[Cite as *State v. Walls*, 2009-Ohio-4985.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92280

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DEWEY WALLS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-488719, CR-488847, CR-488848, and CR-488849

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

RELEASED: September 24, 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).

KENNETH A. ROCCO, J.:

{¶ 1} Defendant-appellant, Dewey Walls, appeals from the judgments of conviction and sentences entered against him in the underlying criminal cases. He urges that he was deprived of due process when the court accepted his guilty plea to these charges without confirming that he understood that he was waiving his right to confront the witnesses against him. He also argues that his sentence was void because the court did not fully explain postrelease control to him at sentencing. We find no error in the proceedings below, and affirm the trial court's judgment.

{¶ 2} This appeal involves four separate criminal cases against appellant. In Case No. CR-488719, appellant was charged with receiving stolen property and possession of criminal tools. In Case No. CR-488847, he was also charged with receiving stolen property and possessing criminal tools arising out of a separate event. In Case No. 488848, he was charged with receiving stolen property and theft of a motor vehicle. Finally, in Case No. CR-488849, he was charged with two counts of kidnapping, six counts of corrupting another with drugs, one count of compelling prostitution, and one count of failure to provide notice of a change of address. Appellant was found to be incompetent to stand trial and was ordered into treatment. These cases were then transferred to the mental health docket.

{¶ 3} At a hearing on June 4, 2008, the parties stipulated and the court determined that appellant was competent to stand trial. Pursuant to the parties' written plea agreement, appellant then entered a plea of guilty to one count of receiving stolen property, a motor vehicle, in each of Case Nos. CR-488719 and CR-488847, and one count of theft in Case No. CR-488848. In Case No. CR-488849, the first kidnapping charge was amended to abduction, and the first charge of corrupting another with drugs was amended to attempted corrupting another. Appellant plead guilty to these amended charges. The remaining charges were all dismissed.

{¶ 4} At the sentencing hearing, the court overruled appellant's oral[1] motion to withdraw his guilty pleas. The court sentenced him to three years' imprisonment on each charge in Case No. 488849 and one year's imprisonment on each of the remaining charges, to be served concurrent to one another with credit for time served. The court further ordered that the sentence include postrelease control of up to three years.

{¶ 5} In his first assignment of error, appellant complains that the court erred by accepting his guilty plea without ensuring that he understood his constitutional right to confront the witnesses against him. "Before accepting a guilty or no-contest plea, the court must make the determinations

[1]Appellant also filed two written, pro se motions to withdraw his guilty plea in each case. The court declined to consider these pro se motions because appellant was represented by counsel.

and give the warnings required by Crim.R. 11(C)(2)(a) and (b) and notify the defendant of the constitutional rights listed in Crim.R. 11(C)(2)(c)." *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, ¶13. "[A] court must strictly comply with Crim.R. 11(C)(2)(c) when advising a defendant of all five constitutional rights listed." Id. at ¶22. However, the court need not use the exact language of the rule "as long as the record shows that the trial court explained these rights in a manner reasonably intelligible to that defendant." *State v. Ballard* (1981), 66 Ohio St.2d 473, at paragraph two of the syllabus.

{¶ 6} At the plea hearing, the court advised the appellant:

> "THE COURT: You have a right to a trial. You may have a jury trial or have a trial to me. It's up to the State to prove you guilty beyond a reasonable doubt at trial. You are presumed innocent until proven guilty. Mr. Walls, do you understand?
>
> "DEFENDANT WALLS: Yes.
>
> * * *
>
> "THE COURT: Gentlemen, if you had a trial your attorneys would be with you, they would have a right to ask questions and challenge the cases against you. You would have the right to call witnesses, you could subpoena them for trial. If you had a trial and you chose not to testify, no one can use this against you. Mr. Hunter, do you understand that?
>
> * * *
>
> "THE COURT: Mr. Walls?
>
> "DEFENDANT WALLS: Yes."

{¶ 7} The court did not use the precise language of Crim.R. 11(C)(2)(c). The issue before us is whether the court's statement that appellant's attorney would "have a right to ask questions and challenge the cases against you" sufficiently apprised appellant of his right of confrontation. The right of confrontation is, essentially, a procedural guarantee of the right to cross-examine the witnesses against the defendant, thus ensuring the reliability of the evidence. See *Crawford v. Washington* (2004), 541 U.S. 36, 61. While the court here did not specifically refer to the right to cross-examine witnesses, we think the court's somewhat broader explanation that appellant's attorneys could "ask questions" and "challenge the cases" against appellant explained the right of confrontation in a way that was reasonably intelligible to appellant. Appellant's speculation about the various ways in which that he could have misunderstood what the court said is just that – speculation, especially in light of his extensive record of involvement with the criminal justice system. Therefore, we overrule the first assignment of error.

{¶ 8} In his second assignment of error, appellant claims his sentence was void because the court did not fully explain postrelease control to him. The court did explain the consequences of a violation of postrelease control at the plea hearing. The court also informed appellant at the sentencing

hearing that "[p]ost release control of up to three years is part of the sentence on each of these dockets," and included a similar statement (not at issue in this appeal) in the sentencing entry. Appellant does not challenge the imposition of postrelease control itself, but only the notice that he was given at the sentencing hearing of the consequences of a violation of postrelease control.

{¶ 9} We recognize that R.C. 2929.19(B)(3)(e) requires the trial court to notify the offender at sentencing that if he violates a term of postrelease control, he may be imprisoned for up to one half his original term. However, the terms this statute have changed significantly since our decision in *State v. Craddock*, Cuyahoga App. No. 85175, 2005-Ohio-2839, and the Supreme Court's decision in *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085. R.C. 2929.19(B)(3)(e) now provides that:

> "* * * If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(e) of this section that the parole board may impose a prison term as described in division (B)(3)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code or to include in the judgment of conviction entered on the journal a statement to that effect *does not negate, limit, or otherwise affect* the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of section 2967.28 of the Revised Code, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. * * * (Emphasis added.)"

{¶ 10} Under the terms of amended R.C. 2929.19(B)(3)(e), we cannot agree that the sentence is void if the court fails to notify the offender at the sentencing hearing about the consequences of violating postrelease control. So long as the parole board notifies the offender before he is released from prison that it can impose a prison term for a violation of postrelease control, the legislature has determined that the board has the authority to impose a prison term for a violation. Plainly, therefore, the lack of notice of the consequences of a postrelease control violation does not affect the validity of the sentence. We overrule the second assignment of error and affirm the trial court's judgment.

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 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.

KENNETH A. ROCCO, JUDGE

SEAN C. GALLAGHER, P.J., and
LARRY A. JONES, J., CONCUR