

[Cite as *Brooklyn v. Murray*, 2015-Ohio-2955.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102303

CITY OF BROOKLYN

PLAINTIFF-APPELLEE

vs.

CRYSTAL MURRAY

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Parma Municipal Court
Case No. CRB-14-02369

BEFORE: E.A. Gallagher, P.J., Stewart, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: July 23, 2015

ATTORNEY FOR APPELLANT

Myron P. Watson
323 W. Lakeside Avenue
Suite 420
Cleveland, Ohio 44113

ATTORNEY FOR APPELLEE

Hillary Goldberg
Brooklyn City Prosecutor
7619 Memphis Avenue
Cleveland, Ohio 44144

EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Crystal Murray appeals her conviction and sentence in the Parma Municipal Court for one count of providing false information. Murray also appeals the trial court's denial of her motion to vacate her plea. For the following reasons, we reverse and remand.

{¶2} Murray was charged with one count of falsification in violation of Brooklyn Codified Ordinance 525.02(a)(3). On September 29, 2014, Murray withdrew her previously entered plea of not guilty and entered a plea of guilty to the charge. The trial court imposed a 180-day jail sentence with 166 days suspended, a fine of \$500 and placed Murray on probation for 18 months. Murray was also ordered to make restitution in the amount \$1,317.60.

{¶3} On November 26, 2014, Murray filed a motion to vacate plea with an affidavit alleging that her trial counsel told her she would be sentenced to probation with no jail time. Murray averred that she would not have changed her plea but for the representation that she would not receive jail time. Murray also alleged that her trial counsel did not fully investigate her case and was not aware of the relevant facts, resulting in her being denied the effective assistance of counsel. The trial court denied Murray's motion to vacate plea on December 2, 2014. This delayed appeal followed and two assignments of error have been presented:

I. The trial court erred and abused its discretion in denying defendant's motion to vacate plea without a hearing.

II. The defendant was denied effective assistance of counsel under the Sixth Amendment when counsel was ill-prepared and was unable to provide any mitigating circumstances at her sentencing.

{¶4} After reviewing the record, including the transcript of Murray’s plea hearing, we are unable to reach the merits of her assignments of error because we find plain error at the plea stage.

{¶5} Under Crim.R. 52(B), plain errors affecting substantial rights may be noticed by an appellate court even though they were not brought to the attention of the trial court. *State v. Watson*, 8th Dist. Cuyahoga No. 100356, 2014-Ohio-2395, ¶ 18, citing *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, 920 N.E.2d 104.

{¶6} “When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution.” *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 7, quoting *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996).

{¶7} A “failure to comply with the requirements of Crim.R. 11 is plain error.” *State v. Johnson*, 8th Dist. Cuyahoga No. 91884, 2009-Ohio-2268, ¶ 11, quoting *State v. Hlinovsky*, 7th Dist. Belmont No. 99 BA 65, 2001-Ohio-3247. The failure to strictly comply with Crim.R. 11(C)(2)(c) renders a defendant’s plea invalid. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 31.

{¶8} In this instance, although the trial court advised Murray of a number of constitutional rights that she would be waiving by changing her plea, the court failed to

inform her that she could not be compelled to testify against herself at trial. The state conceded the error at oral argument.

{¶9} In light of this error, we find Murray's plea to be invalid.

{¶10} Murray's assignments of error are moot.

{¶11} Case reversed and remanded for further proceedings.

It is ordered that appellant recover from 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 trial 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.

EILEEN A. GALLAGHER, PRESIDING JUDGE

MELODY J. STEWART, J., and
ANITA LASTER MAYS, J., CONCUR