

[Cite as *State v. Abraham*, 2009-Ohio-3292.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91969

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ERIC ABRAHAM

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-511940, CR-511979, CR-511980, CR-511981

BEFORE: Gallagher, P.J., Kilbane, J., and McMonagle, J.

RELEASED: July 2, 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, Eric Abraham, appeals the decision of the Cuyahoga County Court of Common Pleas to accept his guilty plea and the court's denial of his presentence motion to withdraw his plea. For the reasons stated herein, we affirm.

{¶ 2} Abraham was indicted in multiple cases on various counts of aggravated robbery, kidnapping, theft, and safecracking, as well as one- and three-year firearm specifications.¹ The initial cases were pretried numerous times, and full discovery was provided by the state. Abraham was eventually reindicted on the same charges in the wake of *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749. The reindicted cases were Cuyahoga County Court of Common Pleas case numbers CR-511940 (1/5/08 Garfield Heights Radio Shack incident), CR-511979 (9/2/07 University Heights Hollywood Video incident), CR-511980 (1/8/08 Cleveland BP gas station incident), and CR-511981 (1/14/08 Cleveland Gamestop incident). As a result, the earlier cases were dismissed as duplicative.

{¶ 3} Abraham was arraigned on the reindicted cases on June 17, 2008. The state dismissed duplicative counts in the indictments. Ultimately, Abraham

¹ Cuyahoga County Common Pleas case numbers CR-506511 (1/5/08 Garfield Heights Radio Shack incident), CR-507008 (9/2/07 University Heights Hollywood Video incident), CR-507034 (1/8/08 Cleveland BP incident), and CR-507035 (1/14/08 Cleveland Gamestop incident).

entered into a packaged plea arrangement under which he pled guilty to the following amended charges: Case No. CR-511940, one count of aggravated robbery with a three-year firearm specification, and one count of kidnapping; Case No. CR-511979, two counts of aggravated robbery, both with a three-year firearm specification; Case No. CR-511980, one count of aggravated robbery; Case No. CR-511981, one count of aggravated robbery with a three-year firearm specification. All other counts and specifications were dismissed or deleted.

{¶ 4} As part of the plea arrangement, Abraham agreed that he was to receive a term of incarceration of at least 15 years, to be determined by the court. On July 15, 2008, the trial court sentenced Abraham to a total term of 25 years' incarceration.

{¶ 5} Abraham filed this appeal, raising two assignments of error for our review. His first assignment of error provides as follows: "The proceedings below were defective in that the court erred in accepting a plea which was neither knowingly, willingly nor intelligently made in violation of Crim.R. 11 and defendant's constitutional rights."

{¶ 6} We review de novo the trial court's acceptance of a plea in compliance with Crim.R. 11(C) and the requirements of due process. *State v. Sample*, Cuyahoga App. No. 81357, 2003-Ohio-2756. "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. Engle*, 74 Ohio St.3d 525, 527, 1996-Ohio-179. Under Crim.R. 11(C)(2), before accepting a guilty plea in a felony case, one of the determinations a trial court must make is that the defendant is making the plea voluntarily, with understanding of the nature of the charges.

{¶ 7} Abraham argues that the record fails to demonstrate that he understood the nature of all the crimes charged. At the sentencing hearing, the prosecutor reviewed the facts of each of the four separate aggravated robbery incidents. Three of the victims of the offenses addressed the court: two victims from the Radio Shack incident and the victim from the BP gas station incident. Abraham accepted full responsibility for his actions and admitted robbing the two victims present from the Radio Shack incident. However, Abraham denied robbing the victim from the BP gas station.

{¶ 8} Abraham argues that the court should have inquired into whether he understood the nature of the crimes and whether anyone had explained to him the nature of the crimes to which he was entering guilty pleas. He further points out that there were amendments to the multiple-count indictments, which involved four distinct incidents, and that the plea was taken the same day as the arraignment on the reindicted cases.

