[Cite as *State v. Blakney*, 2011-Ohio-932.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95025

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KENDRICK BLAKNEY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-532436

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

RELEASED AND JOURNALIZED: March 3, 2011

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KENNETH A. ROCCO, J.:

{¶ 1} After entering a guilty plea in this case to a charge of attempted felonious assault with a one-year firearm specification, defendant-appellant Kendrick Blakney appeals his conviction.

{¶ 2} Blakney presents one assignment of error. He claims the trial court wrongly accepted his plea, because the record reflects he had a hearing problem that limited his ability to understand the proceeding.

{¶ 3} Upon review, this court finds no error. Consequently, Blakney's conviction is affirmed.

{¶ 4} Blakney originally was indicted in this case on four charges, viz., one count of felonious assault with one- and three-year firearm specifications, two counts of having a weapon while under disability, and one count of discharge of a firearm on or near prohibited premises. After several pretrial hearings, the prosecutor notified the trial court that a plea agreement had been reached. The proposed agreement resolved both this case and another that was pending against Blakney in the same trial court.[1]

{¶ 5} The matter proceeded to a hearing. Within a short time, the trial court became aware that Blakney's auditory abilities were limited. The court commented that a "deaf interpreter" should be summoned, but Blakney's defense attorney stated Blakney could not read sign language. Blakney told the trial court that he read lips as long as the person "talk[ed] a little louder."

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[1]Since Blakney's notice of appeal cited only the instant case, the record of the other is not before this court.

{¶ 6} The trial court decided to continue the proceeding until the following day. The court explained that it had only "twenty minutes before [it had] to be back in a death penalty case," and it could not "spend the time that [it] want[ed] to spend with" Blakney; the court did not "want to rush [him]."

{¶ 7} The following day, the trial court called Blakney's case for a full plea hearing. The record reflects that in order to facilitate matters, the judge seated herself closely to Blakney and promised to "go slow[ly]." The judge told Blakney to stop her if he did not understand something, and he agreed to do so.

{¶ 8} The prosecutor outlined the terms of the agreement, i.e., in exchange for Blakney's guilty plea, the state would add the attempt statute to the felonious assault charge in Count 1, dismiss the three-year firearm specification, and dismiss the remaining counts. After asking defense counsel of the statement's accuracy, the trial court addressed Blakney.

{¶ 9} Blakney requested the trial court to "speak up just a little bit." The court obliged, repeating its questions when Blakney expressed difficulty in hearing them. Blakney indicated he understood each of the constitutional rights he was waiving in entering his plea, answered, "Yes, ma'am," when asked if he understood the potential penalties involved, and assured the trial court that no threats or promises had been made to him.

{¶ 10} The trial court asked Blakney for his plea to the amended Count 1 in the following manner:

{¶ 11} "Your plea to Count 1 in Case Number 532436, the body is a felony of the third degree punishable by one to five years in prison, a $10,000 fine, five years of post-release control. What is your plea?"

{¶ 12} Blakney responded, "Yes, ma'am."

{¶ 13} The trial court said, "Is it guilty or not guilty?"

{¶ 14} Blakney answered, "Say that again."

{¶ 15} The court obliged with, "Guilty or not guilty?"

{¶ 16} Blakney stated: "Guilty."

{¶ 17} The trial court then separately addressed the firearm specification, and Blakney again answered, "Yes, ma'am" before he realized he needed actually to say, "Guilty," in order to accomplish the point of the proceeding.

{¶ 18} The trial court accepted Blakney's plea and proceeded to sentencing. The court asked the prosecutor if the state had anything to contribute. Blakney interjected, "I wish I had my hearing aids with me."

{¶ 19} Immediately, the trial court told him, "If you don't hear or understand, you stop me, okay?" Blakney assured the judge, "You're okay." Thus, the record supports a conclusion that Blakney believed he might have trouble hearing the prosecutor's comments.

{¶ 20} After the prosecutor described the circumstances surrounding the case, defense counsel told the trial court that Blakney had "owned up to what he [had] done," and taken "the first step in rehabilitation." The trial court then asked Blakney if he wished to comment. He answered merely, "I'm cool."

{¶ 21} The trial court assured him that he was not required to make a statement, and Blakney indicated that he wanted to "just get it over with." The trial court ultimately imposed a one-year prison term for the firearm specification, to be served prior to and consecutive to one year on the underlying charge.

{¶ 22} Blakney appeals from his conviction with one assignment of error, as follows:

{¶ 23} "I. The trial court abused its discretion by accepting the appellant's plea where the record indicated that the appellant had a hearing disability which prohibited him from hearing his Criminal Rule 11 rights and the nature and circumstances of the charges to which he entered pleas of guilt."

{¶ 24} Blakney argues the trial court erred by accepting his guilty plea without first providing a "certified professional" to assist him with his hearing difficulty. He asserts the

trial court's failure to provide one indicates his plea was not knowingly, voluntarily, or intelligently made.[2] Since the trial court made reasonable efforts to accommodate Blakney's disability, and since the record demonstrates the validity of Blakney's plea, his argument is rejected.

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

{¶ 26} "(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:

{¶ 27} "(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.

{¶ 28} "(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."

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[2]With respect to his assignment of error, Blakney also appears to argue that the trial court should have permitted him to withdraw his plea. Since the record reflects Blakney never sought to do so, this argument will not be addressed.

{¶ 29} 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.

{¶ 30} "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.

{¶ 31} The transcript of Blakney's plea hearing demonstrates "the trial court carried out the mandates of Crim.R. 11(C) both as to constitutional and nonconstitutional rights." *State v. Robertson* (May 5, 1988), Cuyahoga App. No. 53843. Moreover, the totality of the circumstances supports a conclusion Blakney fully understood "the ramifications of the hearing," despite his hearing disability. Id.

{¶ 32} The trial judge placed herself nearby, told him he could stop the proceeding if he had any difficulty, and paused at appropriate times to ensure the dialogue was audible to him. When Blakney responded to the trial court in an inappropriate manner, the trial court

posed the question again until the court was satisfied he heard it accurately. Furthermore, Blakney's guilty plea to an amended Count 1 resulted in the dismissal of three other charges; he indicated he entered it with the intention of getting the matter "over with."

{¶ 33} Based upon the record, Blakney entered his guilty plea knowingly, voluntarily, and intelligently. The trial court, therefore, properly accepted it.

{¶ 34} Blakney's assignment of error, accordingly, is overruled.

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.

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KENNETH A. ROCCO, JUDGE

COLLEEN CONWAY COONEY, P.J., and

KATHLEEN ANN KEOUGH, J., CONCUR