

[Cite as *State v. Dravis*, 2002-Ohio-2248.]

COURT OF APPEALS OF OHIO EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 79474

STATE OF OHIO

Plaintiff-Appellee

vs.

PAUL DRAVIS

Defendant-Appellant

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JOURNAL ENTRY

AND

OPINION

DATE OF ANNOUNCEMENT
OF DECISION:

MAY 9, 2002

CHARACTER OF PROCEEDING:

Criminal appeal from
Common Pleas Court
Case No. CR-398771

JUDGMENT:

Affirmed.

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-Appellee

WILLIAM D. MASON
Cuyahoga County Prosecutor
CAROL M. SKUTNIK
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 4113

For Defendant-Appellant

PATRICIA KOCH WINDHAM
Assistant Public Defender
1200 West Third Street N.W.
100 Lakeside Place
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶1} Paul Dravis appeals from a judgment of the common pleas court finding him guilty of one count of attempted aggravated vehicular assault, two counts of aggravated vehicular assault and one count of driving under the influence of alcohol pursuant to a plea agreement. On appeal, he assigns the following as error for our review.

{¶2} I. THE TRIAL COURT ERRED IN ACCEPTING APPELLANT'S PLEA OF GUILTY AS IT WAS NOT ENTERED KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY.

{¶3} II. THE RECORD DOES NOT SUPPORT THE TRIAL COURT'S FINDINGS TO SUPPORT OF CONSECUTIVE SENTENCING.

{¶4} Having reviewed the record and the legal arguments of the parties, we affirm the judgment of the trial court.

{¶5} On November 9, 2000, Dravis was indicted for three counts of aggravated vehicular assault and one count of driving under the influence as a result of a head-on collision when Dravis' vehicle hit another vehicle carrying the victims, Joan Blaha, Ronald Blaha, and their daughter Diane Young. The state amended count one to attempted aggravated vehicular assault and Dravis informed the court he would plead guilty to the amended count one, as well as counts two, three and four as indicted.

{¶6} Prior to entering the plea, Dravis' counsel advised the court he had reviewed the agreement with Dravis and believed Dravis would be entering the plea agreement knowingly, intelligently and

voluntarily, with a full understanding of his rights and the sentencing consequences that could follow. The constitutional rights requiring strict compliance are contained in Crim.R. 11(C)(2)(c).¹ The court engaged in the following dialogue with Dravis:

{¶7} ***

{¶8} THE COURT: Do you understand that by entering your plea of guilty, that you are waiving or giving up certain constitutional rights?

{¶9} THE DEFENDANT: Yes.

{¶10} THE COURT: Let me know you understand those rights by saying yes to the questions I ask you.

{¶11} You understand that you have a right to a trial by jury or by a judge?

{¶12} THE DEFENDANT: Yes.

{¶13} THE COURT: You have a right to call witnesses to appear and testify on your behalf.

{¶14} THE DEFENDANT: Yes.

{¶15} THE COURT: You have a right to have

¹ *State v. Clark* 2002 Ohio App. LEXIS 20, (Jan. 3, 2002), Cuyahoga App. No. 79386.

the State prove your guilt beyond a reasonable doubt.

{¶16} THE DEFENDANT: Yes.

{¶17} THE COURT: You have a right not to testify at trial and no one may use your silence against you.

{¶18} THE DEFENDANT: Yes.

{¶19} THE COURT: Has anyone made any threats or promises in order to get you to change your pleas this morning?

{¶20} THE DEFENDANT: No.

{¶21} THE COURT: Are you currently on probation or parole in any other case?

{¶22} THE DEFENDANT: No.

{¶23} THE COURT: You understand that legally the Court could proceed to sentence you after accepting your plea?

{¶24} THE DEFENDANT: Yes.

{¶25} ***

{¶26} The court accepted the guilty plea and sentenced Dravis to one year for attempted aggravated vehicular assault, five years for the aggravated vehicular assault against Joan Blaha, four years for the aggravated vehicular assault against Diane Young, and six months for the DWI, to run concurrent with the felonies. The court stated counts one, two, and three shall run consecutive to each other.

{¶27} Crim.R. 11(C) provides:

{¶28} ***

{¶29} (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:

{¶30} ***

{¶31} (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 sentence.

{¶32} ***

{¶33} The rights specified under Crim.R. 11(C) (2) (b) are non-constitutional rights. Here, Dravis complains he was not adequately informed of the nature of his offenses or the penalties they carried. Since he complains of a non-constitutional right, the standard of review is substantial compliance.² It requires an appellate court to review the totality of the circumstances and determine whether the plea hearing was in substantial compliance with Crim.R. 11(C).³ Substantial compliance with Crim.R. 11(C) requires the trial court to engage the defendant on the record in a "reasonably intelligible" dialogue.⁴ Under this standard of

² *Clark, supra.*

³ E.g. *State v. Stewart* (1977), 51 Ohio St.2d 86, 92-93, 364 N.E.2d 1163; *State v. Rivers* 1997 Ohio App. LEXIS 308, (Jan. 30, 1997), Cuyahoga App. No. 70385.

