

[Cite as *State v. Cline*, 2015-Ohio-4085.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102573

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

PAUL CLINE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-581588-B, CR-14-582002-A, CR-14-582219-A, CR-14-585685-B, and
CR-14-588823-A

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

RELEASED AND JOURNALIZED: October 1, 2015

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TIM McCORMACK, J.:

{¶1} Defendant-appellant Paul Cline appeals his sentence of ten years in prison. For the following reasons, we affirm.

{¶2} In 2014, Cline was indicted in five separate cases. On January 24, he was charged with felonious assault of a peace officer, two counts of trafficking, drug possession, and possessing criminal tools (Cuyahoga C.P. No. CR-581588-B). On January 30, Cline was charged with two counts of trafficking, two counts of drug possession, receiving stolen property, having weapons while under disability, and trafficking in illegal food stamps (Cuyahoga C.P. No. CR-582002-A). This indictment included four firearm specifications. In February, Cline was charged with having weapons while under disability, two counts of trafficking (one count includes a schoolyard specification), two counts of drug possession, carrying a concealed weapon, improperly handling firearms in a motor vehicle, and possessing criminal tools (Cuyahoga C.P. No. CR-582219-A). This indictment also included four firearm specifications. In May, he was charged with two counts of assault of a peace officer, two counts of obstructing official business, and falsification (Cuyahoga C.P. No. CR-585685-B). Finally, in September, Cline was charged with trafficking, three counts of drug possession, receiving stolen property, having weapons while under disability, and possessing criminal tools (Cuyahoga C.P. No. CR-588823-A). This indictment contained a juvenile specification and a firearm specification.

{¶3} On December 15, 2014, Cline pleaded guilty to amended charges. In Case No. 581588, he pleaded guilty to felonious assault of a peace officer in Count 1, drug possession (heroin) in Count 3, and drug possession (cocaine) in Count 5. The state agreed to dismiss the remaining charges contained in that indictment. In Case No. 582002, he pleaded guilty to trafficking cocaine in Count 1, trafficking heroin in Count 3, receiving stolen property (handgun) in Count 5, and having weapons while under disability in Count 6. Counts 1 and 3 contain firearm specifications. The state dismissed the remaining charges. In Case No. 582219, Cline pleaded guilty to having weapons while under disability (semiautomatic weapon) in Count 1, trafficking heroin in Count 2, with attendant specifications, drug possession in Count 5, with specifications, and carrying a concealed weapon (semiautomatic weapon) in Count 6. The remaining charges were dismissed. In Case No. 585685, he pleaded guilty to assault of a peace officer in Count 1, amended to include the victim in Count 2, and the state dismissed all other charges. Finally, in Case No. 588823, Cline pleaded guilty to trafficking in Count 1, with specifications, and the state dismissed the remaining charges in that indictment.

{¶4} On December 29, 2014, the court held a sentencing hearing. In Case No. 581588, the court sentenced Cline to seven years in prison on Count 1, two years on Count 3, and ten months on Count 5. The sentences in Counts 3 and 5 shall run concurrently to the prison sentence in Count 1. In Case No. 582002, the court sentenced Cline to ten months on Count 1, seven years on Count 3, one year on Count 5, and two years on Count 6. The court ordered the sentences to be served concurrently to each

other and to the prior case. In Case No. 582219, the court sentenced Cline to two years on Count 1, two years on Count 2, ten months on Count 5, and fifteen months on Count 6, all of which shall be served concurrently to each other and to the prior cases. In Case No. 585685, the court sentenced Cline to seventeen months on amended Count 1, to be served concurrently to the sentence in Case No. 581588. Finally, in Case No. 588823, the court sentenced Cline to seven years on Count 1, to be served concurrently.

{¶5} Addressing the attendant specifications, in Case No. 582002, the court sentenced Cline on the one-year firearm specifications in Counts 1 and 3, to be served concurrently to each other but consecutively to the underlying charges in the case. In Case No. 582219, the court sentenced him on the two one-year firearm specifications, to be served concurrently to each other but consecutively to the underlying charges. And finally, the court sentenced Cline on the one-year firearm specification in Case No. 588823, to be served consecutively to the prior firearm specifications.

{¶6} Cline now appeals his aggregate sentence of ten years in prison, asserting one assignment of error: The trial court failed to afford appellant the right to allocution as provided by [Crim.R. 32(A)(1)]. Specifically, Cline argues that the court denied him an opportunity to speak on his own behalf at sentencing when the court interrupted him.

{¶7} Crim.R. 32(A) provides that, at the time of sentencing, the trial court shall do all of the following:

- (1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

- (2) Afford the prosecuting attorney an opportunity to speak;
- (3) Afford the victim the rights provided by law;
- (4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

See also R.C. 2929.19(A) (providing that at the sentencing hearing, the court shall “ask the offender whether the offender has anything to say”).

{¶8} The purpose of allocution “is to afford the defendant an opportunity to present additional information to the court that it may consider when fashioning an appropriate sentence.” *State v. Ross*, 8th Dist. Cuyahoga No. 100708, 2014-Ohio-4566, ¶ 7, citing *Defiance v. Cannon*, 70 Ohio App.3d 821, 828, 592 N.E.2d 884 (3d Dist.1990).

