

[Cite as *State v. Sojourney*, 2009-Ohio-5353.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92087

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ALONZO SOJOURNEY

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-501109

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

RELEASED: October 8, 2009

JOURNALIZED:

ATTORNEY FOR APPELLANT

Susan J. Moran
55 Public Square
Suite 1616
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Scott Zarzycki
Assistant Prosecuting Attorney
The 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).

LARRY A. JONES, J.:

{¶ 1} Appellant-defendant, Alonzo Sojourney (“Sojourney”), appeals the decision of the lower court. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the lower court.

STATEMENT OF THE CASE AND THE FACTS

{¶ 2} On September 24, 2007, Sojourney was charged in a two-count indictment alleging one count of aggravated murder in violation of R.C. 2903.01, with a repeat violent offender specification, a notice of prior conviction, and a three-year gun specification; and a second count of having a weapon while under a disability in violation of R.C. 2923.13(A)(2). On September 27, 2007, Sojourney was arraigned, received assigned counsel, and the case was placed on the docket.

{¶ 3} On August 20, 2008, the day set for trial, Sojourney entered into a plea agreement with the State where he pled guilty to Count 1, aggravated murder, in violation of R.C. 2903.01, with the deletion of the repeat violent offender specification, deletion of the notice of prior conviction specification, and deletion of the three-year gun specification. Further, the State dismissed Count 2, having a weapon while under a disability. Immediately following the plea, the trial court sentenced Sojourney to an agreed term of 20 years-to-life in prison. Sojourney now appeals.

Assignment of Error

{¶ 4} Sojourney assigns one assignment of error on appeal:

{¶ 5} “[1.] The trial court erred in accepting appellant’s guilty plea and appellant’s guilty plea is void and invalid in light of the fact that the plea was not entered knowingly, voluntarily, and intelligently when the court failed to advise appellant of the penalties associated with plea, in violation of appellant’s right to Due Process of law under the Fourteenth Amendment of the United States Constitution and Article I, Section 10 of the Ohio Constitution.”

LEGAL ANALYSIS

{¶ 6} Sojourney argues that his guilty plea was invalid because the trial court failed to adequately explain the penalties involved with the offense of aggravated murder. However, contrary to Sojourney’s claims, a review of the evidence demonstrates that the lower court acted properly.

Guilty Plea

{¶ 7} In determining whether to accept a no contest or guilty plea, the trial court must determine whether the defendant has knowingly, intelligently, and voluntarily entered the plea. Crim.R. 11(C); *State v. Johnson* (1988), 40 Ohio St.3d 130, 532 N.E.2d 1295. To do so, the trial court should engage in a dialogue with the defendant as described in Crim.R.11(C). Crim.R. 11(C)(2)(a) requires the trial court explain to a defendant, before it accepts the defendant’s plea, “the nature of the charge and of the maximum penalty involved.” *Johnson*, at 133, 532 N.E.2d 1295.

{¶ 8} A review of the record in the case at bar demonstrates that the trial court engaged in substantial Crim.R. 11 dialogue prior to accepting Sojourney’s

guilty plea. First, the trial court asked the State about the plea agreement and the State responded as follows:

MR. ZARZYCKI: “It’s my understanding, your Honor, that Mr. Sojourney will be withdrawing his formerly entered plea of not guilty and entering a guilty plea to an amended count, amended by deleting the repeat violent offender specification; deleting the notice of prior conviction specification and deleting the three-year firearm specification. That would be a plea to aggravated murder in violation of 2903.01(A) with an agreement that -- which is punishable, without an agreement, by either 20 years[-]to[-]life in prison, 25 years[-]to[-]life in prison, or possible 30 years[-]to[-]life or a possible life without parole.

“There is an agreement here by the State to the lower end, which is the 20 years[-]to[-]life. It’s my understanding he will be pleading guilt to that count with that agreement in mind. Finally, with this plea of guilt to an amended Count 1, the State will move to nolle the having weapon under disability charge.”¹

{¶ 9} After listening to the State’s reiteration of the plea agreement, the trial court clarified on the record that Sojourney is also “subject to post-release control of five years.” The trial court went on to state that if Sojourney “were to commit an additional felony while on post-release control, he would be subject to additional incarceration of up to one-half of the original sentence.”² Defense counsel went on to state the following:

MR. McDONNELL: “That’s a correct recitation of the plea agreement. We’ve advised our client of all of his constitutional rights. It’s my professional opinion that the plea he’s about to enter into will be a knowing, intelligent, and voluntary

¹Tr. 3-4.

