

[Cite as *State v. Godwin*, 2016-Ohio-117.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103224

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROBERT GODWIN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-584496

BEFORE: Kilbane, J., Celebrezze, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: January 14, 2016

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MARY EILEEN KILBANE, J.:

{¶1} This is an accelerated appeal brought pursuant to App.R. 11.1 and Loc.App.R. 11.1.

{¶2} Defendant-appellant, Robert Godwin (“Godwin”), appeals the trial court’s denial of his postsentence motion to withdraw his guilty plea. For the reasons that follow, we affirm.

{¶3} In April 2014, Godwin was charged in a ten-count indictment in connection with a shooting at his financial planner’s office that resulted from Godwin’s belief that his financial planner was mismanaging his money. Counts 1-4 charged him felonious assault. Each count carried one- three- and five-year firearm specifications and forfeiture specifications. Count 5 charged him with discharge of a firearm on or near a prohibited premises and carried one-, three-, and five-year firearm specifications and forfeiture specifications. Count 6 charged him with tampering with evidence and carried a forfeiture specification. Count 7 charged him with improperly handling a firearm in a motor vehicle and carried forfeiture specifications. Counts 8 and 9 charged him with vandalism and each count carried forfeiture specifications. Count 10 charged him with possessing criminal tools and carried forfeiture specifications.

{¶4} Pursuant to a plea agreement, Godwin pled guilty to three amended counts of felonious assault (Counts 2-4) and one count of vandalism (Count 8). Count 2 was amended by the deletion of the three- and five-year firearm specifications and Counts 3

and 4 were amended by the deletion of all the firearm specifications. In exchange, the state nolleed Counts 1, 5, 6, 7, 9, and 10.

{¶5} The matter proceeded to sentencing in March 2015. The trial court sentenced Godwin to one year in prison on the mandatory firearm specification, to be served prior to and consecutive to the two-year sentence on Count 2. The court also sentenced him to two years on each of Counts 3 and 4 and one year on Count 8. The court ordered that Count 2 be served consecutive to Counts 3 and 4, but concurrent with Count 8 for an aggregate of seven years in prison.

{¶6} Approximately one month after his sentence, Godwin filed a motion for reconsideration of his sentence, which the court denied. Two weeks later, Godwin filed a motion to vacate his conviction and permission to withdraw his guilty plea. The state opposed the motion and the trial court held a hearing on the matter in June 2015. The trial court denied Godwin's motion, stating that "the Court took the time and actually read through the transcripts a couple times and * * * then researched the case law, and I believe the standard is did the Court substantially comply with Rule 11, and I believe I did."

{¶7} Godwin now appeals, raising the following single assignment of error for review.

Assignment of Error

The trial court abused its discretion when it denied [Godwin's] post-sentence motion to vacate because the record from the change of plea hearing established numerous errors by the trial court that resulted in [Godwin] suffering manifest injustice and being prevented from making a knowing, intelligent, and voluntary decision to enter his pleas of guilt.

{¶8} Godwin contends that he suffered a manifest injustice and his plea was involuntary because the trial court: (1) failed to advise him of the maximum penalty; (2) made inconsistent statements about the eligibility requirements for community control sanction; (3) failed to advise him of its policy of imposing consecutive sentences whenever there are multiple victims; and (4) failed to comply with Crim.R. 11 when it never asked him whether he understood that by pleading guilty he was waiving certain constitutional rights.

{¶9} The withdrawal of a guilty plea is governed by Crim.R. 32.1, which states: “A motion to withdraw a plea of guilty * * * may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.” Thus, under Crim.R. 32.1, Godwin has the burden of establishing “manifest injustice” warranting the withdrawal of his guilty plea. *State v. Nicholson*, 8th Dist. Cuyahoga No. 97873, 2012-Ohio-4591, ¶ 15, *discretionary appeal not allowed*, 134 Ohio St.3d 1470, 2013-Ohio-553, 983 N.E.2d 369, citing *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977).