A trial court complies with a defendant’s right of allocution when it addresses the defendant personally and asks whether he has anything he would like to say on his own behalf. *State v. Green*, 90 Ohio St.3d 352, 359, 738 N.E.2d 1208 (2000), citing *Green v. United States*, 365 U.S. 301, 305, 81 S.Ct. 653, 5 L.Ed.2d 670 (1961). The trial court’s inquiry provides the defendant the “last opportunity to plead his case or express remorse.”

Id. at 360. This type of inquiry also indicates substantial compliance with Crim.R. 32(A). *State v. Gimenez*, 8th Dist. Cuyahoga No. 75854, 1999 Ohio App. LEXIS 4293, * 5 (Sept. 16, 1999).

{¶9} Here, the record reflects that in an effort to accommodate Cline’s mother’s schedule, the trial court heard a statement from Cline’s mother, Tammy Mays, immediately following Cline’s guilty plea, but prior to the sentencing hearing. At this

time, Mays explained to the court that Cline had a drug problem for a period of time, that he must learn from his mistakes, that Cline's actions have caused him to be separated from his infant son, and that she has taught him right from wrong. The court thanked Mays and advised her that she would have an additional opportunity to address the court at the sentencing hearing. The court then asked Cline if he understood what his mother said, to which Cline replied, "Yes, your Honor."

{¶10} On December 29, 2014, the court held a sentencing hearing. At this time, the prosecutor elaborated on the facts of each case. He explained that in one case, Cline aimed his vehicle directly at a police officer who attempted to effectuate a traffic stop, accelerated, and eventually rammed his car into the police cruiser. The prosecutor stated that one officer was hit on the arm and the other was hit on the thigh. The prosecutor also explained that Cline is not just a young man with a drug problem, but he is a person who is trafficking drugs, including heroin, which is known to cause death and destruction.

{¶11} Thereafter, the court heard a statement from defense counsel, who provided that Cline came from a good, hard-working family, who "became enamored" with the "running and gunning and slinging dope." Counsel submitted that Cline now understands that none of the "quick money" was worth it, and he must now invest in his future by working on his education and skill. Finally, defense counsel advised the court that "[t]here is a lot of good left" in Cline, and he asked for leniency.

{¶12} The court then heard from Cline's mother again in mitigation. Mays explained to the court that Cline has learned from his circumstances, he has matured, and

he has become a wiser person. She expressed hope that the experience has made him a better father to his infant son. The court acknowledged that Mays was a victim of sorts in that, as a Cleveland police officer, she was placed in a difficult position, finding it necessary to take “some strong actions” that were adverse to her son, in an effort to curtail his behavior. The court then advised Mays that it will take into consideration everything she had presented to him.

{¶13} Finally, the court addressed Cline. It asked Cline where he went to school and then asked him if he had anything to say before sentencing. In response, Cline stated that he wished to apologize to his mother and his family. At this point, the court acknowledged that Cline wished to make a statement and it reminded Cline to speak up. Cline then proceeded to apologize again to his mother and family “for all the problems and embarrassment [he] caused.” He stated that he “didn’t never harm anybody intentionally or try to cause any harm to nobody.” Finally, he stated that he “just * * * want[s] to take the time in prison to better [himself].” It was at this point that the court interrupted Cline and stated “I hope so.” The court then reminded Cline that he is fortunate that his cases were not worse and told him, “You have somebody watching out over you.” The court then proceeded to sentence Cline.

{¶14} In light of the above, we find Cline’s assignment of error to be without merit. After listening to Cline’s mother speak twice and his counsel speak in mitigation on Cline’s behalf, the court specifically addressed Cline and asked Cline if he had anything to say, reminding him to keep his voice up. Cline responded by apologizing to

his family for his behavior and explaining that he meant no harm. He also provided that he wanted to better himself while in prison. Although the court may have interrupted Cline at this point, Cline's interest in "bettering" himself in prison is not material to mitigation of punishment; rather, it relates to how he will spend his time in prison once he is sentenced.

{¶15} Further, regardless of the court's interruption, the court acknowledged Cline's wishes in stating that it hoped Cline did, in fact, wish to better himself. And the record demonstrates that Cline spoke freely in expressing his remorse, repeatedly apologizing to his family. There is no evidence that Cline intended to offer any additional statement, and neither he nor counsel objected to the trial court's interruption or the court's alleged failure to afford him the opportunity to speak before he was sentenced. Moreover, Cline has failed to demonstrate how he was harmed by the court's interruption. There is nothing in the record that shows what Cline might have said, or attempted to say, and how that statement could have affected his sentence.

{¶16} We therefore find the trial court provided Cline with the right to allocution as provided by Crim.R. 32(A)(1). Cline's sole assignment of error is overruled.

{¶17} 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

MARY EILEEN KILBANE, P.J., and
EILEEN T. GALLAGHER, J., CONCUR