

[Cite as *State v. Holt*, 2010-Ohio-5591.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94039

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SCOTT HOLT

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-518463, CR-518472, and CR-518643

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

RELEASED AND JOURNALIZED: November 18, 2010

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KENNETH A. ROCCO, P.J.:

{¶ 1} After entering guilty pleas in three separate cases to charges of aggravated robbery, one including a firearm specification, defendant-appellant Scott Holt appeals from his convictions and the sentences imposed.

{¶ 2} Holt presents seven assignments of error. He asserts the trial court erred in accepting his pleas without first “resolving his confusion about the charges,” ensuring he remembered the facts of the crimes, informing him

that he had the options to plead “no contest” or “not guilty by reason of insanity” (NGRI), and advising him that he would not be eligible for community control sanctions. Holt further argues his thirteen-year sentence is “unjustified,” and his trial counsel rendered ineffective assistance during the plea and sentencing hearings.

{¶ 3} Upon a review of the record, this court cannot find either that the trial court erred or that his trial counsel was ineffective in representing him. Holt’s convictions and sentences, consequently, are affirmed.

{¶ 4} Holt’s convictions in these cases result from a crime spree in which he engaged for three days in November 2008. In CR-518463, Holt was charged on eight counts for committing “hold-ups” of clerks working in four different Cleveland convenience stores on November 7, 2008.¹ In CR-518472, Holt was charged on two counts for another “hold-up” of a clerk in a Fairview Park convenience store.² In CR-518643, Holt was charged with two counts for committing a “hold-up” of two women in Lakewood.³

¹Counts one through four charged Holt with aggravated robbery, and counts five through eight charged Holt with kidnapping; each count contained a three-year firearm specification.

²Count one charged Holt with aggravated robbery, and count two charged him with kidnapping; both counts contained a three-year firearm specification.

³Count one charged Holt with aggravated robbery with a deadly weapon, to wit: a knife, and count two charged him with kidnapping.

{¶ 5} Holt entered pleas of not guilty and retained counsel to represent him. In late December, 2008, after the cases were consolidated for purposes of trial, Holt’s attorney requested in each case a referral for evaluations of Holt’s competency to stand trial and “sanity at the time of the act.” The trial court granted the requests.

{¶ 6} The resulting examination indicated Holt lacked competency to stand trial.⁴ Therefore, in February 2009, the court ordered Holt’s placement into a psychiatric treatment facility.

{¶ 7} In June 2009, Holt’s treating psychiatrist notified the court that Holt had been restored to competency. The parties stipulated to the psychiatric report. Approximately a month later, after the parties indicated an agreement had been reached in Holt’s cases, the trial court conducted a plea hearing.

{¶ 8} At the outset, the prosecutor outlined the state’s offer. In exchange for Holt’s guilty pleas, in the first case, to one count of aggravated robbery, amended to include the names of all of the victims, with a one-year firearm specification, and, in each of the other two cases, to one count of aggravated robbery, the state would dismiss all of the other charges. Holt’s

⁴The record contains no specific finding on the issue of Holt’s “sanity at the time of the act,” but the fact that the issue was dropped indicates it was without merit.

attorney indicated he and Holt discussed the matter thoroughly and it was counsel's belief that his client could "competently enter a plea at this time."

{¶ 9} The trial court thereupon conducted a colloquy with Holt. The court outlined the constitutional rights Holt would be relinquishing, the charges to which he would be entering his guilty pleas, and the potential penalties involved with each charge, including the possibility of consecutive terms and the requirements of postrelease control. Holt answered each of the court's questions succinctly and appropriately.

{¶ 10} Holt interrupted the trial court only once, when the court told Holt the charge of aggravated robbery in CR-518472 indicated he committed the offense with a "deadly weapon." Holt protested that, while he "said [he] had a gun," he actually did not. With this on his mind, Holt brought up the matter again at the time at which the court asked him for his pleas.

{¶ 11} Holt told the court that he could not "plead guilty to it if [he] didn't have a firearm." Holt further stated that he did not even recall "being there" at two of the convenience stores; he recalled only "pulling the knife on the girl[s] in the parking lot" in CR-518643. Holt asked if he could speak with his attorney; the court stopped the hearing for that purpose.

{¶ 12} When the trial court again proceeded with the hearing, the court asked Holt if he needed additional time. Holt stated, "No." The court

explained that Holt could change his mind, but Holt declared, “I’ll plead guilty.” Ultimately, the trial court accepted Holt’s pleas and referred him for a presentence investigation and report.

{¶ 13} Holt’s cases were called for sentencing three weeks later. The prosecutor indicated that Holt committed the offenses in the first two cases by telling the clerks that he had a gun and demanding money and in the third case by actually showing the victims that he had a knife.

