[Cite as *State v. Taylor*, 2013-Ohio-4622.]

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

State of Ohio — Court of Appeals No. L-12-1287

Appellee — Trial Court No. CR0201102823

v.

Jesse Taylor — **DECISION AND JUDGMENT**

Appellant — Decided: October 18, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Matthew D. Simko, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

* * * * *

JENSEN, J.

{¶ 1} This is an appeal from the judgment of the Lucas County Court of Common Pleas convicting Jesse Taylor of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(e), a felony of the first degree.

{¶ 2} In November 2011, the Lucas County Grand Jury returned a two count indictment against Jesse Taylor. The first count charged Taylor with possession of more than 100 grams of cocaine in violation of R.C. 2925.11(A) and (C)(4)(f), a felony of the first degree. The second count charged Taylor with trafficking of more than 100 grams of cocaine in violation of R.C. 2925.03(A)(2) and (C)(4)(g), a felony of the first degree. Both counts carried major drug offender specifications pursuant to R.C. 2941.1410.

{¶ 3} Appellant entered into a plea agreement with the state. On April 18, 2012, Taylor appeared in court, withdrew his previous plea of not guilty and entered a plea of guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), to the lesser included offense of the first count of the indictment, possession of cocaine in an amount of more than 25 grams but less than 100 grams, in violation of R.C. 2925.11(A) and (C)(4)(e), a felony of the first degree. While explaining the resolution to the trial court, the state indicated that in exchange for the plea it would dismiss the second count of the indictment as well as the major drug offender specifications attached to both counts of the indictment.

{¶ 4} A sentencing hearing was held in June 2012. Taylor was sentenced to four years in prison and five years of mandatory postrelease control. The sentence was ordered to be served consecutive to a sentence Taylor was serving in Sandusky County on another offense. Taylor now appeals and assigns the following errors for our review:

I. THE TRIAL COURT ERRED BY ACCEPTING APPELLANT'S GUILTY PLEA WHEN IT FAILED TO COMPLY WITH THE PROCEDURAL REQUIREMENTS OF AN *ALFORD* PLEA.

II. THE STATE FAILED TO FULFILL ITS PART OF THE PLEA BARGAIN.

{¶ 5} This court has previously determined that an *Alford* plea is "a species of a guilty plea, which, in effect, waives a defendant's right to raise most issues on appeal." *State v. Gilmer*, 6th Dist. Lucas No. L-12-1079, 2013-Ohio-3055, ¶ 6, quoting *State v. Ware*, 6th Dist. Lucas No. L-08-1050, 2008-Ohio-6944, ¶ 12; *State v. Bryant*, 6th Dist. Lucas No. L-03-1359, 2005-Ohio-3352, ¶ 23. We have further held that "[a] defendant who enters a plea of guilty as part of a plea bargain waives all appealable errors '* * * unless such errors are shown to have precluded the defendant from voluntarily entering into his or her plea pursuant to the dictates of Crim.R. 11(C).'" *Gilmer* at ¶ 6, citing *State v. Witcher*, 6th Dist. Lucas No. L-92-354, 1993 WL 558859 (Dec. 30, 1993) (other citations omitted). Accordingly, Taylor's claimed errors are considered only to the extent they may have affected the voluntariness of his *Alford* plea.

{¶ 6} In his first assignment of error, Taylor asserts that the trial court committed reversible error when it failed to conduct a "substantive dialogue" with the defendant to ascertain whether his *Alford* plea was voluntarily and intelligently made. Interpreting and applying *Alford*, the Supreme Court of Ohio has held:

> Where the record affirmatively discloses that: (1) defendant's guilty plea was not the result of coercion, deception or intimidation; (2) counsel was present at the time of the plea; (3) counsel's advice was competent in light of the circumstances surrounding the indictment; (4) the plea was made with the understanding of the nature of the charges; and, (5) defendant was motivated either by a desire to seek a lesser penalty or a fear of the consequences of a jury trial, or both, the guilty plea has been voluntarily and intelligently made. *State v. Piacella*, 27 Ohio St.2d 92, 271 N.E.2d 852 (1971), syllabus; *see also State v. Gonzalez*, 193 Ohio App.3d 385, 2011-Ohio-1542, 952 N.E.2d 502, ¶ 60 (6th Dist.).