²Tr. 4.

plea. We thank the court for the opportunity to speak to our client.”³

{¶ 10} Accordingly, Sojourney’s defense counsel spoke with their client and it was their professional opinion that the plea was knowing, intelligent and voluntary. The trial court then went on to explain Sojourney’s trial rights to him. The following exchange took place on the record:

THE COURT: “I’m going to explain your trial rights to you, please *stop me at any time if you don’t understand anything.*” You have an absolute right to go to trial. At trial, you have the right to confront the witnesses against you through your counsel. If you cannot afford an attorney, one would be appointed at no cost. Do you understand? (Emphasis added.)

THE DEFENDANT: “Yes.

THE COURT: “The burden of proof is on the State alone at trial. At trial, the State must prove beyond a reasonable doubt each and every element of the charges by proof beyond a reasonable doubt unanimously to a jury of 12 or a judge if you waived a jury. You would have no burden of proof.

“Do you understand that?

THE DEFENDANT: “Yes, sir.

THE COURT: “At trial, you could present a defense; call witnesses, compel their appearance at trial by subpoena; testify yourself and tell your own side of the story, or you could choose not to testify and the prosecutor could not comment upon that fact in violation of your 5th Amendment right.

“You understand that?

³Tr. 4.

THE DEFENDANT: "Yes, sir.

THE COURT: "Has anyone threatened or coerced you into taking this plea?

THE DEFENDANT: "No, sir.

THE COURT: "Do you understand that if you plead guilty today, you waive your trial and constitutional rights and obviously admit the truth of the charges to which you are pleading?

THE DEFENDANT: "Yes, sir.

* * *

THE COURT: "All right, then. How do you plead to the charge of aggravated murder, in violation of Ohio Revised code Section 2903.01(A), which states that on May 19[], 2007, you did purposely and with prior calculation and design, cause the death of another, to wit Henry Lee Casey?

THE DEFENDANT: "Guilty.

THE COURT: "This court makes the finding that you knowingly, intelligently, and voluntarily made this plea and will accept it.

"Counsel, are you satisfied that the Court has complied with Criminal Rule 11?

MR. McDONNELL: "That's correct.

THE COURT: "Do you wish to proceed to sentencing?

MR. McDONNELL: "Yes, your Honor."⁴

{¶ 11} After informing the court that defense counsel wanted to proceed to sentencing, *defense counsel* asked the court if it would "impose a sentence of

⁴Tr. 5-8.

20[-] years[-]to[-]life.” (Emphasis added.) As it was *defense* counsel’s request that the court implement a sentence of “20 years[-]to[-]life,” defendant’s claim that he didn’t understand the sentence is unpersuasive. Moreover, immediately after his attorney asked the court to impose a sentence of 20 years-to-life, the trial court asked Sojourney if there was anything he would like to say. Sojourney did not ask any questions about the 20 years-to-life sentence that was just discussed, he only stated that he wanted to say he was sorry.⁵

{¶ 12} Defendant’s mistaken belief or impression regarding the consequences of his plea is not sufficient to establish that plea was not knowingly and voluntarily made. *State v. Sabatino* (1995), 102 Ohio App.3d 483, 657 N.E.2d 527.

{¶ 13} Crim.R. 32.1 permits a post-sentence motion to withdraw a guilty plea only to correct a manifest injustice. *State v. Xie* (1992), 62 Ohio St.3d 521, 526, 584 N.E.2d 715; *State v. Grigsby* (1992), 80 Ohio App.3d 291, 299, 609 N.E.2d 183. The burden of establishing a manifest injustice is upon the defendant. *State v. Legree* (1988), 61 Ohio App.3d 568, 572, 573 N.E.2d 687; *State v. Grigsby*, at 299, 609 N.E.2d 183.

{¶ 14} In determining whether a guilty plea is voluntarily, intelligently, and knowingly made, courts look to the totality of the circumstances. *In re Flynn* (1995), 101 Ohio App.3d 778, 656 N.E.2d 737.

⁵Tr. 8.

{¶ 15} A review of the evidence demonstrates that Sojourney understood the plea and corresponding sentence. The state agreed to dismiss all specifications attached to Count 1, and dismissed Count 2 in its entirety. It was further agreed between the parties that Sojourney would received the *minimum* sentence for aggravated murder, 20 years-to-life. Without the plea agreement Sojourney could have received 25 years-to-life or even 30 years-to-life. A review of the totality of the circumstances demonstrates that the lower court acted properly in sentencing Sojourney. Sojourney's dissatisfaction with receiving the *agreed upon minimum sentence* of 20 years-to-life for aggravated murder is not sufficient to constitute a manifest injustice.

{¶ 16} Sojourney's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of 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.

LARRY A. JONES, JUDGE

KENNETH A. ROCCO, P.J., and
JAMES J. SWEENEY, J., CONCUR