

[Cite as *State v. Griffin*, 2015-Ohio-5430.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102964

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

THERON GRIFFIN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-590332-A

BEFORE: Laster Mays, J., Celebrezze, A.J., and Jones, J.

RELEASED AND JOURNALIZED: December 24, 2015

FOR APPELLANT

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ANITA LASTER MAYS, J:

{¶1} Defendant-appellant Theron Griffin (“Griffin”) was found guilty of failure to verify address, in violation of R.C. 2950.06(F), a low-tier third-degree felony. Griffin pleaded not guilty at arraignment, but later withdrew his not guilty plea and entered a plea of no contest, and the trial court found him guilty. The trial court sentenced Griffin to community control sanctions. Griffin appeals his conviction and sentence.

{¶2} After a review of the record, we affirm the conviction, but remand to the trial court for resentencing. Griffin assigns two errors for our review.

I. The judgment entry order of sentence is invalid and void thus must be vacated where the plea was not made knowingly, intelligently, and voluntarily pursuant to Crim.R. 11 and 43(A).

II. The charges and indictment of failure to verify address must be dismissed, where defendant has fulfilled the ten-year registration requirement duties.

I. Facts and Procedural Postural

{¶3} On July 11, 2001, Griffin was indicted in Cuyahoga C.P. Case No. CR-01-410027 on ten counts of gross sexual imposition, one count of attempted rape, and two counts of intimidation. On April 26, 2003, Griffin pleaded guilty to one count of gross sexual imposition in violation of R.C. 2907.05, a third-degree felony. Griffin was subsequently sentenced to one year in prison and was adjudicated a sexually oriented offender pursuant to R.C. 2950.09(B).

{¶4} On the same day of sentencing in CR-01-410027, Griffin was also sentenced

in Cuyahoga C.P. Case Nos. CR-01-412141 and CR-02-420954. In CR-01-412141, Griffin pleaded guilty to two counts of gross sexual imposition in violation of R.C. 2907.05, both fourth-degree felonies and was sentenced to two years in prison. In CR-02-420954, Griffin pleaded guilty to one count of intimidation in violation of R.C. 2921.04, a third-degree felony and was sentenced to one year in prison. He was adjudicated a sexually oriented offender pursuant to R.C. 2950.09(B) in both cases.

{¶5} Griffin appealed all three convictions. *State v. Griffin*, 8th Dist. Cuyahoga No. 83724, 2004-Ohio-4344. Griffin's convictions and pleas were vacated, and the cases were remanded to the lower court for further proceedings. *Id.* at ¶ 33.

{¶6} After remand, on November 24, 2004, Griffin pleaded guilty in CR-01-410027 to one count of gross sexual imposition in violation of R.C. 2907.05, a third-degree felony, and was adjudicated a sexually oriented offender pursuant to R.C. 2950.09(B). As a result, he was required to register in person with the sheriff of his county of residence within seven days of coming to that county. In addition, he was required to periodically verify his residential address in person, at the county sheriff's department for ten years, with address verification every 90 days. Griffin received credit for three years time served and was ordered released.

{¶7} Griffin failed to satisfy his reporting requirements on August 17, 2014. Griffin was indicted on one count of failure to verify address on October 30, 2014, in case number CR-14-590332 in violation of R.C. 2950.04(F), a third-degree felony. At his arraignment, he pleaded not guilty. On March 4, 2015, Griffin withdrew his not guilty

plea and entered a plea of no contest. During this hearing, Griffin was advised by the court that he could be placed under community control sanctions for up to five years if he was found guilty. The trial court found him guilty.

{¶8} At the sentencing hearing, the trial court imposed community control sanctions, but did not indicate the duration of Griffin's sentence. However, when the journal entry was issued on April 2, 2015, it stated that Griffin was sentenced to five years of community control. As a result, he has filed this timely appeal.

