[Cite as *Parma v. Pratts*, 2011-Ohio-728.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94990

CITY OF PARMA

PLAINTIFF-APPELLEE

vs.

VICTOR PRATTS

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Parma Municipal Court
Case Nos. 09 TRC 05112 and 09 CRB 03737

BEFORE: Boyle, J., Kilbane, A.J., and Rocco, J.

RELEASED AND JOURNALIZED: February 17, 2011

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MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Victor Pratts, appeals his conviction and sentence, raising seven assignments of error:

{¶ 2} "[I.] Defendant was denied due process of law when the court incorrectly informed defendant concerning the possible penalties.

{¶ 3} "[II.] Defendant was denied due process of law when the court imposed maximum, consecutive sentences for misdemeanor offenses without concerning the length of a license suspension.

{¶ 4} "[III.] Defendant was denied due process of law when the court misadvised defendant concerning the length of a license suspension.

{¶ 5} "[IV.] Defendant was denied due process of law when the court failed to advise defendant of the effect of a no-contest plea.

{¶ 6} "[V.] Defendant was denied due process of law when the court ruled on matters not of record in imposing maximum consecutive sentences.

{¶ 7} "[VI.] Defendant was denied due process of law when the complaints were amended without notice to defendant.

{¶ 8} "[VII.] Defendant was denied due process of law when the court imposed more than a minimum sentence for a first time OVI conviction."

{¶ 9} We find merit to Pratts's claim that the trial court failed to inform him of the effect of his no contest plea and, accordingly, we reverse.

Procedural History and Facts

{¶ 10} In August 2009, the city of Parma filed charges against Pratts in two separate cases. In Case No. 09 TRC 05112, Pratts was charged with six counts: Counts 1 and 2, driving under the influence of alcohol, in violation of Parma Codified Ordinances ("P.C.O.") 333.01(A)(1)(a) (OVI) and 333.01(A)(1)(d) (BAC); Count 3, no operator's license, in violation of P.C.O. 335.01; Count 4, driving under a 12-point suspension, in violation of P.C.O. 335.081; Count 5, failure to have a taillight illumination, in violation of P.C.O. 337.04; and Count 6, no seat belt, in violation of P.C.O. 337.295(B)(1).

{¶ 11} In Case No. 09 CRB 03737, Pratts was charged with four counts: Count 1, non-support of dependants, in violation of P.C.O. 636.10; Count 2, open container, in violation of P.C.O. 617.07; Count 3, failure to comply with police order, in violation of P.C.O. 606.175, and Count 4, child endangering, in violation of P.C.O. 630.01.

{¶ 12} At his arraignment, Pratts pleaded not guilty to the charges in both cases. But in March 2010, after several pretrials and on the day of trial, Pratts withdrew his not guilty plea and pleaded no contest to a single count of OVI (amended to a violation of R.C. 4511.19); a single count of failure to comply (amended to R.C. 2921.331); and a single count of failure to have a taillight. The remaining charges were dismissed. The trial court found Pratts guilty of three counts and sentenced him to 180 days in jail on the failure to comply count and 180 days on the OVI count, ordering that the sentences be served consecutively. The trial court further imposed the minimum mandatory fine of $375 on the OVI count. The trial court did not impose a fine or costs on the taillight offense. The trial court further suspended Pratts's license for three years.

{¶ 13} Two days later, Pratt moved to modify his sentence, and the trial court denied the motion.

{¶ 14} Pratt now appeals, raising several assignments of error in support of his claim that his plea was accepted contrary to law and that the trial court abused its discretion in imposing such a harsh sentence.

Effect of No Contest Plea

{¶ 15} We shall first address the fourth assignment of error because it is dispositive of this appeal. Pratts argues that his due process rights were violated when the court accepted his plea without informing him of the effect of the plea.

{¶ 16} Initially, we note that a trial court's obligations in accepting a plea depend upon the level of offense to which the defendant is pleading. *State v. Watkins*, 99 Ohio St.3d 12, 2003-Ohio-2419, 788 N.E.2d 635, ¶25. The OVI and failure to comply offenses to which Pratts pleaded no contest are first degree misdemeanors punishable by up to 180 days in jail. Therefore, they are petty offenses as defined in Crim.R. 2(D).

{¶ 17} For a petty offense, defined in Crim.R. 2(D), the court is instructed that it "may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty." Crim.R. 11(E). Similarly, Traf.R. 10, which addresses pleas and a defendant's rights when pleading to a traffic offense, contains a nearly identical provision. See Traf.R. 10(D). In this case, both rules are applicable because Crim.R. 11(E) applies to nontraffic misdemeanor cases involving petty offenses (including Pratts's failure to comply conviction) and Traf.R. 10(D) applies to misdemeanor traffic cases involving petty offenses, i.e., Pratts's OVI conviction.

