

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

State of Ohio

Court of Appeals No. E-13-031

Appellee

Trial Court No. 2012-CR-0420

v.

Anthony Doto

DECISION AND JUDGMENT

Appellant

Decided: December 20, 2013

* * * * *

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

John M. Felter, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas, following a guilty plea entered by appellant, Anthony Doto, on a charge of aggravated robbery. For the following reasons, we affirm.

A. Facts and Procedural Background

{¶ 2} Appellant was arrested on September 27, 2012, in connection with a burglary that took place on December 11, 2011. He was later indicted on two counts each of aggravated burglary and aggravated robbery, all felonies of the first degree. Further, appellant was charged with two counts of felonious assault, one count of having weapons while under disability, and one count of carrying a concealed weapon, felonies of the second, third, and fourth degree, respectively. Additionally, attendant firearms specifications were attached to each count in the indictment except the count of carrying a concealed weapon. At his initial arraignment on November 20, 2012, appellant entered a plea of not guilty and a pretrial date was set for November 26, 2012.

{¶ 3} Following several continuances and the reassignment of the case from Judge Binette to Judge Tone, appellant filed a motion to dismiss on speedy trial grounds on March 18, 2013. Before the trial court issued its ruling on his motion to dismiss, appellant filed another motion for leave and extension to file pretrial motions. On April 8, 2013, the trial court issued its decision denying both of appellant's motions.

{¶ 4} Less than two weeks later, appellant appeared before the trial court and pleaded guilty to one count of aggravated robbery. In exchange for his guilty plea, the state entered a nolle prosequi as to the remaining charges and attendant firearms specifications contained in the indictment. Notably, appellant has not provided this court with a transcript of the plea hearing.

{¶ 5} Upon acceptance of appellant's guilty plea, the trial court scheduled a sentencing hearing for May 3, 2013. At sentencing, the trial court imposed a four-year prison sentence. Thereafter, appellant filed this timely appeal.

B. Assignments of Error

{¶ 6} On appeal, appellant assigns the following errors for our review:

I. THE TRIAL COURT ERRED BY NOT PROPERLY
ADVISING DEFENDANT/APPELLANT OF THE EFFECT OF
ENTERING A GUILTY PLEA.

II. THE TRIAL COURT ERRED IN DENYING DEFENDANT/
APPELLANT'S MOTION FOR LEAVE TO FILE PRETRIAL
MOTIONS.

III. THE TRIAL COURT ERRED IN DENYING DEFENDANT/
APPELLANT'S MOTION TO DISMISS DUE TO VIOLATIONS OF HIS
RIGHT TO A SPEEDY TRIAL.

II. Analysis

A. Trial Court's Acceptance of Appellant's Guilty Plea

{¶ 7} In his first assignment of error, appellant argues that the trial court failed to inform him of the effects of entering a guilty plea during the Crim.R. 11 colloquy. Specifically, appellant contends that the trial court committed reversible error when it failed to explain that, by entering a guilty plea, he was waiving his right to appellate review regarding the trial court's denial of his pretrial motions.

{¶ 8} Crim.R. 11(C) delineates the requirements for a proper, voluntary plea.

State v. Gonzalez, 193 Ohio App.3d 385, 2011-Ohio-1542, 952 N.E.2d 502 (6th Dist.).

As applicable here, Crim.R. 11(C) provides, in relevant part:

(2) 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:

* * *

(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.

{¶ 9} Here, we find that the trial court adequately informed appellant of the effect of his guilty plea under Crim.R. 11(C)(2)(b). Despite appellant's arguments contained in his appellate brief, appellant has failed to provide a transcript of the plea hearing as required by App.R. 9. Absent the transcript, we must presume the regularity of the proceedings and affirm the trial court. *State v. Jones*, 8th Dist. Cuyahoga No. 96630, 2012-Ohio-584, ¶ 20 ("However, without the transcript of [appellant's] plea hearing filed in the instant appeal, we must presume regularity and the validity of the trial court's acceptance of his plea."), citing *Ostrander v. Parker-Fallis Insulation Co.*, 29 Ohio St.2d 72, 74, 278 N.E.2d 363 (1972).

{¶ 10} In addition to our obligation to affirm the trial court in the absence of the plea hearing transcript, we conclude that the evidence that is contained in the record demonstrates the trial court's compliance with Crim.R. 11(C). Indeed, the written guilty plea that bears appellant's signature demonstrates that appellant was informed of his limited appellate rights. Specifically, the written plea provides in relevant part: "I understand my right to appeal a maximum sentence, *my other limited appellate rights* and that any appeal must be filed within 30 days of my sentence." (Emphasis added.)

{¶ 11} While appellant acknowledges that the trial court informed him that he would have limited rights on appeal, he argues that the trial court should have specifically addressed the effect that the guilty plea would have on his pretrial motions. However, this same argument was previously dispelled in the context of a similar challenge involving a trial court's acceptance of a guilty plea following its denial of a defendant's speedy trial motion. *State v. Hoffman*, 8th Dist. Cuyahoga No. 53749, 1988 WL 118591 (Nov. 3, 1988). In *Hoffman*, the Eighth District concluded that "neither Crim.R. 11 nor Ohio law generally requires a court to explain every potential consequence of a guilty plea before accepting the defendant's guilty plea." *Id.* at *2.

{¶ 12} In light of the foregoing, we conclude that the trial court complied with Crim.R. 11(C) in its acceptance of appellant's guilty plea. Accordingly, appellant's first assignment of error is not well-taken.

B. Trial Court's Denial of Appellant's Pretrial Motions

{¶ 13} In his second and third assignments of error, appellant argues that the trial court erroneously denied his motion for leave to file pretrial motions and his motion to dismiss premised upon speedy trial violations. However, we cannot reach this argument because appellant's guilty plea precludes appellate review of "constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established." *State v. Gadd*, 6th Dist. Ottawa No. OT-08-053, 2010-Ohio-3072, ¶ 5, citing *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, 810 N.E.2d 927, ¶ 78.

{¶ 14} In *Fitzpatrick*, the Ohio Supreme Court went on to state that "a defendant who * * * voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel 'may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" *Fitzpatrick* at ¶ 78, quoting *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973); *see also State v. Keinath*, 6th Dist. Ottawa No. OT-11-032, 2012-Ohio-5001, ¶ 25 ("A guilty plea entered pursuant to Crim.R. 11 precludes the direct appeal of any defects in a particular cause of action with the exception of a challenge to the voluntariness of the guilty plea itself or an attack upon the subject matter jurisdiction of the court."), citing *State v. Kelly*, 57 Ohio St.3d 127, 130, 566 N.E.2d 658 (1991). Therefore, we conclude that appellant is precluded from arguing that the trial court erred in denying such motions.

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

III. Conclusion

{¶ 16} 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

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, 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>
