[Cite as *State v. Martin*, 2011-Ohio-222.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95281

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TRAMAINE E. MARTIN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-532936

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

RELEASED AND JOURNALIZED: January 20, 2011

FOR APPELLANT

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KENNETH A. ROCCO, P.J.:

{¶ 1} In this appeal brought on the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1, defendant-appellant Tramaine Martin, proceeding pro se, appeals from his convictions and the sentences imposed after he entered guilty pleas to two charges, viz., failure to comply with the signal or order of a police officer ("failure to comply"), with a furthermore clause that, in committing the

offense, he "was fleeing immediately after the commission of a felony," and receiving stolen property.

{¶ 2} The purpose of an accelerated appeal is to permit the appellate court to render a brief and conclusory opinion. *State v. Rodriquez*, Cuyahoga App. No. 95055, 2010-Ohio-4902, ¶2.

{¶ 3} Martin presents four assignments of error. He claims the trial court committed plain error in accepting his guilty pleas to offenses that were "allied." He also claims the trial court did not have the constitutional authority to impose a lifetime driver's license suspension as part of his sentence. He further claims his indictment was defective, thus depriving the trial court of subject matter jurisdiction over this case. Finally, he argues the trial court should have dismissed the charges based upon a violation of his statutory right to a speedy trial.

{¶ 4} Since a review of the record demonstrates none of Martin's assignments of error has merit, each is overruled. Martin's convictions and sentences are affirmed.

{¶ 5} According to the record, Martin became involved in a flight from the police on Christmas Eve, 2009. Some Cleveland police officers observed him driving on the wrong side of the street near West 65th Street and Detroit Avenue. When they attempted to stop him, he proceeded to enter the freeway, continuing eastbound in the westbound lanes. Martin finally "bailed" from the vehicle only to be captured; the vehicle he drove proved to have been stolen.

{¶ 6} On January 20, 2010, Martin was indicted on five counts, charged with three counts of failure to comply, R.C. 2921.331(B), one count of receiving stolen property, R.C. 2913.51(A), and one count of possession of criminal tools, R.C. 2923.24(A). The first count contained a furthermore clause alleging that, in committing the offense, he "was fleeing immediately after the commission of a felony."

{¶ 7} Martin eventually chose to represent himself in this case. He filed two motions to dismiss his indictment; the first alleged the indictment was defective for failure to allege a mens rea in Counts 1, 2, and 3; the second alleged his statutory right to a speedy trial had been violated. The trial court denied each motion.

{¶ 8} On June 8, 2010, Martin entered into a plea agreement with the state, whereby in exchange for the dismissal of the other counts, he would plead guilty to Count 1 and Count 4. After a thorough colloquy, the trial court accepted Martin's pleas, found him guilty, and sentenced him to consecutive prison terms of 15 months and 9 months, respectively.

{¶ 9} Martin presents four assignments of error in this appeal. In his first, he argues the trial court improperly sentenced him on both counts; he claims the two charges were "allied offenses."

{¶ 10} According to the holding in *State v. Underwood*, 124 Oho St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, a court of appeals should review, even in the

context of a plea agreement, whether multiple counts in the plea agreement constitute allied offenses, or whether those offenses were committed with separate animus that may be punished separately. The court further held most recently in *State v. Johnson*, Slip Opinion No. 2010-Ohio-6314, at paragraph one of the syllabus, that the following is the appropriate analysis:

{¶ 11} "When determining whether two offenses are allied offenses of similar import subject to merger under R.C. 2941.25, the conduct of the accused must be considered. (*State v. Rance* (1999), 85 Ohio St.3d 632, 710 N.E.2d 699, overruled.)"

{¶ 12} An examination of Martin's conduct in this case demonstrates he committed the offense of failure to comply separately from his commission of the offense of receiving stolen property; therefore, his crimes were not allied offenses. *Johnson*, ¶48-51. Hence, his first assignment of error is overruled.

{¶ 13} In his second assignment of error, Martin argues that the trial court improperly imposed a lifetime driver's license suspension upon him. He claims that penalty constitutes an ex post facto law as applied to him, because his prior conviction for failure to comply occurred before the effective date of the version of R.C. 2921.331(B) that requires the lifetime suspension.

{¶ 14} Martin's argument has been addressed and rejected in *State v. Doyle*, Pickaway App. No. 06CA31, 2008-Ohio-905, ¶10, as follows:

{¶ 15} "Although subsection (E) of R.C. 2921.331, which authorizes the suspension of driver's licenses for failure to comply with the order of a police officer, was not made effective until January 1, 2004, such penalty * * * was permitted under R.C. 4507.16(A)(1)(e). The same legislation that enacted subsection (E) of R.C. 2921.331 also amended R.C. 4507.16 so as to delete subpart (A)(1)(e). See S.B. No. 123, 2002 Ohio Laws file 184. In short, Senate Bill 123 simply moved the suspension penalty provision from R.C. 4507.16 to R.C. 2921.331. For these reasons, we find no ex post facto violation * * *."

{¶ 16} Accordingly, Martin's second assignment of error is overruled.

{¶ 17} Martin argues in his third assignment of error that the trial court lacked subject matter jurisdiction over the case because the indictment was defective; he asserts the counts that charged him with failure to comply failed to allege a mens rea.[1] In his fourth assignment of error, he argues that, since his statutory time for speedy trial had elapsed, the trial court lacked jurisdiction to determine his case.

{¶ 18} Martin's third and fourth arguments are foreclosed by his guilty pleas to the charges. *State v. Gaston*, Cuyahoga App. No. 92242, 2009-Ohio-3080, ¶6; *State v. Kelley* (1991), 57 Ohio St.3d 127, 566 N.E.2d 658, paragraph one of the syllabus, citing *Montpelier v. Greeno* (1986), 25 Ohio St.3d 170, 495 N.E.2d 581.

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[1]See, however, *State v. Johnson*, Slip Opinion No. 2010-Ohio-6301.

{¶ 19} As this court stated in *State v. Deal*, Cuyahoga App. No. 93969, 2010-Ohio-4490, ¶34, quoting *State v. Cooper*, Cuyahoga App. No. 93308, 2010-Ohio-1983, ¶11:

{¶ 20} "'This court has consistently recognized that by entering a plea of guilty to the offenses, a defendant waives any alleged errors in the indictment, including the failure to allege a culpable mental state. *State v. Griffin*, Cuyahoga App. No. 92728, 2010-Ohio-437; *State v. Hawkins*, Cuyahoga App. No. 91930, 2009-Ohio-4368; *State v. Gaston*, Cuyahoga App. No. 92242, 2009-Ohio-3080.'"

{¶ 21} The same rule holds true for alleged failures to comply with statutory speedy trial requirements. *State v. Goodwin*, Cuyahoga App. No. 93249, 2010-Ohio-1210, ¶10.

{¶ 22} Since Martin's third and fourth assignments of error also are overruled, his 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
COLLEEN CONWAY COONEY, J., CONCUR