

[Cite as *State v. Burks*, 2009-Ohio-2375.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91719

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GODFREY BURKS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-502709

BEFORE: Gallagher, P.J., Stewart, J., and Boyle, J.

RELEASED: May 21, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

SEAN C. GALLAGHER, P.J.:

{¶1} Appellant, Godfrey Burks (“Burks”), appeals his convictions for aggravated burglary under R.C. 2911.01(A) and violating a protection order under R.C. 2919.27(A)(1), assigning one error for our review. For the reasons outlined below, we affirm the convictions and sentence.

{¶2} Burks was originally charged in an eight-count indictment with assorted offenses ranging from kidnapping, aggravated burglary, felonious assault, aggravated robbery, and robbery to the violation of a protection order. On February 7, 2008, Burks withdrew his not-guilty plea and entered a plea to one count of aggravated burglary, a felony of the first degree under R.C. 2911.01(A) and one count of violating a protection order, a felony of the third degree, under R.C. 2919.27(A)(1).

{¶3} At the time of the plea, the trial court advised Burks as follows:

“THE COURT: “* * * your sentence will include up to three years - - pardon me, up to five years post release control. That means if you go to prison, even when you get out, you have to report to the Parole Board. If you don’t do that, they can ship you back to prison for up to half your original sentence. Do you understand all that?”

{¶4} **“THE DEFENDANT: Yes, sir.”**

{¶5} On March 14, 2008, Burks was sentenced to five years on the aggravated burglary charge and three years on the violation of the protection order charge, with the terms to be served concurrently. Thus, Burks was sentenced to a total of five years. At the time of the sentencing, the court again referenced the mandatory postrelease control requirement:

“THE COURT: Remember, that sentence will include another five years of post release control. That means when you get out of prison, you will be required to report regularly to the parole board. And if you don’t do that, they could ship you back to prison for up to half your original sentence.”

{¶6} Burks appeals his plea and sentence in one assigned error, as follows:

{¶7} “The trial court failed to comply with the mandatory requirements of Ohio Revised Code §2943.032 and denied appellant due process of law by accepting appellant’s guilty plea without first fully informing him of the terms and conditions of postrelease control. Ohio Revised Code §2943.032; Crim.R. 11(C)(2)(a) and (b); Fourteenth Amendment, Constitution of the United States and Article I, Section 16, Ohio Constitution.”

{¶8} Burks argues that he was denied due process because the trial court accepted his guilty plea without fully advising him about the terms and conditions of postrelease control as set forth in R.C. 2943.032. He asserts that the trial court’s statements were incomplete and misleading because they implied that he could only violate postrelease control by failing to report to his parole officer. Thus, Burks claims his plea was not made knowingly, intelligently, and voluntarily.

{¶9} Burks’s assigned error raises the question of how much information a trial judge must provide regarding postrelease control pursuant to R.C. 2943.032 and Crim.R. 11(C)(2)(a) and (b).

{¶10} The postrelease control statute at issue, R.C. 2943.032, states the following:

“Advice as to possible extension of prison term

“Prior to accepting a guilty plea or a plea of no contest to an indictment, information, or complaint that charges a felony, the court shall inform the defendant personally that, if the defendant pleads guilty or no contest to the felony so charged or any other felony and if the court imposes a prison term upon the defendant for the felony, all of the following apply:

“(A) The parole board may extend the stated prison term if the defendant commits any criminal offense under the law of this state or the United States while serving the prison term.

“(B) Any such extension will be done administratively as part of the defendant’s sentence in accordance with section 2967.11 of the Revised Code and may be for thirty, sixty, or ninety days for each violation.

“(C) All such extensions of the stated prison term for all violations during the course of the term may not exceed one-half of the term’s duration.

“(D) The sentence imposed for the felony automatically includes any such extension of the stated prison term by the parole board.

“(E) If the offender violates the conditions of a post-release control sanction imposed by the parole board upon the completion of the stated prison term, the parole board may impose upon the offender a residential sanction that includes a new prison term up to nine months.”

{¶11} In this instance, there is no debate that the trial court advised Burks he would be subjected to a period of postrelease control, and that the term would be for a five-year period. Nevertheless, we must still determine if the trial court's advisements were sufficient to comply with Crim.R. 11(C)(2)(a) and (b).

{¶12} When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution. *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio -509.

{¶13} Crim.R. 11(C) requires the trial judge to tell a defendant certain matters before accepting a guilty plea. Specifically, Crim.R. 11(C)(2) requires the following:

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

“(a) Determining that he is making the plea voluntarily, with understanding of the nature of the charge and of the maximum penalty involved, and, if applicable, that he is not eligible for probation.

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

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

State v. Nero (1990), 56 Ohio St.3d 106, 564 N.E.2d 474.

{¶14} Because Burks was advised of the maximum postrelease control period, the constitutional provision was met. The specific failure of the trial court to address the listed circumstances under R.C. 2943.032 raises a nonconstitutional issue under Crim.R. 11(C)(2)(a) and (b).

{¶15} Though failure to adequately inform a defendant of his constitutional rights would invalidate a guilty plea under a presumption that it was entered involuntarily and unknowingly, failure to comply with nonconstitutional rights will not invalidate a plea unless the defendant thereby suffered prejudice. The test for prejudice is whether the plea would have otherwise been made. Under the substantial-compliance standard, a reviewing court reviews the totality of circumstances surrounding the defendant's plea and determines whether he subjectively understood the effect of his plea. *Sarkozy*, supra.

{¶16} There is no debate that the language of R.C. 2943.032 contains the word "shall" and that the best course of conduct for any trial court is to fully advise a defendant of each of the five circumstances outlined in the statute. Nevertheless, a reading of this list does not provide a defendant with a comprehensive outline of every conceivable manner in which a prison term can be imposed for a violation of postrelease control. Further, this does not appear to be the purpose of R.C. 2943.032. The details in the statutory language are clearly procedural and explain the process whereby up to one-half of the original sentence, in this case five years, can be imposed. Because the court properly advised Burks of the length of his

postrelease control and the maximum penalty for a violation, the court substantially complied with Crim.R. 11(C)(2)(a) and (b).

{¶17} In this instance, there was no showing that Burks was prejudiced by the failure to read all five subsections of the statute. Also, there is no indication he would not have pled had these additional sections been read to him. There is no requirement that a court recite every possible manner in which a violation of postrelease control can, or will, occur. The constitutional safeguards are protected when it is clear from the record that the defendant was advised of, and clearly understood, the maximum penalty.

{¶18} Appellant's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

MELODY J. STEWART, J., and

MARY J. BOYLE, J., CONCUR