

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89453

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DAVID W. ROBERTS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-480193 and CR-483914

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

RELEASED: July 15, 2010

JOURNALIZED:

FOR APPELLANT

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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).

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, David W. Roberts (“defendant”), appeals pro se from his convictions and the agreed six-year prison sentence imposed pursuant to his guilty pleas to two counts of drug trafficking, two counts of drug possession, and two counts of possession of criminal tools. For the reasons that follow, we affirm.

{¶ 2} On April 27, 2006, defendant was charged with nine offenses in CR-480193. On July 21, 2006, he was charged with five other offenses in CR-483914. On July 28, 2006, only seven days after the second indictment was issued, the State presented defendant and his counsel with alternative plea offers described as a package deal that would resolve both cases. The terms of the plea agreement defendant ultimately selected provided he would plead guilty to three counts from each case and would receive in exchange an agreed sentence of six years mandatory time.¹ Defense counsel indicated that he had “an extensive conversation with both the prosecutor and [defendant]” and said, “I believe [defendant] fully understands what the offers are. He understands that his case was scheduled for trial earlier this week, and that, at some point, the case would be given another trial date, and I believe he understands that he will be coming back to court on Monday morning, and for another pretrial.”

¹The State presented a second option with regard to the “new case,” whereby defendant could have pled guilty to two counts; however, the drug trafficking count would include a schoolyard specification, which would elevate it to a second degree felony. This alternate option would not include an agreed sentence but would leave sentencing to the court’s discretion.

{¶ 3} The trial court then explained to defendant his constitutional rights and the maximum penalties he faced on each count in the event he was found guilty at trial. The court then reviewed the two plea options presented to defendant and informed him that he would be subject to mandatory prison time under either option. The trial court specifically advised defendant that he could decline any plea offer and the matters would be set for trial on the indictments.

{¶ 4} On July 31, 2006, the trial court conducted a plea hearing. Defendant pled guilty to two counts of drug trafficking, felonies of the third degree; two counts of drug possession, felonies of the fourth and fifth degree; and two counts of possession of criminal tools, felonies of the fifth degree. The remaining counts in both cases were nolle and the parties agreed to a prison sentence of six years.

{¶ 5} Defense counsel said he had long conversations with his client and that defendant was fully aware of his constitutional and statutory rights. Counsel further stated that “no threats or promises” were made “in order to reach this plea” and counsel believed defendant was entering into the plea freely and voluntarily.

{¶ 6} The judge then informed defendant she would make further inquiry of him to ensure his pleas would be a “knowing and intelligent act on [his] behalf.” Defendant was instructed to inform the judge if he did not understand something or if he did not wish to proceed. Defendant affirmed that he understood. Defendant denied any threats or promises being made in order to induce his plea.

He said he was satisfied with his attorney. He understood that the drug-related convictions required mandatory suspension of his driver's license for a period of time. Defendant told the court his education included two years of college. He had no difficulty reading or writing the English language. He said he was not under the influence of any drugs or alcohol and he had not taken any medication that would affect his judgment.

{¶ 7} The trial court again explained defendant's constitutional rights, which defendant said he understood. Defendant said he understood that by entering his pleas he was "waiving [his] trial rights and [he was] admitting to the truth of the charge to which [he was] pleading." The court reviewed the potential penalties of the offenses, including that some convictions would require a mandatory prison sentence. Defendant said he understood he would be ineligible for judicial release and community control, which was described as probation. Defendant was advised of the mandatory fine. Defendant was advised of postrelease control. Defendant acknowledged his understanding of the nature of the charges, the possible penalties (maximum and mandatory requirements), and postrelease control.

{¶ 8} The defendant repeated that he had not been threatened or promised anything other than what was stated in open court and on the record to induce his plea.

{¶ 9} The trial court, satisfied that defendant understood his constitutional rights, the nature of the charges, the effect of the plea, and the maximum and

mandatory terms that may be imposed, found defendant was entering the pleas knowingly, intelligently, and voluntarily.

{¶ 10} The trial court accepted defendant's guilty pleas as set forth previously. The court found defendant to be indigent and waived the fines. The trial court accepted the agreed sentence and imposed it as follows: in CR-480193 defendant received a four-year prison term for drug trafficking, to be served consecutively to a one-year prison term for drug possession, to be served consecutively to a one-year prison term for possession of criminal tools, totaling a six-year prison term. This sentence was ordered to be served concurrently to the six-year sentence imposed in CR-483914, which included a four-year sentence for drug trafficking, consecutive to a one-year sentence for drug possession, consecutive to a one-year sentence for possession of criminal tools.

Both cases were resolved with a total prison term of six years.

{¶ 11} Although this Court on two previous occasions denied defendant's motion to pursue a delayed appeal, the Federal District Court for the Northern District of Ohio later granted defendant habeas relief providing that "the State must grant him leave to file a delayed appeal" or release him from custody. See *Roberts v. Gansheimer* (June 3, 2009), N.D. Ohio No. 08-CV-1473, unreported. Accordingly, on July 1, 2009, defendant was granted leave to appeal and was appointed counsel. Upon defendant's multiple requests, however, his appellate counsel was terminated and he proceeded pro se.

{¶ 12} Defendant now appeals, raising four assignments of error for our review, which we discuss out of order and together where appropriate for discussion.

{¶ 13} “I. Appellant’s rights were violated by law enforcement officials of the Cleveland Police Department and Cuyahoga County Sheriff’s Department in Case No. CR-06-480193; and the Broadview Heights Police Department in Case No. CR-06-483914 in violation of the Fourth and Fourteenth Amendments to the United States Constitution, and Article One, Section 14 of the Ohio State Constitution.

{¶ 14} “II. Appellant was deprived of his right to the effective assistance of trial counsel in contravention of the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article One, Section 10 of the Ohio State Constitution.

{¶ 15} “III. The State, by and through its prosecuting attorney exercised prosecutorial misconduct and failed to disclose exculpatory evidence prior to trial violating appellant’s right to due process as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Sections 10 and 16, Article I of the Ohio Constitution.”

{¶ 16} Each of these assignments of error are based upon purported constitutional errors that occurred before defendant entered his guilty plea and therefore are without merit and overruled. *State v. Spates* (1992), 64 Ohio St.3d 269, 272, 595 N.E.2d 351, quoting *Tollett v. Henderson* (1973), 411 U.S.

258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (“a guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea * * *.”); see, also, *Roberts*, supra (finding “the Magistrate Judge’s conclusions with regard to the last four grounds of Roberts’s petition are fully supported by the record and controlling case law.”)²

{¶ 17} Assignments of Error I, II, and III are overruled.

{¶ 18} “IV. The trial court erred in accepting appellant’s plea of guilty, as it was not entered knowingly, intelligently, and voluntarily pursuant to the requirements of Ohio Crim.R. 11 regarding the nature of the charges.”

{¶ 19} The standard for reviewing whether or not the trial court accepted a plea in compliance with Crim.R. 11(C) is a de novo standard of review. *State v. Stewart* (1977), 51 Ohio St.2d 86, 364 N.E.2d 1163. It requires an appellate court to review the totality of the circumstances and determine whether the plea hearing was in compliance with Crim.R. 11(C). *Id.* at 92-93. Compliance with

²In *Roberts*, the Magistrate Judge determined various grounds of the habeas petition failed on the merits and were waived by Roberts’s guilty plea that included arguments similar to those raised in these errors: such as the alleged denial of effective assistance of counsel relating to discovery errors and failure to raise and pursue Fourth Amendment claims, alleged violations of the Fourth and Fourteenth Amendments based upon warrantless search and seizure, and violation of constitutional rights stemming from the prosecution’s alleged suppression of evidence favorable to the accused.

Crim.R. 11(C) requires the trial court to engage the defendant on the record in a reasonably intelligible dialogue. *State v. Ballard* (1981), 66 Ohio St.2d 473, 423 N.E.2d 115.