{¶ 18} Turning to the crux of Pratts's claim, we must determine whether the trial court complied with both rules and informed Pratts of the effect of his no contest plea

prior to accepting it. Traf.R. 10(B) and Crim.R. 11(B) set forth the "effect of guilty or no contest pleas." These provisions are also nearly identical and provide:

{¶ 19} "The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the complaint and such plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding." Traf.R. 10(B)(2).

{¶ 20} "The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding." Crim.R. 11(B)(2).

{¶ 21} In *Watkins*, supra, the Ohio Supreme Court clarified that all that is required of a trial judge before accepting a plea to a petty misdemeanor offense under Traf.R. 10(D) and Crim.R. 11(E) is that the judge must inform the defendant of the information contained in Traf.R. 10(B)(2) and Crim.R. 11(B)(2) — both of which set forth the effect of the no contest plea. Id. at ¶28; see, also, *State v. Jones*, 116 Ohio St.3d 211, 2007-Ohio-6093, 877 N.E.2d 677, paragraph two of the syllabus ("to satisfy the requirement of informing a defendant of the effect of a plea, a trial court must inform the defendant of the appropriate language under Crim.R. 11(B)").[1]

[1] This holding equally applies to traffic offenses under Traf.R. 10(B).

{¶ 22} The transcript of Pratts's plea hearing reveals that the trial court failed to inform him of the effect of his no contest plea. The language of Traf.R. 10(B)(2) and Crim.R. 11(B)(2) are noticeably absent from the colloquy. Instead, the record shows that the court informed Pratts of the maximum penalties, and then, prior to Pratts's entering his plea, the following exchange took place:

{¶ 23} "THE COURT: By entering this plea, you are waiving your right to a trial to myself or to a jury and all the rights that go along with the trial. Those rights include the right to be presumed innocent, right to require the prosecution to prove your guilty beyond a reasonable doubt, waiving your right to compel witnesses to testify on your behalf and your right to confront witnesses against you. You're also giving up your right not to testify against yourself and that fact cannot be used against you by any means. Do you understand that you are giving up all of those rights?

{¶ 24} "THE DEFENDANT: Yes, sir.

{¶ 25} "THE COURT: The OVI is a first offense within a six-year period. There are minimum mandatory sentence requirements on that. There is a minimum mandatory three days in jail; a minimum mandatory $325 fine;[2] a minimum mandatory 180-day license suspension. All of those things are going to happen, at least. Understood?

{¶ 26} "THE DEFENDANT: Yes, sir.

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[2] The trial court later in the hearing corrected himself and indicated that the minimum mandatory fine was actually $375.

{¶ 27} "THE COURT: Are you, currently, under the influence of any drugs or alcohol?

{¶ 28} "THE DEFENDANT: No, sir.

{¶ 29} "THE COURT: What plea would you like to enter to the taillight, OVI, and failure to comply?

{¶ 30} "THE DEFENDANT: No contest, your Honor.

{¶ 31} "THE COURT: I'll accept the plea of no contest. Stipulate to a finding of guilt, Mr. Mancino?

{¶ 32} "COUNSEL: Yes, that's correct Your Honor.

{¶ 33} "THE COURT: I'll make a finding of guilt and I'm ready to impose sentence."

{¶ 34} The court then heard from both Pratts's counsel and Pratts before imposing its sentence. The trial court, however, failed to inform Pratts of the effect of his no contest pleas as required by Traf.R. 10(D) and Crim.R. 11(E), the language of which is set forth in Traf.R. 10(B)(2) and Crim.R. 11(B)(2). Under these same circumstances, this court has consistently recognized that such failure amounts to reversible error and requires that the defendant's plea be vacated. See, e.g., *N. Royalton v. Semenchuk*, 8th Dist. No. 95357, 2010-Ohio-6197; *Parma v. Buckwald*, 8th Dist. Nos. 92354 and 92356, 2009-Ohio-4032 (recognizing that the trial court's complete failure to comply with the

rule does not implicate an analysis of whether the defendant was prejudiced by such failure).

{¶ 35} Accordingly, Pratts's fourth assignment of error is sustained. Having determined that Pratts was not informed about the effect of his plea, the remaining assignments of error challenging the validity of the plea and sentence are moot.

{¶ 36} Pratts's pleas are vacated. We reverse the judgment of the trial court and remand to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of 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 Parma Municipal 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.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, A.J., and
KENNETH A. ROCCO, J., CONCUR