{¶10} A motion made pursuant to Crim.R. 32.1 “is addressed to the sound discretion of the trial court, and the good faith, credibility and weight of the movant’s assertions in support of the motion are matters to be resolved by that court.” *Smith* at paragraph two of the syllabus. We, therefore, review a trial court’s decision to deny a defendant’s postsentence motion to withdraw a guilty plea under an abuse of discretion standard. *State v. Britton*, 8th Dist. Cuyahoga No. 98158, 2013-Ohio-99, ¶ 17, citing *Smith* at paragraph two of the syllabus, and *State v. Peterseim*, 68 Ohio App.2d 211, 214, 428 N.E.2d 863 (8th Dist.1980). “Unless it is shown that the trial court acted unreasonably, arbitrarily or unconscionably in denying a defendant’s motion to withdraw his pleas, there is no abuse of discretion.” *State v. Geraci*, 8th Dist. Cuyahoga Nos. 101946 and 101947, 2015-Ohio-2699, ¶ 9, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶11} Manifest injustice is a “‘clear or openly unjust act,’ * * * ‘an extraordinary and fundamental flaw in the plea proceeding.’” *Nicholson* at ¶ 15, quoting *State v. Sneed*, 8th Dist. Cuyahoga No. 80902, 2002-Ohio-6502, ¶ 13. It “‘comprehends a fundamental flaw in the path of justice so extraordinary that the defendant could not have sought redress from the resulting prejudice through another form of application reasonably available to him or her.’” *Id.*, quoting *Sneed* at ¶ 13. “Manifest injustice is an ‘extremely high standard’; a defendant may withdraw a guilty plea only in ‘extraordinary cases.’” *State v. Rogers*, 8th Dist. Cuyahoga No. 99246, 2013-Ohio-3246, ¶ 27, quoting *State v. Beachum*, 6th Dist. Sandusky Nos. S-10-041 and S-10-042,

2012-Ohio-285, ¶ 23. The requisite showing of manifest injustice must be based on specific facts contained in the record or supplied through affidavits submitted with the motion. *Cleveland v. Dobrowski*, 8th Dist. Cuyahoga No. 96113, 2011-Ohio-6071, ¶ 14, *discretionary appeal not allowed*, 2012-Ohio-1501, 964 N.E.2d 439, citing *State v. Gegia*, 157 Ohio App.3d 112, 2004-Ohio-2124, 809 N.E.2d 673 (9th Dist.).

{¶12} We note that “[a] change of heart * * * is not a sufficient ground to withdraw a plea. Otherwise, the accused might be encouraged to plead guilty to test the weight of potential punishment, and withdraw the plea if the sentence were unexpectedly severe.” *Britton* at ¶ 20.

Maximum Penalty

{¶13} Godwin first argues that his plea was involuntary because the trial court did not inform him that the one-year firearm specification on Count 2 was mandatory and must be served prior to and consecutive to any other sentence imposed.

{¶14} We note, however, that the trial court has no obligation under Crim.R. 11 to explain the mandatory nature of the firearm specification or that sentences may be imposed consecutively. *State v. Johnson*, 40 Ohio St.3d 130, 134, 532 N.E.2d 1295 (1988) (There is no specific requirement in Crim.R. 11 that an explanation be made that any sentence as given may run consecutively, or only concurrently, as might benefit the defendant.) Rather, Crim.R. 11 only mandates that the trial court state to the defendant the maximum penalty for each charge. *Id.*; *State v. Clay*, 8th Dist. Cuyahoga Nos. 89339, 89340, 89341, 2008-Ohio-314, ¶ 18.

{¶15} In the instant case, a review of the plea colloquy reveals that the trial court advised Godwin of the maximum penalty for each count. With regard to Count 2, felonious assault with the one-year firearm specification, the court stated that

[this count] carries a penalty from two to eight years in prison, plus your one-year firearm specification. So you are actually looking at anywhere from three years up to nine years in prison. Do you understand that?

[GODWIN]: Yes.

* * *

[COURT]: Because these are multiple charges, I could sentence you one after the other, or consecutively. If I do that, you are looking at anywhere from three years in prison up to 25 years in prison, and a fine of up to \$47,500. Do you understand that, sir?

* * *

[GODWIN]: Yes.

{¶16} The trial court also stated that Godwin is subject to prison because of his mandatory one-year gun specification. The court stated, “[y]ou could be placed under a community control sentence for up to five years — strike that. No, you could not, because you do have a mandatory one-year gun specification on you.”

{¶17} Thus, the trial court complied with Crim.R. 11 by properly advising Godwin of the maximum penalty for each charge.