II. Invalid Plea

{¶9} This court reviews de novo whether the trial court accepted a plea in compliance with Crim.R. 11(C). *State v. Lunder*, 8th Dist. Cuyahoga No. 101223, 2014-Ohio-5341, ¶ 22. Rigorous adherence to the requirements of Crim.R. 11(C)(2)(c), or strict compliance, is required for constitutional rights. However, for non-constitutional rights, substantial compliance is sufficient. When a court deviates from the text of Crim.R. 11 for non-constitutional rights, substantial compliance will be found when, examining the totality of the circumstances, the record indicates that “the defendant subjectively understands the implications of his plea and the rights he is waiving.” *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990). An explanation of the maximum penalty is required by Crim.R. 11(C)(2)(a). This is a non-constitutional right, so this court will look for substantial compliance. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 31. *State v. Pluhar*, 8th Dist. Cuyahoga No. 102012, 2015-Ohio-3344, ¶ 8.

{¶10} Under this standard, slight deviations are permissible, so long as the totality of the circumstances indicate that the defendant subjectively understood the implications of his plea. *State v. Phillips*, 12th Dist. Butler No. CA2008-05-126, 2009-Ohio-1448, ¶ 13, citing *Clark* at ¶ 31. With regard to a non-constitutional right, the reviewing court must determine whether the trial court partially complied or whether it failed to comply with the rule. *Id.* at ¶ 32. If the trial court partially complied, the plea may be vacated only if the defendant demonstrates a prejudicial effect, that is, that he would not have entered the plea. *Id.*; *Nero* at 108.

{¶11} In his first assignment of error, Griffin asserts that the judgment entry order of sentence is invalid and void and, thus, must be vacated where the plea was not made knowingly, intelligently, and voluntarily pursuant to Crim.R. 11 and 43(A). Crim.R. 11(C)(2) requires a trial court, before accepting a guilty plea, to address the defendant personally to:

(1) determine that the defendant is making the plea voluntarily, with an understanding of the nature of the charges and the maximum penalty; (2) inform the defendant of and determine that the defendant understands the effect of the guilty plea, and that the court may proceed with judgment after accepting the plea; and (3) inform the defendant and determine that the defendant understands that he is waiving his rights to a jury trial, to confront the witnesses against him, to call witnesses in his favor, and to require the state to prove his guilt beyond a reasonable doubt at a trial where the defendant cannot be forced to testify against himself.

{¶12} Griffin argues that his plea of no contest was not made knowingly. After a review of the record, the court strictly complied with Griffin's constitutional rights under Crim.R. 11(C)(2)(c). However, the issue here is not whether he understood his plea of

no contest. The issue is whether his sentence should be set aside because the trial court did not inform him of the duration of the community control sanctions. The trial court did state at the plea hearing that he could receive up to five years, but during sentencing, failed to indicate that he actually received five years of community control. The journal entry reflected five years of community control, but Griffin should have been told that at the sentencing hearing.

{¶13} Therefore, the plea was made knowingly, intelligently, and voluntarily. But the matter is remanded to the trial court for the limited purpose of resentencing to ensure compliance with regards to the terms of Griffin's community control sanctions, which the state concedes is proper.

{¶14} Griffin's first assignment of error is overruled because his plea was made knowingly, intelligently, and voluntarily. However, the case is remanded for resentencing.

III. Indictment Error

{¶15} In Griffin's second assignment of error, he argues that the charges and indictment of failure to verify address in accordance with R.C. 3797.04, must be dismissed because he fulfilled the ten-year registration requirement duties. Griffin contends that he was not required to register with the sheriff on August 17, 2014. However, Griffin was required to report until November 24, 2014, ten years after he was declared a sexually oriented offender.

{¶16} In addition, because Griffin pleaded no contest, he cannot now challenge the facts of the indictment. “By entering no contest pleas, a defendant admits the truth of the facts alleged in the indictment.” *State v. McCool*, 46 Ohio App.3d 1, 544 N.E.2d 933 (8th Dist.1988). Therefore Griffin’s argument is without merit. His second assignment of error is overruled and we affirm Griffin’s conviction.

{¶17} Judgment is affirmed, and this case is remanded to trial court for the limited purpose of resentencing.

It is ordered that the appellant recover from appellee costs herein taxed.

The court finds that there were reasonable ground 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.

A certified copy of this entry constitute the mandate pursuant to Rule 27 of the Rule of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
LARRY A. JONES, SR., J., CONCUR