

[Cite as *State v. Taylor*, 2015-Ohio-1643.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101609

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DEALONTA TAYLOR

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-583225-A

BEFORE: McCormack, J., E.A. Gallagher, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: April 30, 2015

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TIM McCORMACK, J.:

{¶1} Defendant-appellant, Dealonta Taylor, appeals his conviction following a guilty plea. For the reasons that follow, we affirm.

{¶2} On March 24, 2014, Taylor was charged with one count of aggravated robbery and one count of kidnapping, both of which are first-degree felonies and contained one- and three-year firearm specifications and two forfeiture specifications. He was also charged with two first-degree misdemeanors: theft, with two forfeiture specifications; and possessing a defaced firearm, with one forfeiture specification.

{¶3} On April 24, 2014, Taylor withdrew his previously entered not guilty plea and pleaded guilty to one count of aggravated robbery in violation of R.C. 2911.01(A)(1) and its attendant one-year firearm specification. In exchange for the plea, the state dismissed the three-year firearm specification in the first count of the indictment as well as the remaining charges. In addition, Taylor forfeited two firearms as part of the plea agreement. The trial court sentenced Taylor to one year imprisonment on the firearm specification and four years imprisonment on the underlying aggravated robbery charge, to be served consecutively.

{¶4} Taylor now appeals his conviction, claiming that the trial court did not comply with Crim.R. 11(C) in accepting his guilty plea and, therefore, his plea was not entered into knowingly, intelligently, or voluntarily. In three assignments of error, Taylor claims that he did not enter a separate guilty plea to the firearm specification, the

trial court failed to inform him of the maximum fine, and the trial court failed to properly inform him that he is not eligible for community control sanctions. We will address these claims together.

{¶5} Whether the trial court accepted a plea in compliance with Crim.R. 11(C) is subject to de novo review. *State v. Lunder*, 8th Dist. Cuyahoga No. 101223, 2014-Ohio-5341, ¶ 22. “‘We are required to review the totality of the circumstances and determine whether the plea hearing was in compliance with Crim.R. 11(C).’” *State v. Jackson*, 8th Dist. Cuyahoga No. 99985, 2014-Ohio-706, ¶ 6, quoting *State v. Schmick*, 8th Dist. Cuyahoga No. 95210, 2011-Ohio-2263, ¶ 6.

{¶6} Crim.R. 11(C) provides that a trial court must inform a defendant of certain constitutional and nonconstitutional rights before accepting a felony plea of guilty or no contest. The purpose of Crim.R. 11(C) is to provide the defendant with certain information so that he or she can make a voluntary and intelligent decision regarding whether to plead guilty. *Schmick* at ¶ 5.

{¶7} Under Crim.R. 11(C), prior to accepting a guilty plea in a felony case, the trial court must conduct an oral dialogue with the defendant to ensure the following: that the plea is voluntary, with the understanding of the nature of the charges and the maximum penalty involved and, if applicable, that the defendant is not eligible for community control sanctions; that the defendant understands the effect of his or her plea; and that the defendant understands the constitutional rights he or she waives by pleading guilty, including the rights to jury trial, to confront witnesses against him or her, to have

compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself. Crim.R. 11(C)(2)(a)-(c); *see, e.g., State v. Hussing*, 8th Dist. Cuyahoga No. 97972, 2012-Ohio-4938, ¶ 18.

{¶8} Strict compliance is required if the appellant raises a violation of a constitutional right delineated in Crim.R. 11(C)(2)(c). When the trial court fails to explain the constitutional rights set forth in Crim.R. 11(C)(2)(c), it is presumed the plea was entered involuntarily and unknowingly and therefore invalid. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 31.

{¶9} When the appellant raises a violation of a nonconstitutional right found in Crim.R. 11(C)(2)(a) and (b), we look for substantial compliance. *State v. Joachim*, 8th Dist. Cuyahoga No. 90616, 2008-Ohio-4876, ¶ 8. For example, if the trial court imperfectly explained nonconstitutional matters such as the maximum possible penalty and the effect of the plea, a substantial-compliance standard applies. *Clark* at ¶ 31. “Under this standard, a slight deviation from the text of the rule is permissible; so long as the totality of the circumstances indicates that ‘the defendant subjectively understands the implications of his plea and the rights he is waiving,’ the plea may be upheld.” *Clark* at ¶ 31, quoting *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

{¶10} When the trial court does not substantially comply with Crim.R. 11 with regard to a nonconstitutional right, reviewing courts must determine whether the trial

court partially complied or completely failed to comply with the rule. If the trial court partially complied, the plea may be vacated only if the defendant demonstrates a prejudicial effect. *Clark* at ¶ 32. The test for prejudice is “whether the plea would have otherwise been made.” *Nero* at 108.

