

[Cite as *State v. Johnson*, 2009-Ohio-3088.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91567

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAVAN JOHNSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-451828 and CR-506662

BEFORE: Blackmon, J., Gallagher P.J., and Rocco, J.

RELEASED: June 25, 2009

JOURNALIZED:

ATTORNEY FOR APPELLANT

Patricia J. Smith

4403 St. Clair Avenue
The Brownhoist Building
Cleveland, Ohio 44103

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

Timothy R. Fadel
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

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).

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Javan Johnson assigns the following error for our review:

“The trial court abused its discretion by accepting the appellant’s invalid plea.”

{¶ 2} Having reviewed the record and pertinent law, we affirm Johnson’s conviction and sentence; we hold that his guilty plea was knowingly, intelligently, and voluntarily made. The apposite facts follow.

Facts

{¶ 3} On February 12, 2008, Johnson was indicted in Case No. CR-506662 for ten counts of identity fraud, nine counts of misuse of a credit card, and six counts of forgery.¹ Johnson entered a plea to two counts of identity fraud and two counts of misuse of a credit card. The trial court sentenced him to five years in prison. The offenses committed in Case No. CR-506662 constituted a violation of Johnson’s community control imposed in Case No. CR-451828; therefore, the trial court added six months to the sentence to be served consecutively to the five-year sentence.

Post-Sentence Withdrawal of Guilty Plea

¹Johnson includes Case No. CR-451828 in his notice of appeal. However, the sentence in that case was entered on January 1, 2008. Johnson’s notice of appeal was filed on June 4, 2008, well outside the 30-day time limit in which to file the appeal. App.R. 4(A). A motion for delayed appeal was not filed; thus, we have no jurisdiction to review any error as to Case No. CR-451828. *State v. Chapman*, Cuyahoga App. No. 79812, 2002-Ohio-1081. We note the court did enter a journal entry on May 6, 2008 regarding Johnson’s violation of community control in Case No. 451828. However, Johnson does not set forth an argument as to the community control violation.

{¶ 4} In his sole assigned error, Miller argues the trial court failed to explain the nature and consequences of the offenses when his plea was entered; thus, his guilty plea was not knowingly, intelligently, or voluntarily made.

{¶ 5} Pursuant to Crim.R. 32.1, the trial court can set aside a judgment of conviction after it imposes sentence and may allow the defendant to withdraw his or her plea only “to correct a manifest injustice.” The individual seeking vacation of the plea bears the burden of establishing the existence of a “manifest injustice.”² “Manifest injustice” is an extremely high standard that permits the court to allow a plea withdrawal only in “extraordinary cases.”³ It has been referred to as “an extraordinary and fundamental flaw in the plea proceeding.”⁴

{¶ 6} We conclude Johnson has failed to show a manifest injustice occurred. The record indicates that the trial court fully informed Johnson of his constitutional rights and made sure that he was knowingly waiving those rights. We also conclude the trial court sufficiently apprised Johnson of the charges to which he pled.

{¶ 7} Crim.R. 11(C)(2)(a) states that the court shall not accept a guilty plea without first addressing the defendant personally and “[d]etermining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved ***.” The requirements of Crim.R.

²*State v. Smith*, supra at paragraph one of syllabus.

³*Id.* at 264.

11(C)(2)(a) are non-constitutional; thus, we review the plea proceedings to ensure “substantial compliance” with the rule.⁵ “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.”⁶

{¶ 8} This court has held that “courts are not required to explain the elements of each offense, or even to specifically ask the defendant whether he understands the charges, unless the totality of the circumstances shows that the defendant does not understand the charges.”⁷ Nothing in the record indicates that Johnson did not understand the charges to which he pled. The transcript from the plea hearing shows the court identified each charge to which Johnson was pleading guilty and explained the maximum penalty involved. The state also explained to the court the plea bargain reached by the parties, outlining each individual count and specifying the degree of the offense for each count. There was no indication that Johnson did not understand the offenses to which he agreed to plead.

⁴Id.

⁵*State v. Esner*, Cuyahoga App. No. 90740, 2008-Ohio-6654; *State v. Joachim*, Cuyahoga App. No. 90616, 2008-Ohio-4876; *State v. Asberry*, 173 Ohio App.3d 443, 2007-Ohio-5436; *State v. Moviel*, Cuyahoga App. No. 86244, 2006-Ohio-697.

⁶*State v. Nero* (1990), 56 Ohio St.3d 106, 108.

⁷See *State v. Carpenter*, Cuyahoga App. No. 81571, 2003-Ohio-3019; *State v. Krcal*, Cuyahoga App. No. 80061, 2002-Ohio-3634; *State v. Whitfield*, Cuyahoga App. No. 81247, 2003-Ohio-1504; *State v. Steele*, Cuyahoga App. No. 85901, 2005-Ohio-5541; *State v. Swift* (1993), 86 Ohio App.3d 407.

{¶ 9} Additionally, although Johnson claims as part of his argument that he was innocent of the crimes to which he pled, a “plea of guilty is a complete admission of the defendant’s guilt.”⁸ By entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime.⁹ Accordingly, Johnson’s assigned error is overruled.

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 be sent to said 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.

⁸Crim. R. 11(B)(1).

⁹*State v. Barnett* (1991), 73 Ohio App.3d 244, 248, citing, *United States v. Broce* (1989), 488 U.S. 563, 109 S.Ct. 757, 102 L.Ed.2d 927.

PATRICIA ANN BLACKMON, JUDGE

SEAN C. GALLAGHER, P.J., and
KENNETH A. ROCCO, J., CONCUR