⁴ See, e.g., *State v. Ballard* (1981), 66 Ohio St.2d 473, 423

review, "it is not always necessary that the trial court advise the defendant of the elements of the crime, or to specifically ask the defendant if he understands the charge, so long as the totality of the circumstances are such that the trial court is warranted in making a determination that the defendant understands the charge."⁵

Typically, the trial court is able to ascertain whether a defendant comprehends the nature of the charges and the consequences of a guilty plea through an oral dialogue with the defendant.⁶

{¶34} In this regard, the court stated to Dravis:

{¶35} THE COURT: Let's go over what the
 State would ask you to do. They'll
 amend Count One from aggravated

N.E.2d 115.

⁵ *State v. Rainey* (1982), 3 Ohio App.3d 441, 446 N.E.2d 188.

⁶ *State v. Caudill* (1976), 48 Ohio St.2d 342, 358 N.E.2d 601, paragraph two of the syllabus.

vehicular assault to attempted aggravated vehicular assault, which would bring it down to a felony of the fourth degree. It starts as a third degree as indicted.

{¶36} They asked you to plead to aggravated vehicular assault in Count Two and Three. Those are both felonies of the third degree. They ask you to plead to DUI, driving under the influence, which is a misdemeanor of the first degree as indicted.

{¶37} Are you with me so far?

{¶38} THE DEFENDANT: Yes.

{¶39} THE COURT: Let's go over potential penalties. Count One as amended now, the attempt statute has been added, is a felony of the fourth degree with six to eighteen months - the Court can choose any one of those months - up to \$5,000.00 in fines, a mandatory driver's license suspension of one to five years, and subject to, I think, community control, potentially.

{¶40} ***

{¶41} THE COURT: *** A felony of the third degree is one to five years. The Court can choose any one of those years. Whatever I choose, Mr. Dravis, is mandatory time. There is no judicial release; understand that?

{¶42} THE DEFENDANT: Yes.

{¶43} THE COURT: There is a mandatory license suspension of two to ten years at the Court's discretion; do you understand that?

{¶44} THE DEFENDANT: Yes.

{¶45} THE COURT: Up to \$10,000.00 in fines on those. Restitution has been asked by the State.

{¶46} Let's go over the DUI. It's up to six months in County Jail, up to \$1,000.00 in fines. It's between 250 and \$1,000.00. There is a license suspension of 180 days to three years on that, okay?

{¶47} THE DEFENDANT: Yes.

{¶48} THE COURT: Mr. Dravis, do you understand me so far?

{¶49} THE DEFENDANT: Yes.

{¶50} ***

{¶51} The court then explained post-release control. It is clear from the above dialogue the court fully explained Dravis' constitutional rights and the charges against him with the corresponding penalties. We conclude Dravis entered a guilty plea knowingly, voluntarily and intelligently. Therefore, this assignment of error is overruled.

{¶52} In his second assignment of error, Dravis alleges the record does not support the trial court's imposition of consecutive sentences.

{¶53} R.C. 2929.19(B)(2)(c) requires the trial court to make a finding that gives its reasons for selecting the sentence if it imposes consecutive sentences under R.C. 2929.14.

{¶54} Further, R.C. 2929.14(E)(4) provides in part:

{¶55} If multiple terms are imposed on an

offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

{¶56} (a) The offender committed the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

{¶57} (b) The harm caused by the multiple offenses was so great or unusual that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the offender's conduct.

{¶58} (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶59} Here, the court imposed consecutive sentences with respect to the felony charges of attempted aggravated vehicular assault and aggravated vehicular assault. On the record, the court stated the following:

{¶60} THE COURT: ***

{¶61} The Court must make a finding in the record that consecutive terms are imposed because this is

necessary to protect the public,
this is the fourth DWI, and punish
the offender.

{¶62} It's not disproportionate to
the conduct and danger he poses and
demonstrated in this case in the
following:

{¶63} Harm in this case is so great
and unusual that a single term does
not adequately reflect the
seriousness of his conduct, and the
offender's criminal history shows
consecutive terms are needed to
protect the public.

{¶64} ***

{¶65} Based on the foregoing, it is clear the court made the
requisite findings in order to impose consecutive sentences. In
this case, the court not only used the statutory language, but very
carefully explained its reasoning behind the findings. Therefore,
this assignment of error is overruled and the judgment of the trial
court is affirmed.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs
herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court
directing the Common Pleas Court to carry this judgment into
execution. The defendant's conviction having been affirmed, any
bail pending appeal is terminated. Case remanded to the trial
court for execution of sentence.

A certified copy of this entry shall constitute the mandate

pursuant to Rule 27 of the Rules of Appellate Procedure.

ANNE L. KILBANE, J., and

DIANE KARPINSKI, J., CONCUR.

PATRICIA ANN BLACKMON
PRESIDING JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).