{¶11} Taylor contends that his plea was not entered knowingly, intelligently, or voluntarily because he did not enter a separate guilty plea to the firearm specification. This argument is without merit.

{¶12} Here, the record demonstrates that the court engaged in an open dialogue with Taylor, specifically addressing the firearm specification. Initially, the prosecutor presented the plea agreement to the court, noting that the state would accept Taylor’s guilty plea to “aggravated robbery, a felony of the first degree, in violation of R.C. 2911.01(A)(1), a one-year firearm specification, under R.C. 2941.141(A).” The court then confirmed with the state, “With regard to amended Count 1, I take it the proposed plea is aggravated robbery, with a one-year firearm specification * * *?” The prosecutor answered, “That’s correct, your Honor. And felony of the first degree is punishable by a sentence of 3 to 11 years. The one-year firearm specification is also mandatory and to be served consecutive and prior to the underlying sentence for the underlying offense.” Thereafter, the court asked Taylor if that was his understanding of the plea, to which Taylor responded in the affirmative.

{¶13} The court continued to advise Taylor of his rights and the consequences of plea. Taylor repeatedly indicated that he understood. In addressing the particular terms of Taylor's plea, the court engaged in the following exchange with Taylor:

Court: Three of [the counts in the indictment] are going to be dismissed, and that's going to leave one count, amended Count 1, which will be aggravated robbery, with a one-year gun specification * * *. That is a felony of the first degree. Do you understand that?

Taylor: Yes, your Honor.

Court: Now, with a felony of the first degree, and with a gun specification, the following applies: First, because it's a one-year gun specification, that means you must serve that in prison for a one-year period starting from the time that you arrive in prison. Do you understand that?

Taylor: Yes.

Court: That has to be served first, and it has to be served before the underlying case, the aggravated robbery for whatever that sentence is. Do you understand that?

Taylor: Yes.

{¶14} After ensuring that Taylor had no questions regarding his plea and that no threats or promises had been made, the court asked Taylor, "how do you plead to amended Count 1, aggravated robbery, with a one-year gun specification, a felony of the first degree?" Taylor answered, "Guilty." Subsequently, the court determined that Taylor knowingly and voluntarily entered a guilty plea and it accepted the plea, making a finding of "guilty with regard to amended Count 1, aggravated robbery, with a one-year

gun specification, a felony of the first degree.” Both the state and Taylor’s counsel indicated that the court complied with Crim.R. 11.

{¶15} In light of the foregoing, we find the record demonstrates that Taylor fully understood that he was entering a plea of guilty to aggravated robbery as well as the one-year firearm specification.

{¶16} Taylor also contends that his plea was not knowing, intelligent, or voluntary because the trial court failed to advise him of the maximum fine for his offense. We find no merit to this argument.

{¶17} This court has held that the trial court’s Crim.R. 11 dialogue concerning the “maximum penalty” involved in an offense necessarily includes the mention of postrelease control and any fines and costs associated with a particular offense. *See State v. McKissic*, 8th Dist. Cuyahoga Nos. 92332 and 92333, 2010-Ohio-62, ¶ 6; *see also State v. Flagg*, 8th Dist. Cuyahoga Nos. 93248 and 93279, 2010-Ohio-4247, ¶ 33. The appellant may therefore dispute the knowing, intelligent, and voluntary nature of his plea on direct appeal if the trial court fails to advise him during a plea colloquy that the sentence may include the imposition of a fine. *State v. Simmons*, 8th Dist. Cuyahoga Nos. 99513 and 100552, 2013-Ohio-5026, ¶ 4. However, where the trial court fails to advise the defendant of a fine but otherwise advises the defendant of the maximum penalty he faces as required by Crim.R. 11(C)(2), the defendant cannot show prejudice where the trial court does not actually impose a fine. *Id.* at ¶ 7.

{¶18} Here, although the court did not mention the possibility of the imposition of a fine, the record shows that the court otherwise fulfilled its obligation concerning the “maximum penalty” noted in Crim.R. 11(C)(2)(a) when the court advised Taylor that a felony of the first degree is punishable by a sentence of 3 to 11 years and involves mandatory postrelease control of 5 years. Taylor indicated that he understood the possible penalties. After taking Taylor’s guilty plea to the amended charge of aggravated robbery with a one-year firearm specification, the trial court sentenced Taylor to five years in prison, which included one year for the specification. The court did not impose a fine.

{¶19} In light of the above, Taylor cannot demonstrate that he would not have entered the plea had he been advised of the potential fine. He therefore cannot demonstrate he was prejudiced by the court’s omission regarding the fine.

{¶20} Finally, Taylor contends that his plea was not knowing, intelligent, or voluntary because the trial court failed to properly inform him that he was not eligible for probation or community control sanctions. We find no merit to this argument.

{¶21} Under Crim.R. 11(C)(2)(a), the trial court must, “where applicable,” inform the defendant that he is not eligible for probation or for the imposition of community control sanctions. Because this claim is essentially a “maximum penalty” argument and pertains to a nonconstitutional right as discussed above, we review it for substantial compliance.

{¶22} Here, the trial court advised Taylor that “[t]he aggravated robbery is from 3 to 11 years in prison, and there’s a — what’s called a presumption. It means a strong probability that you will go to prison on that charge.” When asked if he understood, Taylor responded, “Yes, your Honor.” Thereafter, the following exchange took place:

Court: And I’ll determine at sentencing, * * * whether that will be at the low end, three years, or all the way up to 11 years. Do you understand that?

Taylor: Yes, your Honor.

Court: Now, there is a possibility that I might order you to be on probation, called community control sanctions. And the way the law is written for a felony of the first degree, it is simply a possibility, not a probability. It’s probably that you’re going to go to jail. In order for you to get community control sanctions, or probation, you have to convince me that you should be on probation rather than me sending you to prison which is the presumption. Do you understand that?

Taylor: Yes, your Honor.

Court: But even if I did that, even if I put you on community control sanctions, you still have to serve at least the one-year gun specification in prison. Do you understand that?

Taylor: Yes.

{¶23} Additionally, surrounding this exchange, Taylor’s sentence was repeatedly addressed. Each time, Taylor acknowledged that he understood the terms of the plea and the possible penalty involved. In presenting the plea agreement to the court, the prosecutor provided that the amended aggravated robbery is a felony of the first degree and is “punishable by a sentence of 3 to 11 years. The one-year firearm specification is also mandatory and to be served consecutive and prior to the underlying sentence * * *.”

When the court asked Taylor if he accepted the terms presented by the prosecutor, Taylor replied in the affirmative. Taylor also indicated that he had no questions about the terms. The court then reiterated the terms presented by the prosecutor, explaining “because it’s a one-year gun specification, * * * you must serve that in prison for a one-year period starting from the time you arrive in prison. * * * That has to be served first, and it has to be served before the underlying case, the robbery, aggravated robbery for whatever that sentence is.” Once again, Taylor stated that he understood. And finally, after the court explained all of the rights, charges, penalties, and risks, and just before pleading guilty, Taylor stated that he had no questions. Moreover, there is nothing in the record demonstrating any confusion or misunderstanding.

{¶24} In light of the record before us, we find that the court substantially complied with the nonconstitutional requirements delineated in Crim.R. 11(C)(2). *See State v. Moore*, 8th Dist. Cuyahoga No. 101658, 2015-Ohio-1026. We further find that, under the totality of the circumstances, Taylor subjectively understood the implications of his plea with regard to the maximum penalty involved, including his prison term.

{¶25} We therefore find that Taylor’s guilty plea was knowingly, intelligently, and voluntarily made. Taylor’s assignments of error are overruled.

{¶26} Judgment affirmed.

It is ordered that appellee recover of 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.

TIM McCORMACK, JUDGE

EILEEN A. GALLAGHER, P.J., and
EILEEN T. GALLAGHER, J., CONCUR