

[Cite as *State v. Goodwin*, 2010-Ohio-1210.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93249

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

BRANDON GOODWIN

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-513090

BEFORE: Stewart, J., Blackmon, P.J., and Celebrezze, J.

RELEASED: March 25, 2010

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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Brandon Goodwin, appeals his convictions from the Cuyahoga County Court of Common Pleas. Goodwin was convicted of aggravated robbery and felonious assault — both with firearm specifications. Goodwin seeks relief on grounds that he was denied his right to a speedy trial as required by the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. Goodwin further argues that his previous trial counsel was ineffective because they failed to raise the speedy trial issue. Goodwin then argues that the trial court failed to conform with Crim.R. 11 and did not inform him of his right of compulsory process to produce witnesses on his behalf.

{¶ 2} The state argues that Goodwin experienced no speedy trial violation, and because there was no violation, Goodwin cannot maintain a claim for ineffective assistance of counsel for failing to raise this issue. The state notes that there were two dockets created for this case and that the dockets reflect that this case was extensively pre-tried between the time the case was bound over and the time Goodwin pleaded guilty. The state also argues that the trial court strictly complied with the constitutional requirements of Crim.R. 11 when the court told Goodwin that he could

subpoena witnesses to testify on his behalf. For the reasons set forth below, we affirm.

I

{¶ 3} On December 31, 2007, Goodwin and five others assaulted and robbed Kevin McDermott. Goodwin, who was a juvenile at the time of the offense, was originally charged in juvenile court with a 14-count indictment including attempted murder, felonious assault, and aggravated robbery, all with firearm specifications. On March 5, 2008, a bindover hearing was conducted in juvenile court, and on March 6, 2008, Goodwin was bound over to the common pleas court for prosecution as an adult. On March 18, 2008, Goodwin was indicted on the bindover and charged with the same 14 counts. Goodwin was subsequently reindicted on the same charges following the Ohio Supreme Court's ruling in *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917.¹

{¶ 4} In the time period between Goodwin's indictment in the trial court on March 18, 2008 and his trial on August 26, 2008, Goodwin initiated several actions that extended the time he was required to be brought to trial as required by R.C. 2945.71. During this period, Goodwin filed a discovery

¹ In *Colon*, the court held that an indictment for robbery that followed the language of the statute but failed to include the necessary element of recklessness was defective. As a result of this holding, the state reindicted numerous cases, including this one, to correct the defect.

request, made a request for a continuance of trial ten times, and dismissed his appointed counsel and retained new counsel. All of the continuances in this case were at the request of Goodwin.

{¶ 5} On August 26, 2008, Goodwin pleaded guilty to aggravated robbery and felonious assault, both with one-year firearm specifications. He was sentenced on April 9, 2009 to 13 years in prison.

{¶ 6} Goodwin timely appealed, raising two assigned errors for review by this court.

II

{¶ 7} Goodwin first assigns as error his counsel's failure to raise the issue of speedy trial in violation of the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. Goodwin argues that the failure constituted ineffective representation by counsel.

{¶ 8} R.C. 2945.71 states that a person against whom a charge of felony is pending “[s]hall be brought to trial within two hundred seventy days after the person’s arrest.” Each day during which an accused is held in jail on the pending charge is counted as three days. *Id.* R.C. 2945.72(H) states that the time within which an accused must be brought to trial in the case of a felony may only be extended by “[t]he period of any continuance granted on the accused’s own motion, and the period of any reasonable continuance granted other than upon the accused’s own motion[.]”

{¶ 9} In order for Goodwin to maintain a claim for ineffective assistance of counsel, he must prove that (1) his counsel's performance was deficient and (2) that this deficient performance prejudiced his defense. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. On the record before us, there is no showing of prejudice.

{¶ 10} “A plea of guilty waives a defendant's right to challenge his or her conviction on statutory speedy trial grounds pursuant to R.C. 2945.71(B)(2).” *State v. Kelley* (1991), 57 Ohio St.3d 127, 566 N.E.2d 658, paragraph one of the syllabus. A guilty plea also waives claims of ineffective assistance of counsel based upon statutory speedy trial issues. *State v. Johnson* (Mar. 4, 1993), 8th Dist. No. 61904; *State v. Mayle*, 5th Dist. No. CA 07-3, 2008-Ohio-286, at ¶39, citing *State v. Barnett* (1991), 73 Ohio App.3d 244, 596 N.E.2d 1101. “[I]t is clear that a plea of guilty waives the right to claim that the accused was prejudiced by constitutionally ineffective counsel, except to the extent the defects complained of caused the plea to be less than knowing and voluntary.” *Barnett*, 73 Ohio App. at 249.