{¶ 9} Our review of the record reflects that the trial court held a full hearing pursuant to Crim.R. 11 before accepting Abraham’s guilty pleas. At the

hearing, Abraham was represented by two competent attorneys. The prosecutor reviewed the plea agreement on the record. Defense counsel, on behalf of Abraham, waived reading of the indictment in each case. The trial court notified Abraham of his constitutional and other rights. The court instructed Abraham on the state's burden of proof. The court reviewed each charge, as amended, and the possible penalties with Abraham. The court instructed Abraham on the consequences of pleading guilty to the charges, and Abraham expressed his understanding affirmatively. The court engaged in an extensive colloquy with Abraham and determined that the plea was knowingly, intelligently, and voluntarily made.

{¶ 10} Although the factual basis for the plea was not placed on the record prior to Abraham entering his plea, a guilty plea does not require an explanation of circumstances. The Ohio Supreme Court has held that “Crim.R. 11 does not require the trial court to establish a factual basis for the plea before its acceptance.” *State v. Post* (1980), 32 Ohio St.3d 380, 386. Nevertheless, in this matter, the record reflects that the cases were fully pretried, full discovery was provided to the defendant, and defense counsel represented that there was a factual basis for Abraham's plea. The record demonstrates that Abraham had acquired an understanding of the nature of the charges against him.² There is

² Hence, this case is distinguishable from *State v. Blair* (1998), 128 Ohio App.3d 435, which is relied upon by Abraham.

no evidence in the record that, at the time of entering his plea, Abraham made a protestation of innocence. A defendant who has entered a guilty plea without asserting actual innocence is presumed to understand that he has completely admitted his guilt. *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415. Further, the plea entered in the BP gas station case was part of a packaged plea arrangement.

{¶ 11} We find the trial court had sufficient facts and circumstances before it from which the court could properly determine that Abraham understood the nature of the charge. Also, there is convincing proof in the record that Abraham understood the effect of his guilty plea, and that such plea was made knowingly, willingly, and intelligently. We therefore overrule Abraham's first assignment of error.

{¶ 12} Abraham's second assignment of error provides as follows: "The court erred in violation of Crim.R. 32.1 by failing to allow defendant to withdraw his plea."

{¶ 13} Abraham claims that he made an oral motion to withdraw his guilty plea. He states that he protested at sentencing after hearing the underlying facts as explained by the prosecution and hearing from the alleged BP victim. He argues that the trial court should have held a hearing upon his oral motion.

{¶ 14} A defendant may move to withdraw a guilty plea prior to sentencing. Crim.R. 32.1. A trial court should grant such a presentence motion freely and

liberally. *State v. Xie* (1992), 62 Ohio St.3d 521, 527. Once a defendant has made a motion to withdraw a guilty plea, the trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for withdrawing the plea. *Id.*

{¶ 15} Our review of the record does not show that Abraham actually moved to withdraw his plea. In addressing the court and the victims who spoke at the sentencing hearing, Abraham stated as follows:

“* * * I accept full responsibility for my actions. There’s no excuse for what I did.

“[The BP victim], this lady, Your Honor, I did not rob this lady. And I’m sorry for whatever misunderstanding I had or whatever.

“[The Radio Shack victims], yes, I did go in there and I did rob them and I accept full responsibility. And the other situation I did. But that lady, I’m sorry, I didn’t do that to you. And I want to say that right now, you know. If I have to take my plea back or whatever - - what that lady said to me, I did not go in there and did not do that. And I would not put myself on there for what she told me. I just didn’t do that, Your Honor.”

{¶ 16} Following the above statement, the trial court proceeded to sentence Abraham.

{¶ 17} Although Abraham protested his innocence as to one of the cases when the trial court asked him if there was anything he wanted the court to know, there was nothing to indicate that Abraham desired to withdraw his guilty plea, vacate the plea agreement, and put the state to its burden of proof.

His statement “if I have to take my plea back” was no more than a remark based on his protestation of innocence regarding one of the offenses. Thus, Abraham never affirmatively sought to withdraw his plea and his remarks reflect a mere desire to state “for the record” that he was innocent. Accordingly, we overrule his second assignment of error.

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

MARY EILEEN KILBANE, J., and
CHRISTINE T. MCMONAGLE, J., CONCUR