{¶ 14} Holt’s attorney acknowledged his client had “a long history * * * of criminal activity.” Trial counsel, however, directed the court’s attention to the fact that Holt had been diagnosed with “schizophrenia and bipolarism,” and requested consideration of his need for treatment.

{¶ 15} For his part, Holt admitted he had engaged in “scare tactics” in committing his crimes. He told the court that he suffered from psychiatric disorders and alcoholism, and stopped taking his medications and began drinking following his girlfriend’s death in June 2008. He apologized for his behavior, but admitted he had “become that person” who “black[s] out” from substance abuse to wake to find he had committed crimes while under the influence.

{¶ 16} The trial court decided that, under the circumstances, it was a “greater priority” to “protect the public * * * than doing what [was] right by

Mr. Holt.” Thus, the court imposed consecutive prison sentences in each of Holt’s three cases.

{¶ 17} In CR-518463, Holt received a one-year term for the firearm specification, to be served prior to and consecutive with a three-year term. In CR-518472, Holt received a four-year term, and in CR-518643, Holt received a five-year term. The trial court ordered the terms in each case to be served consecutively, for a total of thirteen years.

{¶ 18} Holt presents seven assignments of error in this appeal; they are set forth as follows.

“I. By accepting Appellant’s guilty plea [sic] without resolving his confusion about the charges, the trial court violated Crim.R. 11(C)(a) [sic] and Appellant’s due process rights.

“II. By accepting Appellant’s guilty plea [sic] knowing that he had no memory of facts underlying certain charges, the trial court violated Crim.R. 11(C) and Appellant’s due process rights.

“III. By failing to inform Appellant, prior to accepting his guilty plea [sic], of his option to plead ‘No Contest,’ the trial court violated Crim.R. 11(C)(2)(b) and Appellant’s due process rights.

“IV. By accepting Appellant’s guilty plea [sic] without advising him that he could also plead ‘Not Guilty by Reason of Insanity,’ the trial court violated Crim.R. 11(C)(2)(b) and Appellant’s due process rights.

“V. In accepting Appellant’s guilty plea [sic] without mentioning his ineligibility for community control sanctions, the trial court violated Crim.R. 11(C)(2)(a) and Appellant’s due process rights.

“VI. The imposition of consecutive prison terms totaling thirteen years was excessive and unjustified when Appellant’s offenses caused no physical harm and his record revealed a low risk of violence.

“VII. As defense counsel failed to protect Appellant’s interests in numerous respects, resulting in an involuntary plea and an improper sentence, Appellant was deprived of his constitutional right to effective assistance of counsel.”

{¶ 19} Holt’s first, second, third, fourth, and fifth assignments of error present the argument that his guilty pleas in these cases for several reasons were not knowingly, voluntarily, and intelligently made. This court disagrees.

{¶ 20} Crim.R. 11(C) governs the acceptance of guilty or no contest pleas and states in pertinent part:

{¶ 21} “(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

{¶ 22} “(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.

{¶ 23} “(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.”

{¶ 24} Ohio courts have determined that although literal compliance with Crim.R. 11(C)(2)(a) and (b) is preferred, substantial compliance is sufficient. *State v. Caplinger* (1995), 105 Ohio App.3d 567, 572, 664 N.E.2d 959, citing *State v. Johnson* (1988), 40 Ohio St.3d 130, 532 N.E.2d 1295; *State v. Nero* (1990), 56 Ohio St.3d 106, 564 N.E.2d 474.

{¶ 25} “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.*, at 108, citing *State v. Stewart* (1977), 51 Ohio St.2d 86, 364 N.E.2d 1163. “Furthermore, a defendant who challenges his guilty plea on the basis that it was not knowingly, intelligently, and voluntarily made must show a prejudicial effect.” *Id.* In determining prejudice, “[t]he test is whether the plea would have otherwise been made.” *Id.*

{¶ 26} Holt first asserts that the trial court did not ascertain that he understood he was pleading to a charge that he committed the offense by threatening the victims that he had a firearm. The record reflects, however, that when Holt raised a concern about this aspect of his guilty plea, the trial court halted the proceeding in order that Holt could clarify the matter with his attorney. By the time the hearing continued, Holt’s concerns had been addressed, and, clearly, he understood that his threat sufficed for purposes of the guilty plea. *State v. Brookins* (Oct. 1, 1998), Cuyahoga App. No. 73345.

{¶ 27} Similarly, although Holt asserts that his comments should have led the trial court to more fully explore whether he remembered committing each of the offenses, Crim.R. 11(C)(2) contains no such requirement. Holt told the trial court he would speak up if he were either confused or did not

understand something, and the record reflects he did so. *State v. Brahler* (Oct. 12, 2000), Cuyahoga App. No. 76941.

{¶ 28} Holt also asserts that the trial court should have informed him prior to accepting his pleas in these cases that he could enter alternate pleas, viz., either “no contest” or “NGRI.” Holt’s assertions essentially ask the trial court to function as a defendant’s trial counsel. This court declines to impose such a requirement.

{¶ 29} As to pleas of “no contest,” the trial court would have no reason to raise the matter, since the state’s offer was conditioned on Holt’s pleas of guilty. As to pleas of NGRI, the record reflects Holt received a psychiatric evaluation, and his trial counsel subsequently permitted the issue of Holt’s sanity to drop. This suggests the avenue was not one capable of being pursued. *State v. Minyard* (Sept. 22, 1994), Cuyahoga App. No. 65587; cf., *State v. Mikulic* (1996), 116 Ohio App.3d 787, 689 N.E.2d 116.

{¶ 30} In addition, Holt complains the trial court failed to inform him he would be ineligible for community control sanctions. The record belies this, because, in explaining the consequences of a guilty plea to a charge with a firearm specification, the trial court stated in pertinent part, “[I]t is mandatory. There’s no question about it. Have to serve one year in prison * *.” *State v. Melton*, Cuyahoga App. No. 89568, 2008-Ohio-925.

{¶ 31} For the foregoing reasons, Holt's first, second, third, fourth, and fifth assignments of error are overruled.

{¶ 32} Holt argues in his sixth assignment of error that the total sentence for his convictions in these cases was excessive and should be reversed.

{¶ 33} The Ohio Supreme Court set forth the applicable standard of appellate review of a felony sentence in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-2372, ¶4:

{¶ 34} "In applying [*State v.*] *Foster* [109 Ohio St.3d 1, 2006-Ohio-856] to the existing statutes, appellate courts 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 shall be reviewed under an abuse-of-discretion standard."

{¶ 35} Pursuant to *Foster* and *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, trial courts retain "full discretion" to impose a prison sentence within the statutory range; courts no longer are required to make findings or give reasons for imposing consecutive sentences. Thus, as long as the sentence complies with the law and is supported in the record, it will be upheld on appeal. *State v. McCullen*, Cuyahoga App. No. 90214, citing *State v. Goins*, Cuyahoga App. No. 89232, 2007-Ohio-6310.

{¶ 36} Holt pleaded guilty to first-degree felonies in each of his three cases. Each sentence the trial court imposed was within the statutory range for that offense. R.C. 2929.14. Moreover, in view of the concession by the defense at the sentencing hearing that Holt's criminal record was lengthy, and in view of the victims' assertions that Holt's actions placed them in fear for their lives in every one of the cases, this court will not substitute a different consequence for Holt's convictions than the one chosen by the trial court.

{¶ 37} Holt's sixth assignment of error, accordingly, also is overruled.

{¶ 38} In his seventh assignment of error, Holt claims his trial counsel rendered ineffective assistance. This court disagrees.

{¶ 39} In order to prevail on a claim of ineffective assistance of counsel, Holt first must demonstrate his counsel's performance was deficient, and then must show his counsel's deficient performance prejudiced his defense. *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373. Counsel is presumed to render adequate assistance unless the appellant demonstrates otherwise. *State v. Smith* (1985), 17 Ohio St.3d 98, 477 N.E.2d 1128.

{¶ 40} The record in this case reflects counsel was diligent in pursuing discovery, and thus well-prepared to broker a plea agreement by which nine of the twelve outstanding counts against his client were dismissed by the state, and the remaining counts were amended in Holt's favor. Although the

remaining counts were still first-degree felonies, counsel arranged to have his client exposed to only a one-year firearm specification. This result hardly can be considered deficient performance. *State v. Corbin* (2001), 141 Ohio App.3d 381, 751 N.E.2d 505.

{¶ 41} In addition, counsel made an eloquent argument for treatment of Holt's mental illness; the trial court, however, simply had no option but to incarcerate Holt for protection of the public. Counsel cannot be faulted for being unsuccessful in this particular matter.

{¶ 42} Since Holt cannot demonstrate his claim of ineffective assistance of trial counsel, his seventh assignment of error also is overruled. *Melton*.

{¶ 43} Holt's convictions and sentences are affirmed.

It is ordered that appellee recover from 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.

KENNETH A. ROCCO, PRESIDING JUDGE

MELODY J. STEWART, J., and
ANN DYKE, J., CONCUR