{¶ 11} Goodwin was indicted and charged with 14 counts. He negotiated a plea agreement under which he pleaded guilty to two counts of the indictment in return for a sentence within an agreed range. Counsel's failure to assert an alleged speedy trial violation under R.C. 2945.73 did not cause Goodwin's waiver of constitutional trial rights to be less than knowing

and voluntary. By pleading guilty, Goodwin waived his right to raise a statutory speedy-trial violation and also waived his claim of ineffective assistance of counsel based upon that issue.² Goodwin's first assignment of error is overruled.

III

{¶ 12} Goodwin's second assignment of error asserts that the trial court failed to conform with Crim.R. 11 and to inform him of his right of compulsory process to produce witnesses in his behalf.

{¶ 13} Both the Ohio and the United States Constitutions require that a defendant entering a guilty plea do so knowingly, intelligently, and voluntarily. *State v. Ortiz*, 8th Dist. No. 91626, 2009-Ohio-2877, citing *State v. Engle*, 74 Ohio St.3d 525, 527, 1996-Ohio-179, 660 N.E.2d 450. Crim.R. 11(C)(2) requires that a trial court conduct an oral dialogue with the defendant to determine that a plea is voluntary, that the defendant understands the nature of the charges and the maximum penalty involved, and to personally inform the defendant of the constitutional guarantees he waives by entering a guilty plea. *Id.* While an alleged failure to provide nonconstitutional rights are held to a substantial compliance standard of

²Even if Goodwin had not waived his statutory right to a speedy trial, the record demonstrates that the case was extensively pre-tried between the time of Goodwin's bindover and the time he pleaded guilty. Allowing for continuances and other delays initiated by Goodwin, there was no speedy trial violation.

review, a court must strictly comply with the dictates of Crim.R. 11(C)(2) regarding the waiver of constitutional rights. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621. Strict compliance with Crim.R. 11(C)(2) does not require “a rote recitation of the exact language of the rule; rather, the focus on review is whether ‘the record shows that the judge explained these rights in a manner reasonably intelligible to the defendant.’” *State v. Parks*, 8th Dist. No. 86312, 2006-Ohio-1352, quoting *State v. Ballard* (1981), 66 Ohio St.2d 473, 423 N.E.2d 115.

{¶ 14} The court told Goodwin at his trial on August 28, 2006:

{¶ 15} “You have a right to issue subpoenas for obtaining your own witnesses to testify on your behalf and you have a right to require the State to prove you’re guilty beyond a reasonable doubt at a trial. You can produce witnesses on your own behalf at any trial if you so desire. You have all these rights. Do you understand them?” Goodwin replied, “Yes.” Goodwin contends that the court failed to adequately advise him of his constitutional right to compulsory process because the court only informed him that he could produce witnesses on his account if he desired; and that his young age (16) precluded him from understanding the constitutional mandates involved with this instruction.

{¶ 16} This court, in *State v. Parks*, 8th Dist. No. 86312, 2006-Ohio-1352, found that a court informs an accused of his right to

compulsory process when it tells the defendant that he has the right to subpoena witnesses. Similar to the current case, the defendant in *Parks* was told by the court that he had the right to subpoena witnesses. The defendant stated on the record that he understood his rights as told to him by the court.

Although Parks contended that he was not informed of his right to compulsory process, this court ruled that the trial court strictly complied with Crim.R. 11(C).

{¶ 17} In the present case, the trial court informed Goodwin that he could subpoena witnesses to testify on his behalf. There is no reason for this court to believe that Goodwin's age would have precluded him from understanding the court's instructions to him, and he has provided no evidence to support this claim. Under these circumstances, we find that the trial court strictly complied with the requirements of Crim.R. 11(C) in accepting Goodwin's waiver of his constitutional rights. Goodwin's second assignment of error is overruled.

{¶ 18} The judgment of the trial court is 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 issue out of this court directing the Cuyahoga County Court of Common Pleas 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.

MELODY J. STEWART, JUDGE _____

PATRICIA ANN BLACKMON, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR