

[Cite as *State v. Martin*, 2010-Ohio-3404.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93141

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTHONY MARTIN

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-517404

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

RELEASED: July 22, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Nancy Schieman
9368 Sunrise Court
Mentor, Ohio 44060

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Anna M. Faraglia
Katherine Mullin
Assistant Prosecuting Attorneys
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Anthony Martin (“Martin”), appeals the decision of the trial court. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the judgment of the lower court.

STATEMENT OF THE CASE AND FACTS

{¶ 2} On November 3, 2008, Martin was indicted for six counts of rape, in violation of R.C. 2907.02(A)(1)(b); six counts of kidnapping, in violation of R.C. 2905.01(A)(4); and two counts of gross sexual imposition, in violation of R.C. 2907.05(A)(4). The charges were the result of repeated sexual abuse inflicted against the children of Martin’s girlfriend, Lynda Ervin (“Ervin”). Ervin was charged as a co-defendant in this matter.

{¶ 3} On February 27, 2009, Martin and Ervin appeared for trial. Martin executed a valid jury waiver, and Ervin entered a plea of guilty to one charge of attempted child endangering. Prior to the beginning of trial, the state extended an offer to Martin for resolution of the matter, of which Martin rejected. The court then moved forward with the bench trial.

{¶ 4} After commencement of trial and the testimony of one witness, Martin indicated his desire to accept the state's previous offer. The trial court then engaged Martin in a lengthy Crim.R. 11 colloquy. After which, Martin pled guilty to two counts of rape, in violation of R.C. 2907.02(A)(1)(b). Sentencing was scheduled for March 25, 2009, and Martin was referred to the adult probation department for a presentence investigation. On the day of sentencing, Martin moved to withdraw his guilty plea. The trial court denied Martin's motion after a hearing. Martin was subsequently sentenced to two consecutive, seven-year prison terms, for a total of 14 years incarceration. Martin now appeals.

{¶ 5} According to the facts, Martin lived with the victims' mother, Ervin. Ervin's ten-year-old daughter stated that Martin attempted to have oral and vaginal sex with her. Ervin's 11-year-old daughter also stated that Martin molested her. The offenses were reported to child protective services by the psychiatrist, who was treating both girls, after one of the girls told the psychiatrist what happened. An investigation ensued and Martin was arrested.

ASSIGNMENTS OF ERROR

{¶ 6} Martin assigns four assignments of error on appeal:

{¶ 7} “[1.] The trial court erred by accepting appellant’s plea of guilty without first informing appellant that a plea of guilty was an admission of guilt.

{¶ 8} “[2.] The trial court abused its discretion by accepting appellant’s guilty plea without determining if he was entering an Alford plea and by pressuring appellant into agreeing to the prosecutor’s plea offer.

{¶ 9} “[3.] The trial court abused its discretion by refusing to allow appellant to withdraw his guilty plea prior to the imposition of sentence.

{¶ 10} “[4.] The trial court abused its discretion by imposing consecutive sentences.”

LEGAL ANALYSIS

Guilty Plea

{¶ 11} Due to the substantial interrelation between Martin’s first three assignments of error we shall address them together.

{¶ 12} A guilty plea will be considered knowing, intelligent, and voluntary if, before accepting the plea, the trial court, at the very least, substantially complied with the procedures set forth in Crim.R. 11 with respect to nonconstitutional notifications. *State v. Nero* (1990), 56 Ohio St.3d 106, 564 N.E.2d 474. “Substantial compliance means that, under the totality of the circumstances, the defendant subjectively understands the implications of his plea and the rights he is waiving.” *Id.*

{¶ 13} Crim.R. 11(C)(2) provides, “In felony cases the court may refuse to accept a plea of guilty * * *, and shall not accept a plea of guilty * * * without first addressing the defendant personally and doing all of the following:

“(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

“(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty * * *, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

“(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant’s favor, and to require the state to prove the defendant’s guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.”