{¶ 7} In the instant case, our review of the record indicates that the trial court reviewed the terms of the plea agreement with the state, Taylor and Taylor's counsel. It informed Taylor of the potential penalties and described the application of postrelease control and the sanctions for a violation of postrelease control. The trial court informed Taylor that by pleading guilty to the lesser included offense of possession of cocaine, he waived certain rights, including his right to a jury trial, the right to confront and cross-examine witnesses, the right to call witnesses to testify on his behalf at trial, the right to employ the power of the court to call witnesses to testify on his behalf, the right to have the state prove his guilt beyond a reasonable doubt, and the right not to testify against himself. *See* Crim.R. 11.

{¶ 8} The trial court explained to Taylor that, if convicted, he would never be able to use or possess a firearm and that he would be required to submit to a DNA sample. The court further explained that Taylor had a limited right to appeal. Taylor indicated that he was satisfied with trial counsel's advice and competence. Taylor also indicated that he believed it was in his best interest to enter into the plea agreement. Thereafter, the state described the evidence that would have been proven beyond a reasonable doubt had the matter proceeded to trial as follows:

> [T]he state would have shown that on November 2nd, 2011, the defendant convinced a woman by the name of Liberty Gowitzka to drive him from Fremont, Ohio, to Toledo, Ohio; that he had her drive him to a drug house known to Toledo Police Vice * * * ; that while there he purchased a large amount of cocaine; * * * that upon leaving that location, the driver, Miss Gowitzka, did commit a traffic violation that caused them to be pulled over on I-280, also in Toledo, Lucas County, Ohio.
>
> The police saw the defendant place the crack cocaine in * * * Miss Gowitzka's purse; that Ms. Gowitzka gave permission to search the vehicle; that during that search they did recover that crack cocaine, along with other drugs; that after that, the defendant was arrested and while in custody was recorded announcing the weight of the drug that he was caught with, four and a half ounces, a fact that only the person known to have purchased the drugs and possessed the drugs could have known at that time.

> The drugs were later analyzed by the Toledo Police Department lab and found to be 129.76 grams of crack cocaine in three individually wrapped Baggies * * *.

{¶ 9} There is no indication that Taylor's *Alford* plea was the result of deception or intimidation. When asked if he was coerced into entering the pleas, appellant stated that he was not. Taylor's counsel was present at the plea hearing, and no evidence was presented that the advice Taylor received from trial counsel was incompetent in light of the circumstances surrounding the indictment. Taylor stated that he understood the nature of the charges against him and that he understood the effect of the *Alford* plea. Finally, Taylor stated that he understood that by entering an *Alford* plea he was denying the commission of the acts charged but wished to tender a plea of guilty in order to avoid risk of a greater penalty if he went to trial. Taylor's first assignment of error is not well-taken.

{¶ 10} Taylor's second assignment of error is based on his contention that the state failed to fulfill its part of the plea bargain. The record does not support this claim. Rather, it is clear that on April 18, 2012, the state verbalized, on the record, the terms of the plea agreement. While the state then failed to request a dismissal of the drug offender specification at the time of sentencing, the trial court proceeded as if the request had been made. Further, as stated above, "[a] defendant who enters a plea of guilty as part of a plea bargain waives all appealable errors '* * * unless such errors are shown to have precluded the defendant from voluntarily entering into his or her plea pursuant to the

dictates of Crim.R. 11(C).'" *Gilmer*, 6th Dist. Lucas No. L-12-1079, 2013-Ohio-3055 at ¶ 6. Nothing in this assignment implicates the voluntary nature of Taylor's *Alford* plea. Accordingly, appellant's second assignment of error is found not well-taken.

{¶ 11} The judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant 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.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE