

[Cite as *State v. Haywood*, 2006-Ohio-6445.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87823

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

BRUCE L. HAYWOOD

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-468634 & CR-468881

BEFORE: Cooney, J., Celebrezze, P.J., and Corrigan, J.

RELEASED: December 7, 2006

JOURNALIZED:

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Bruce Haywood (“Haywood”), appeals the trial court’s denial of his motion to withdraw his guilty plea. Finding no merit to his appeal, we affirm.

{¶ 2} In Case No. CR-468634, Haywood was charged with two counts of drug possession, each containing a firearm specification, one count of drug trafficking containing a firearm specification, one count of having weapons while under a disability, and one count of possessing criminal tools. He was later charged in Case No. CR-468881 with drug trafficking, which included a schoolyard specification, drug possession, and possession of criminal tools.

{¶ 3} The two cases proceeded to a bench trial. Following opening statements, the court recessed. During the recess, Haywood, his counsel, the prosecutor, and several police officers engaged in plea discussions. Although the

police and Haywood were willing to agree to a three-year sentence, the prosecutor stated that he could not agree to that sentence because of the additional year required on the gun specification.

{¶ 4} When the trial reconvened, the prosecutor informed the trial court that a plea agreement had been reached. Haywood agreed to plead guilty to drug trafficking including a firearm specification in Case No. CR-468634 and drug trafficking with a schoolyard specification in Case No. CR-468881, in exchange for all the other charges being nolle. After the trial court advised Haywood of the rights that he was waiving and the possible sentences, Haywood pled guilty. Before sentencing, Haywood hired another attorney who filed a motion to withdraw the guilty plea. Claiming that Haywood had misunderstood the potential penalties that he faced, counsel argued that the plea was not made knowingly, intelligently, and voluntarily. Without the State present, the trial court granted Haywood's motion to withdraw his plea.

{¶ 5} One week later, the State filed its opposition to Haywood's request to withdraw his plea. After a hearing, the trial court denied Haywood's motion, finding that he had entered his guilty plea knowingly, voluntarily, and intelligently. The trial court sentenced Haywood to the mandatory three years for drug trafficking and an additional year for the firearm specification, to be served consecutively, as the law

required. The trial court also sentenced Haywood to two years, for drug trafficking, to be served concurrently to the sentence in Case No. CR-468634.

{¶ 6} Haywood appeals, raising two assignments of error.

Motion to Withdraw Guilty Plea

{¶ 7} In his first assignment of error, Haywood argues that the “trial court erred by not granting [his] motion to withdraw plea as appellant did not subjectively understand the implications of his plea and thus Crim.R. 11(C) was not substantially complied with.” Haywood argues that he believed that he would receive only a three-year sentence by pleading guilty.

{¶ 8} A defendant must make a guilty plea “knowingly, intelligently, and voluntarily.” *State v. Engle* (1996), 74 Ohio St.3d 525, 527, 660 N.E.2d 450. “Failure on any of these points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution.” *Id.*

{¶ 9} Under Crim.R. 11(C)(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:

- (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; and**

- (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."**

{¶ 10} Crim.R. 11 protects a defendant's constitutional right to have the trial court accept only knowing, intelligent, and voluntary pleas. *State v. Boshko* (2000), 139 Ohio App. 827, 833, 745 N.E.2d 1111. The Ohio Supreme Court has held that strict compliance with that rule is preferred, but that substantial compliance is sufficient. *State v. Nero* (1990), 56 Ohio St.3d 106, 108, 564 N.E.2d 474. The court also held that "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.*

{¶ 11} In *State v. Peterseim* (1980), 68 Ohio App.2d 211, this court set out the following test to determine whether the trial court abused its discretion in denying a defendant's motion to withdraw a plea:

"A trial court does not abuse its discretion in overruling a motion to withdraw: (1) where the accused is represented by highly competent counsel, (2) where the accused was afforded a full hearing, pursuant to Crim.R. 11, before he entered the plea, (3) when, after the motion to withdraw is filed, the accused is given a complete and impartial hearing on the motion, and (4) where the record reveals that the court gave full and fair consideration to the plea withdraw request."

{¶ 12} *Peterseim*'s first element requires that highly competent counsel represented the defendant. In the instant case, Haywood was represented by two competent attorneys. Although Haywood argues in his second assignment of error that his original counsel was ineffective, Haywood's new counsel stated on the record that Haywood's previous lawyer "represented [him] * * * properly and adequately and zealously." Also, even assuming that the previous attorney was ineffective – and, thus, incompetent – his ineffectiveness was harmless for two reasons: (1) the trial court conducted a hearing on Haywood's motion at which another attorney represented him, and (2) the second attorney acknowledged that Haywood "certainly" understood the gun specification, as advised by the trial court. Haywood does not argue that his new counsel, who filed the motion to withdraw the plea, was ineffective. Therefore, because two competent attorneys represented Haywood in the trial court, *Peterseim*'s first element is satisfied.

{¶ 13} We also find that the trial court complied with *Peterseim*'s second element, because the record shows that the court conducted a full hearing under Crim.R. 11, before Haywood entered his plea. The trial court asked Haywood whether he understood that he was forfeiting certain rights by entering a guilty plea, including the right to continue with his trial, the right to have the State prove his guilt beyond a reasonable doubt, the right to cross-examine the witnesses against him, and the right against self-incrimination. Haywood affirmatively answered that he

understood each of these rights. The trial court also informed Haywood of the possible sentences, as follows:

“The Court: All right. This is a felony of the first degree. It carries a mandatory prison term. Do you understand that? It means you cannot get probation. Do you understand that?”

The Defendant: Yes.

The Court: And the possible prison term is anywhere from three years to ten years. Do you understand that?”

The Defendant: Yes.

* * *

The Court: The firearm specification is a one-year mandatory term. That has to be served prior to the trafficking penalty, or consecutively to the trafficking penalty. Do you understand that?”

The Defendant: Yes.

The Court: All right. So that will be one year tacked on to whatever sentence you receive for drug trafficking. Do you understand?”

The Defendant: Yes.”

{¶ 14} Therefore, because the trial court conducted a full hearing before accepting Haywood’s guilty plea and clearly told him about the one-year term “tacked on” to the sentence, *Peterseim*’s second element was satisfied.

{¶ 15} Moreover, to satisfy *Peterseim*’s third element, the trial court must give the accused a complete and impartial hearing after the defendant files a motion to withdraw a plea. In the instant case, the trial court conducted a hearing on

Haywood’s motion, albeit after initially granting Haywood’s motion to withdraw his plea outside the prosecutor’s presence. However, we note that Haywood has not challenged the court’s granting and then denying his motion. Therefore, because the trial court held a hearing on Haywood’s motion, *Peterseim*’s third element was satisfied.

{¶ 16} Finally, we find that the trial court properly considered Haywood’s motion to withdraw his guilty plea, as *Peterseim*’s fourth element requires. In the instant case, the record shows that the trial court fully considered Haywood’s motion. The court considered the testimony at the hearing on Haywood’s motion to withdraw his plea and the Crim.R. 11 plea colloquy between the trial court and Haywood. Therefore, because it fully considered Haywood’s motion, the trial court satisfied *Peterseim*’s fourth element.

{¶ 17} Because all four elements set forth in *Peterseim* were satisfied, we find that the trial court did not abuse its discretion in denying Haywood’s motion to withdraw his plea.

{¶ 18} Accordingly, we overrule the first assignment of error.

Ineffective Assistance of Counsel

{¶ 19} In his second assignment of error, Haywood argues that his attorney failed to competently represent him “by not ensuring that appellant understood the plea agreement that was offered and accepted.” Because we have determined that

Haywood “knowingly, voluntarily, and intelligently” entered his plea, the second assignment of error is moot.

{¶ 20} Accordingly, we overrule the second assignment of error.

Judgment affirmed.

It is ordered that appellee recover of appellant the 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.

COLLEEN CONWAY COONEY, JUDGE

FRANK D. CELEBREZZE, JR., P.J. and
MICHAEL J. CORRIGAN, J.* CONCUR

*Sitting by Assignment, Judge Michael J. Corrigan, Retired, of the Eighth District Court of Appeals

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