(A)(1).

{¶ 3} Appellant initially pleaded not guilty by reason of insanity. After an independent evaluation, it was determined that appellant was competent and the plea was withdrawn. Appellant then entered into a plea agreement whereby he pleaded guilty to tampering with evidence and the amended count of murder. The remaining counts were dismissed. Before accepting the plea, the trial court conducted a Crim.R. 11 colloquy, advising appellant of his rights and the effects of his decision.

{¶ 4} On May 8, 2012, appellant was sentenced to life in prison with the possibility of parole after 15 years on the count of murder. He received an additional three years on the count of tampering with evidence, to be served consecutively, for a total prison term of life with the possibility of parole after 18 years. Appellant requested that he receive credit for time served on a separate case, however, that request was denied. Shortly thereafter, this appeal ensued.

B. Assignments of Error

{¶ 5} Appellant has timely appealed, raising three assignments of error:

1. The trial court committed plain error when it accepted the defendant's plea, found defendant guilty and sentenced defendant to murder in violation of R.C. 2903.02(A) when defendant's undisputed recitation of the acts he committed and his means (sic) rea did not meet the elements of murder.

2. The trial court committed prejudicial and plain error by failing to einsure (sic) that appellant entered a plea "with understanding of the nature of the charge."

3. The trial court committed prejudicial error when it does not give defendant proper credit for time served.

II. Analysis

{¶ 6} The first and second assignments of error are interrelated and will be addressed together.

A. Knowing, Intelligent, and Voluntary Plea

{¶ 7} Appellant argues that his constitutional rights were violated in that he did not know the nature of the charges against him. Specifically, appellant argues that his recitation of what happened on the night he attacked his wife demonstrates his lack of understanding of the nature of the charge of murder, in particular his understanding of

"purposely."[1] At sentencing, appellant stated, "I do not believe I killed my wife but emotions did in an explosive passionate rage. It's a very scary feeling not knowing, not being in control, but being controlled by emotions and I'm thankful no one else was injured through it all. I dread the thought of other scenarios. I just snapped * * *." To the extent appellant argues the trial court erred in convicting him of murder when the recitation of the facts suggested voluntary manslaughter, we disagree. "A plea of guilty is a complete admission of all the elements in a charge, and it waives all appealable errors 'unless such errors are shown to have precluded the defendant from voluntarily entering into his or her plea.'" *State v. Harris*, 6th Dist. Erie No. E-06-015, 2007-Ohio-6362, ¶ 12, quoting *State v. Kelley*, 57 Ohio St.3d 127, 566 N.E.2d 658 (1991), paragraph two of the syllabus; Crim.R. 11(B)(1). Thus, appellant cannot now challenge the elements of his conviction.

{¶ 8} Further, to the extent appellant argues that his plea was not knowingly, intelligently, or voluntarily made, or that the court erred in not informing him of the elements of murder or asking him what he did to meet those elements, we again disagree. "A plea may be involuntary either because the accused does not understand the nature of the constitutional protections he is waiving * * * or because he has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt." *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, 810 N.E.2d 927, ¶ 56, quoting *Henderson v. Morgan*, 426 U.S. 637, 645, fn. 13, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976).

[1] R.C. 2903.02(A) states: "No person shall *purposely* cause the death of another." (Emphasis added.)

"In determining whether a defendant understood the charge, a court should examine the totality of the circumstances." *Id.* at ¶ 56, citing *Henderson* at 644.

{¶ 9} "Prior to accepting a guilty plea from a criminal defendant, the trial court must inform the defendant that he is waiving his privilege against compulsory self-incrimination, his right to jury trial, his right to confront his accusers, and his right of compulsory process of witnesses." *Id.* at ¶ 52, quoting *State v. Ballard*, 66 Ohio St.2d 473, 423 N.E.2d 115 (1981), paragraph one of the syllabus. "[T]he courts of this state have generally held that a detailed recitation of the elements of the charge is not required under Crim.R. 11(C)(2)(a)." *Id.* at ¶ 57, quoting *State v. Swift*, 86 Ohio App.3d 407, 621 N.E.2d 513 (11th Dist.1993).

{¶ 10} In *State v. Fitzpatrick*, the defendant was indicted on multiple counts of aggravated murder. He initially pleaded not guilty and requested a jury trial. However, during opening statements, Fitzpatrick abruptly decided he wanted to plead guilty.

{¶ 11} On appeal, Fitzpatrick argued that his plea was not voluntary, knowing, and intelligent because he did not understand the meanings of "prior calculation and design" and "purposely." *Id.* at ¶ 55. The record, though, showed that counsel had explained the charges to Fitzpatrick, including a signed statement by counsel that they had advised the defendant of his charges, the penalties, and his constitutional rights prior to signing the plea agreement. In addition, during the plea colloquy, the judge specifically asked Fitzpatrick if he understood the charges against him or if he needed anything explained to him regarding the charges against him. Fitzpatrick responded that he understood the

charges. *Id.* at ¶ 59. The court further found that Fitzpatrick's statements during the penalty phase, denying that he acted with purpose and prior calculation and design, did not indicate that he did not *understand* those elements. *Id.* at ¶ 62. Accordingly, the court found that Fitzpatrick's argument lacked merit. *Id.* at ¶ 63.

{¶ 12} Similarly, here, appellant signed the plea agreement which stated the charges, the degree, and the maximum sentence for each offense. The agreement stated that appellant had been advised of all his constitutional rights and appellant made a knowing, intelligent, voluntary waiver of the rights guaranteed to him pursuant to Crim.R. 11. Counsel also acknowledged that he had spoken with appellant about the case, its weaknesses, and appellant's options and possible defenses. Further, after the trial court conducted the plea colloquy, appellant testified that he was in agreement with the terms of the plea agreement and that he was satisfied with the representation of his counsel. Finally, appellant's statements at the sentencing hearing did not indicate that he did not understand the element of purposely. Therefore, we hold that appellant's plea was knowingly, intelligently, and voluntarily given.

{¶ 13} Accordingly, appellant's first and second assignments of error are not well-taken.

B. Credit for Time Served on a Separate Offense

{¶ 14} For his third assignment of error, appellant argues that the trial court erred in denying his request to be granted credit for time served. While appellant was in jail and unable to make bond, he was found to have violated his probation in a separate case. He

was transferred to another facility to serve time on the probation violation. Appellant's counsel requested that he be granted credit for time served on the current offense for the time he served on the probation violation. The trial court denied his request.

{¶ 15} R.C. 2967.191 provides:

> The department of rehabilitation and correction shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner's competence to stand trial or sanity, confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term, as determined by the sentencing court under division (B)(2)(g)(i) of section 2929.19 of the Revised Code, and confinement in a juvenile facility.

{¶ 16} As we have recognized, "R.C. 2967.191 requires that jail credit be given only for the time the prisoner was confined for any reason arising out of the offense for which he was convicted and sentenced. It does not entitle a defendant to jail-time credit for any period of incarceration which arose from facts which are separate and apart from those on which his current sentence is based." *State v. Goehring*, 6th Dist. Ottawa No.

OT-03-035, 2004-Ohio-5240, ¶ 9, quoting *State v. Smith*, 71 Ohio App.3d 302, 304, 593 N.E.2d 402 (10th Dist.1992).

{¶ 17} Here, appellant argues that he should have received credit for the time served on a separate probation violation. Because the probation violation was not related to the murder offense for which appellant was convicted and sentenced, the trial court did not err by denying credit for time served on that offense.

{¶ 18} Accordingly, appellant's third assignment of error is not well-taken.

III. Conclusion

{¶ 19} For the foregoing reasons, the judgment of the Erie 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.

Mark L. Pietrykowski, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE

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