{¶ 20} A trial court substantially complies with Crim.R. 11, as required by law, where “under the *totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.*” *State v. Corbin*, 141 Ohio App.3d 381, 386, 2001-Ohio-4140, 751 N.E.2d 505, quoting *Stewart*, 51 Ohio St.2d 86 (other citations omitted) (original sic). In order to merit reversal for this reason, the defendant must show prejudicial effect — the test being “whether the plea would have otherwise been made.” *Id.*

{¶ 21} Defendant contends his plea did not comply with Crim.R. 11 because he asserts he was not “precisely” informed of the nature of the charges to which he was entering his plea. Specifically, defendant claims that the record does not establish the felony level of the crimes to which he pled. This contention lacks merit, as defendant was repeatedly and correctly informed of the various levels of the felonies to which he entered his guilty pleas.

{¶ 22} Defendant also maintains that the trial court was required to spread upon the record the type of controlled substances involved including “their weight, type, composition” or “how these charges came to fruition * * *.” Defendant’s reliance on *State v. Corbin*, 141 Ohio App.3d 381, 386, 2001-Ohio-4140, 751 N.E.2d 505, is misplaced. In *Corbin*, this Court found that the defendant was not informed of the “correct maximum penalty” that was the basis for invalidating the

plea. In *Corbin*, the prosecutor misstated the level of the felony to which the defendant was pleading guilty — representing on the record that it was a “felony of the first degree rather than a felony of the third degree * * *.” *Corbin*, 141 Ohio App.3d at 384. The court in *Corbin* found significant that no one had “correctly informed” Corbin that his pleading guilty to a third degree felony carried a presumption of incarceration between one and five years. Conversely, in this case, defendant does not allege any misstatements as to the levels of felonies to which he was entering his pleas. The record amply reflects that defendant was repeatedly advised of the felony degrees and that he would be subject to mandatory incarceration as a consequence of his plea.

{¶ 23} Defendant concedes that the record includes a description of each of the charges as drug trafficking, drug possession, and possession of criminal tools with corresponding numerical statutory designations. Yet, defendant insists that a knowing, intelligent, voluntary plea require a recitation of the essential elements of each offense upon the record.

{¶ 24} We have repeatedly 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.” *State v. Cobb* (Mar. 8, 2001), Cuyahoga App. No. 76950; *State v. Swift* (1993), 86 Ohio App.3d 407, 412, 621 N.E.2d 513; *State v. Rainey* (1982), 3 Ohio App.3d 441, 442, 446 N.E.2d 188;

State v. Kavlich (June 15, 2000), Cuyahoga App. No. 77217; *State v. Burks* (Nov. 13, 1997), Cuyahoga App. No. 71904.

{¶ 25} The record establishes that the court conducted an extensive inquiry of the defendant, asking his age and education level, asking whether he was under the influence of drugs or alcohol, and whether he was satisfied with his attorney's representation. He responded to all these questions. He also indicated that he understood his various constitutional rights, the result of his plea upon them, and what the maximum and mandatory penalties were for each offense. Defendant was specifically instructed to inform the judge if he did not understand something or if he did not wish to proceed. There is no indication whatsoever that defendant misunderstood the substance of the indictments, the matters for which he was charged, or the possible penalties.

{¶ 26} The record also contains representations that defense counsel had extensive and "long" conversations with defendant about the plea offer. Defendant did not dispute this fact. Although defendant alleges his attorney did not advise him of the nature of the charges, this is not supported by any evidence in the record. Counsel stated that defendant was fully aware of his constitutional and statutory rights. Counsel further stated that "no threats or promises" were made "in order to reach this plea" and counsel believed defendant was entering into the plea freely and voluntarily. The trial court conducted its own inquiry and was satisfied that defendant understood the nature of the charges and the penalties. Any lack of pre-trial discovery in CR-483914 is not fairly attributed to

defendant's attorney but rather to defendant's deliberate decision to enter a guilty plea only days after return of that indictment.

{¶ 27} Accordingly, we find that defendant's guilty pleas were offered knowingly, intelligently, and voluntarily and that the trial judge substantially complied with the statutory guidelines for accepting a guilty plea.

{¶ 28} Assignment of Error IV is overruled.

Judgment affirmed.

It is ordered that appellee recover from 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 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.

JAMES J. SWEENEY, JUDGE

MELODY J. STEWART, P.J., and
LARRY A. JONES, J., CONCUR