Community Control Sanctions

{¶18} Godwin next argues that the trial court made inconsistent statements about the eligibility requirements for community control sanction. With regard to community control, the trial court stated that “[y]ou could be placed under a community control

sentence for up to five years — strike that. No, you could not, because you do have a mandatory one-year gun specification on you.”

{¶19} Godwin contends that this statement did not equate to the court advising him that he was ineligible for community control sanctions. While the trial court initially misspoke, it corrected itself and then advised Godwin that he could not be placed on community control because of the mandatory one-year prison on the gun specification. Therefore, the trial court complied with Crim.R. 11’s requirement that the court advise the defendant that he is not eligible for community control sanctions.

Policy of Imposing Consecutive Sentences

{¶20} Third, Godwin argues that the trial court misstated the minimum possible sentence and failed to advise him that it has a policy of imposing consecutive sentences whenever there are multiple victims.

{¶21} In Count 2, Godwin pled guilty to a one-year firearm specification and felonious assault in violation of R.C. 2903.11(A)(2). This second-degree felony is punishable by two to eight years in prison. R.C. 2929.14(A)(2). The trial court explicitly advised Godwin that Count 2 “carries a penalty from two to eight years in prison, plus your one-year firearm specification.” The court further stated that “you are actually looking at anywhere from three years up to nine years in prison.” The court also stated that because of the multiple charges, it “could sentence [Godwin] one after the other, or consecutively. If I do that, you are looking at anywhere from three years in

prison up to 25 years.” In light of this advisement, we do not find that the trial court misstated the minimum possible sentence.

{¶22} Godwin further argues the court misinformed him at the guilty plea hearing that concurrent sentences could be imposed when it stated at the sentencing hearing that it’s “this Court’s policy that if there are multiple victims that the Defendant needs to pay for each victim and not just one.”¹ Although Godwin cites to the trial court’s statement, which was made at the sentencing hearing, Godwin fails to demonstrate how this statement entitles him to relief from his guilty plea. The trial court complied with Crim.R. 11 by properly advising Godwin of the maximum penalty for each charge and the sentencing range for the charges.

Waiver of Rights

{¶23} Last, Godwin acknowledges that the court reviewed certain constitutional rights, but argues the trial court failed to comply with Crim.R. 11 because it never asked him whether he understood that by pleading guilty he was waiving certain constitutional rights.

{¶24} This court has stated that “the basic premise behind the guilty plea colloquy engaged in between the court and accused is that the accused is entitled to all relevant information that would have a bearing on the decision to plead guilty.” *State v. Cvijetinovic*, 8th Dist. Cuyahoga No. 81534, 2003-Ohio-563, ¶ 6. We stated, however,

¹We recognize that it is better practice for the trial court to fashion its sentence in accordance with the sentencing statutes set forth in R.C. Chapter 2929.

that “[t]here are no magic words to be spoken by the court — the record must only reflect that the court substantially complied with [Crim.R. 11(C)(2)(a)].” *Id.*, citing *Johnson*, 40 Ohio St.3d 130, 133, 532 N.E.2d 1295.

{¶25} In the instant case, a review of the plea colloquy reveals that the trial court advised Godwin of all of his constitutional rights and was satisfied that he understood the nature of the plea. The court stated at the beginning of the colloquy:

Mr. Godwin, even though your lawyer has already explained your rights to you, I must be certain that you understand all of your constitutional rights, so I’m going to ask you a series of questions that I need you answer out loud and on the record. Okay?

[GODWIN]: Okay.

{¶26} At the conclusion of the colloquy, the court stated that

[it] is satisfied that [Godwin] has been informed of his constitutional rights, that he understands the nature of the charges, the effect of a plea, and the maximum penalties which may be imposed. The Court further finds that [Godwin’s] pleas will be made knowingly, intelligently, and voluntarily.

{¶27} Based on the foregoing, we find that the trial court substantially complied with Crim.R. 11, and Godwin subjectively understood the consequences of the plea and the nature of the rights being waived.

{¶28} For the reasons detailed above, we find nothing that suggests that the withdrawal of Godwin’s guilty plea was necessary to correct a manifest injustice. Therefore, the trial court did not abuse its discretion in denying his motion to withdraw his guilty plea.

{¶29} Accordingly, the sole assignment of error is overruled.

{¶30} Judgment is 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.

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

MARY EILEEN KILBANE, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
SEAN C. GALLAGHER, J., CONCUR