

[Cite as *State v. Anderson*, 2010-Ohio-5487.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94598

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DUEVELLE ANDERSON

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-509433, CR-515749, and CR-527537

BEFORE: Cooney, J., Rocco, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: November 10, 2010

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Duevelle Anderson (“Anderson”), appeals the trial court’s judgment, entered after guilty pleas, sentencing him to 19 years incarceration. He contends that his pleas were not knowingly, voluntarily, or intelligently made, in violation of Crim.R. 11. We find merit to the appeal and reverse.

{¶ 2} In October 2009, Anderson faced four pending indictments in the Cuyahoga County Common Pleas Court. While awaiting the jury’s verdict in an

unrelated case, CR-526116, Anderson entered guilty pleas in the three instant cases pursuant to plea agreements with the State. In CR-509433, Anderson pled guilty to one count of failure to comply with order/signal of police officer (a third degree felony), and the State nolleed the second count of receiving stolen property. In CR-515749, Anderson pled guilty to one count of escape (a second degree felony), and the State nolleed a second count of escape. Finally, in CR-527537, Anderson pled guilty to one count of forgery (a fifth degree felony), and the State nolleed a second count of forgery. The court deferred sentencing in all three cases until the verdicts were returned in CR-526116.

{¶ 3} The jury returned not guilty verdicts on all counts before it in CR-526116. However, the court found Anderson guilty of one count of having a weapon while under disability. The court sentenced Anderson to five years in prison in CR-509433, eight years in prison in CR-515749, 12 months in prison in CR-527537, and five years in prison in CR-526116, with all sentences to run consecutively to each other for a total of 19 years' imprisonment.¹ Anderson now brings this delayed appeal, raising four assignments of error.

{¶ 4} In the first assignment of error, Anderson argues he did not enter his pleas knowingly and voluntarily because the court failed to inform him that a guilty plea to the offense of failure to comply required the court to impose a consecutive sentence. We agree.

{¶ 5} Under Crim.R. 11(C), prior to accepting a guilty plea in a felony case, a court must engage in an oral dialogue with the defendant to determine that the plea is voluntary and that the defendant understands the nature of the charges and the maximum penalty that could be imposed. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 876 N.E.2d 621, ¶18. Crim.R. 11(C) also requires the court to personally inform the defendant of the constitutional guarantees he is waiving by entering a guilty plea. *Id.*

{¶ 6} A trial court must strictly comply with the Crim.R. 11(C)(2) requirements regarding the waiver of constitutional rights. With respect to the other requirements of Crim.R. 11(C)(2) regarding nonconstitutional rights, “substantial compliance” is sufficient. *Id.* at ¶14, citing *State v. Stewart* (1977), 51 Ohio St.2d 86, 364 N.E.2d 1163. “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.” *State v. Nero* (1990), 56 Ohio St.3d 106, 108, 564 N.E.2d 474.

{¶ 7} Anderson was charged with failure to comply in violation of R.C. 2921.331(B) in CR-509433, which alleged that he unlawfully operated a motor vehicle “so as to willfully elude or flee from a police officer after receiving a visible or audible signal from the officer to bring his motor vehicle to a stop.” This charge also contained a furthermore clause, which stated that while

¹Case No. CR-526116 is the subject of a separate appeal in Appeal No. 92418.

committing the offense, Anderson's operation of the motor vehicle "caused a substantial risk of serious physical harm to persons or property."

{¶ 8} R.C. 2921.331(D) provides:

{¶ 9} "If an offender is sentenced pursuant to division (C)(4) or (5) of this section for a violation of division (B) of this section, and if the offender is sentenced to a prison term for that violation, the offender shall serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender."

{¶ 10} The trial court never informed Anderson that his sentence for failure to comply would have to be served consecutively to any other prison term imposed for the counts to which he was pleading. The requirement that the court advise a defendant of the maximum penalties involved is a nonconstitutional right enumerated in Crim.R. 11. Hence, substantial compliance would normally be all that is required of the trial court.

{¶ 11} However, in *State v. Norman*, Cuyahoga App. No. 91302, 2009-Ohio-4044, appeal not allowed, 124 Ohio St.3d 1416, 2009-Ohio-6816, 919 N.E.2d 215, this court recently held that when consecutive sentences are mandatory as opposed to discretionary, the trial court must advise the defendant of that fact. This court explained:

"When consecutive sentences are mandatory, the consecutive sentences directly affects the length of the sentence, thus becoming a crucial component of what constitutes the "maximum" sentence, and the failure to

advise a defendant that a sentence must be served consecutively does not amount to substantial compliance with Crim.R. 11(C)(2). See *State v. Ricks* (1977), 53 Ohio App.2d 244, 246-247, 372 N.E.2d 1369.”

Id. at ¶7.

{¶ 12} Therefore, because the trial court never informed Anderson that any prison sentence imposed for a violation of R.C. 2921.331 would have to be served consecutively to sentences imposed for the other charges, the trial court failed to substantially comply with Crim.R. 11(C)(2)(a).

{¶ 13} Further, the court never identified the offenses by name during the plea colloquy. The court accepted a single guilty plea for all charges in all three cases without identifying each charge and case number separately and asking Anderson how he pleads to each individual offense. The court’s failure to identify the offenses to which Anderson was pleading guilty coupled with its failure to inform him of the mandatory consecutive sentence for a violation of R.C. 2921.331, constitutes a lack of substantial compliance with Crim.R. 11(C)(2)(a) and requires reversal of Anderson’s guilty pleas.

{¶ 14} Accordingly, the first assignment of error is sustained.

{¶ 15} Having determined that all of Anderson’s guilty pleas must be reversed, we need not address the remaining three assignments of error that attack other aspects of the plea hearing and sentences.

Judgment reversed, and case remanded.

It is ordered that appellant recover of said appellee 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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, JUDGE

KENNETH A. ROCCO, P.J., and
MELODY J. STEWART, J., CONCUR