

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

State of Ohio

Court of Appeals No. E-12-051

Appellee

Trial Court No. 2010-CR-437

v.

Shedrick H. Bobbitt

DECISION AND JUDGMENT

Appellant

Decided: November 15, 2013

* * * * *

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

John M. Felter, for appellant.

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SINGER, P.J.

{¶ 1} Appellant, Shedrick Bobbitt, appeals his sentence from the Erie County
Court of Common Pleas after entering guilty pleas. Because appellant was adequately

informed of both the minimum and maximum sentences pursuant to Crim.R. 11, including the mandatory three year sentence for the gun specification, appellant's convictions are affirmed.

{¶ 2} On July 24, 2012, appellant entered guilty pleas to one count of complicity to commit felonious assault with a gun specification, a second degree felony, and one count of having a weapon while under disability, a fourth degree felony. He was found guilty and sentenced to serve three years in prison for complicity to commit felonious assault and one year for having a weapon while under disability. These sentences were ordered to be served concurrently. Appellant was also sentenced to serve three years in prison for the gun specification for a total sentence of six years in prison. Appellant raises a single assignment of error:

The Court erred in not advising defendant of the mandatory sentence associated with the firearm specification as required by Crim.R. 11.

{¶ 3} Crim.R. 11(C)(2) states:

In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for

probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶ 4} The Ohio Supreme Court has held that a “guilty plea is constitutionally infirm when the defendant is not informed in a reasonable manner at the time of entering his guilty plea of his rights to a trial by jury and to confront his accusers, and his privilege against self-incrimination, and his right of compulsory process for obtaining witnesses in his behalf.” *State v. Ballard*, 66 Ohio St.2d 473, 478, 423 N.E.2d 115 (1987). The court held that the underlying purpose of Crim.R. 11(C) is to convey to the defendant certain information so that he can make a voluntary and intelligent decision whether to plead guilty. *Id.* at 479-80. A criminal defendant’s interest is knowing what rights he is waiving by pleading guilty and his interest is fully protected when he is informed of what those rights are. *Id.* at 478.

{¶ 5} “Literal compliance with Crim.R. 11 is certainly the preferred practice, but the fact that the trial judge did not do so does not require vacation of the defendant's guilty plea if the reviewing court determines that there was substantial compliance.” *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990), *State v. Stewart*, 51 Ohio St.2d 86, 92, 364 N.E.2d 1163 (1977). “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.” *Id.* If the rule is not substantially complied with a guilty plea may be vacated if there is some showing of prejudicial effect. *Id.* In order to substantially comply without prejudicial effect, “the trial court must satisfy itself that the defendant knows the maximum penalty applicable to the offense involved before accepting a plea of guilty.” *State v. Gibson*, 34 Ohio App.3d 146, 517 N.E.2d 990 (8th Dist.1986), paragraph one of the syllabus.

{¶ 6} In this case, the court informed appellant of both the minimum and maximum sentences that his pleas of guilty would carry if he did, in fact, accept the plea agreement. The plea agreement form indicates which counts appellant pled guilty to and appellant clearly marked that he pled guilty to a firearm specification. Where the form asks if there are mandatory prison counts, the box next to “Yes” is checked and it states “gun specification.” On the third page, it states that the maximum basic prison term which appellant is subject to is nine and a half years and a three year gun

specification of which three years is mandatory. On the fourth page is appellant's signature, along with that of his counsel, the prosecutor and the judge, indicating his substantial understanding of the plea agreement.

{¶ 7} Moreover, during the sentencing hearing, the prosecuting attorney stated on the record that "defendant is entering a plea of guilty to the firearm specification, which requires a three year mandatory sentence." The judge also advised appellant, on the record, that the gun specification carried with it a mandatory three year prison term

{¶ 8} In contrast, appellant relies upon *State v. Williams*, 65 Ohio App.3d 70, 582 N.E.2d 1044 (8th Dist.1989), as authority for this court to hold that the trial court did not substantially comply with Crim.R. 11. In that case, the Eighth District Court of Appeals held that the trial court had violated Crim.R. 11(C) because "the record was devoid of any indication the trial court informed the defendant he would serve three years for the gun specification." *Id.* at 73. The appellate court goes on to say:

[t]he trial court did inform defendant that his sentence on the gun specification carried a mandatory period of actual incarceration which would be served consecutive to his sentence for the underlying felony. However, neither the trial court nor any of the attorneys present informed defendant that the mandatory period of actual incarceration on the gun specification was three years. *Id.* at 73-74.

{¶ 9} That case is distinguishable from the present case because throughout the proceedings at issue here, the trial court made it clear that the firearm specification

carried a minimum of three years incarceration. Appellant was directly informed of the three year mandatory sentence by the prosecuting attorney during the hearing and was asked by the judge whether he understood the mandatory three years and he responded with “Yeah.” The *Williams* court found that the trial court failed to make similar statements either written or orally which would put the defendant on notice of the specifics of what he was pleading to as a result of the agreement. Here, the totality of the circumstances show that the trial court substantially complied with court rules in informing appellant of what he was pleading to. Therefore, there is no indication that the trial court did not substantially comply with the Crim.R. 11 or that the plea agreement was misleading in any way.

{¶ 10} Appellant’s sole assignment of error is found not well-taken. On consideration, 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

Arlene Singer, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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:
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