{¶ 14} Martin argues that his guilty plea was not made knowingly, intelligently, and voluntarily because the trial court failed to comply with Crim.R. 11(C)(2)(b). Crim.R. 11(C)(2)(b) claims are analyzed for substantial compliance. *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51.

{¶ 15} We have said that courts are not required to explain the elements of each offense, or 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. Parker*, Cuyahoga App. No. 82687, 2004-Ohio-2976, citing *State v. Kavlich* (June 15, 2000), Cuyahoga App. No.

77217; *State v. Swift* (1993), 86 Ohio App.3d 407, 621 N.E.2d 513, jurisdictional motion overruled (1993), 67 Ohio St.3d 1410, 615 N.E.2d 1044.

{¶ 16} Here, Martin entered into a plea agreement in which he agreed to plead guilty to reduced charges. Prior to accepting Martin's guilty plea, the trial court explained to him that by entering a guilty plea he was admitting guilt and that he would be waiving his right to a trial by jury, the right to confront witnesses, the right to compulsory process of witnesses, the right to be proven guilty beyond a reasonable doubt, and the right against self-incrimination.

{¶ 17} The trial court in the case at bar engaged in a lengthy plea colloquy:

The Court: "Mr. Martin, do you understand what we're doing here today, now?"

Martin: "Yes."

The Court: "Have any threats been made to you or promises been made to you, by anyone, other than what has been stated in open court and on the record this afternoon, to induce you or to get you to change your plea?"

Martin: "No."

* * *

The Court: "Mr. Martin, the constitutions of the United States of America and the State of Ohio guarantee to you the right to a trial by a jury.

"You have a right to confront and examine, through your lawyer, all of the witnesses that the State of Ohio would call against you at a trial.

"You have the right to compulsory process. That means, you have the right to use the subpoena power of this court to compel or force the attendance at trial, of anybody who could offer testimony on your behalf.

"You have the right to have the State of Ohio prove you guilty beyond a reasonable doubt of each and every element of the crimes of which you have been charged, and you have the right not to testify at trial.

"Were you to go to trial, sir, and choose not to testify, nobody could comment on your silence.

"Now, by pleading guilty, you're waiving or you're giving up all those rights.

"Do you have any questions about any one of your rights, sir?"

Martin: "No."

The Court: "And do you understand you're giving them up by entering a guilty plea today?"

Martin: "Yes."

The Court: "Mr. Martin, based upon what the prosecuting attorney and your own lawyer have said, I believe you're going to plead guilty to two charges that have been amended or they've been changed a little by the State of Ohio. The way they have been changed, the possible sentence that you could receive is three, four, five, six, seven, eight, nine or ten years in prison on each charge, and a fine of up to \$20,000 on each charge."

"So, you could go to prison for up to twenty years, and you could be fined up to \$40,000. Do you understand that?"

Martin: "(Nodding head).

The Court: "It's just a matter of what the length of time is going to be. You understand that?"

Martin: "Yes."

* * *

The Court: “Alright. Do you understand there’s no promises of any particular sentence, sir?”

Martin: “Yes.”¹

{¶ 18} A review of the record demonstrates that the lower court fully apprised Martin of the range of the minimum and maximum penalties and the fines provided for each offense, the possibility of the imposition of postrelease control, and the potential consequences for a violation of postrelease control. The trial court also inquired whether Martin had been threatened or promised anything in exchange for his plea, other than the dismissal or reduction of various counts in the indictment, and asked him if he understood everything. Martin indicated that he understood all that was said.

{¶ 19} The totality of the circumstances demonstrates that Martin understood the charges against him. Contrary to Martin’s assertion, there is no evidence in the transcript that he did not understand the plea or was otherwise confused about the proceedings. Indeed, the lower court judge went to great lengths to ensure Martin was aware of what his guilty plea would mean.

The Court: “But when the words guilty were said they came out of your mouth, right? Your mom didn’t say I plead guilty for my son Anthony, did she?”

Defendant: “No. She just wanted me to plead guilty. I didn’t want to break her heart.”

The Court: “I went through all your rights, the right to trial by jury or to the Court?”

¹Tr. 59-64.

Defendant: “Right.”

The Court: “A right not to testify if you didn’t want to, and a right to have all the witnesses the State would call against you cross examined by your lawyer, and the right to have the State of Ohio prove you guilty beyond a reasonable doubt of each and every one of the crimes with which you have been charged, and didn’t I outline for you what you were facing if you were convicted of all of these crimes?”

Defendant: “Yes.”

The Court: “And then I told you what the penalties would be if you plead to the two charges of rape as they were amended by the State of Ohio, correct?”

Defendant: “Correct.”²

{¶ 20} The evidence demonstrates that Martin knew his guilty plea was a complete admission of guilt. Review of the record reveals Martin’s claim — that he only pled guilty because he was confused and his mother told him to do so — lacks credibility. The trial court thoroughly explained Martin’s constitutional rights and the penalties he was facing. There is nothing in the record to suggest Martin did not voluntarily enter his plea. In fact, the transcript confirms the lower court informed Martin of all required issues, including the possible maximum penalties involved.

{¶ 21} The evidence further demonstrates that Martin’s claim — that the lower court abused its discretion when it denied his motion to withdraw his guilty plea — is also without merit. The trial court does not abuse its discretion in

²Tr. 70-71.

overruling a motion to withdraw a guilty plea where the accused is represented by highly competent counsel, has been afforded a full hearing before entering the plea, and is given a complete and impartial hearing on the motion to withdraw, and the court gives full and fair consideration to the request. *State v. Peterseim* (1980), 68 Ohio App.2d 211, 428 N.E.2d 863.

{¶ 22} Further review of the case at bar demonstrates that the *Peterseim* factors have been met. Martin was given a Crim.R. 11 hearing, at which time he was represented by competent counsel. During the colloquy, Martin stated that he was satisfied with his representation and that he was not threatened or promised anything in exchange for his plea. Martin was given a hearing on his motion to withdraw his guilty plea. The record demonstrates that the lower court gave full and fair consideration to Martin's request prior to denying his motion.

{¶ 23} We find no error on the part of the lower court. Review of the evidence demonstrates Martin's plea was proper and taken in full compliance with Crim.R. 11.

{¶ 24} Accordingly, Martin's first, second, and third assignments of error are overruled.

Consecutive Sentences

{¶ 25} Martin argues in his fourth assignment of error that the lower court abused its discretion by imposing consecutive sentences. We disagree.

{¶ 26} Appellate courts reviewing felony sentences must apply a two-step approach: first, they must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law; if this first prong is satisfied, the trial court's decision in imposing the term of imprisonment shall be reviewed under an abuse-of-discretion standard. R.C. 2929.11, 2929.12, and 2953.08. Also, see, *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.

{¶ 27} The *Kalish* court noted, post-*Foster*, that the trial judges now have full discretion to impose a sentence within the statutory range without having to "navigate a series of criteria that dictate the sentence," *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶25. However, R.C. 2929.11 and R.C. 2929.12 remain operative and the trial court must consider these factors when imposing its sentence. *Kalish* at ¶13.

{¶ 28} In the case at bar, Martin pled guilty to two counts of rape of a minor and was sentenced to seven years on each count. Each count ran consecutively, for an aggregate total of 14 years imprisonment. These two counts reflected crimes against two separate minor female victims.

{¶ 29} Martin claims in his brief that the lower court failed to consider the statutory factors of felony sentencing; however, the lower courts no longer need to place such findings on the record. Moreover, further review of the record demonstrates that Martin's sentencing entry actually does confirm that the lower court considered the statutory factors prior to its decision.

{¶ 30} The evidence demonstrates that Martin failed to show any abuse of discretion on the part of the trial court. The lower court properly sentenced Martin within the prescribed statutory range and appropriately imposed consecutive sentences for Martin's offenses on two different minor female victims.

{¶ 31} Accordingly, Martin's fourth 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

MARY J. BOYLE, P.J., and
JAMES J. SWEENEY, J., CONCUR

