[Cite as *Cleveland v. McCall*, 2017-Ohio-2863.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105310

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

ANTON MCCALL

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2016 TRC 014624

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

RELEASED AND JOURNALIZED: May 18, 2017

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PATRICIA ANN BLACKMON, J.:

{¶1} Anton McCall ("McCall") appeals from the trial court's acceptance of his no contest plea to operating a vehicle while under the influence of alcohol or drugs ("OVI") and assigns the following errors for our review:

> I. Defendant was denied due process of law when the court failed to explain to defendant the effect of a plea of no contest.
>
> II. Defendant was denied due process of law when the court sentenced defendant without affording defendant his right of allocution.

{¶2} The city of Cleveland, pursuant to Loc.App.R. 16(B), has conceded McCall's first assigned error. Our review of the record confirms that the no contest plea was not knowingly and voluntarily made, and therefore, we reverse McCall's conviction and remand the matter to the trial court for further proceedings.

{¶3} On April 19, 2016, Cleveland police officers pulled McCall over for speeding. It appeared to the officers that McCall was under the influence of alcohol or drugs. McCall submitted to a urine test, and it was positive for marijuana and cocaine. McCall was charged with OVI in violation of R.C. 4511.19(A)(1).

{¶4} On July 26, 2016, the court held a hearing at which it accepted McCall's no contest plea. On August 16, 2016, the court sentenced McCall to 180 days in jail with 150 days suspended, a fine, probation, driver's license suspension, random substance abuse testing, assessment, and counseling, and court costs, among other things. It is from this plea and sentence that McCall appeals.

{¶5} Traf.R. 10(B)(2) states that the effect of a no contest plea is as follows: "The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the complaint and such plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding." Pursuant to Traf.R. 10(C), the court shall not accept a no contest plea "without first addressing the defendant personally and informing him of the effect of the [no contest plea] and determining that he is making the plea voluntarily." *See also* Crim.R. 11(D).

{¶6} In the instant case, the court explained the penalties McCall faced and certain constitutional rights McCall gave up by entering a no contest plea. The court then asked McCall if he understood this and if he still wished to plead no contest. However, the court failed to inform McCall of the effects of a no contest plea. *See State v. Jones*, 116 Ohio St.3d 211, 2007-Ohio-6093, 877 N.E.2d 677, ¶ 23 ("Thus, for a no contest plea, a defendant must be informed that the plea of no contest is not an admission of guilt but is an admission of the truth of the facts alleged in the complaint, and that the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding").

{¶7} We find that McCall's plea was not knowingly, voluntarily, and intelligently made, and the court erred by accepting it. McCall's first assigned error is sustained. McCall's second assigned error is moot pursuant to App.R. 12(A)(1)(c).

{¶8} Judgment reversed and case remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cleveland Municipal 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.

PATRICIA ANN BLACKMON, JUDGE

TIM McCORMACK, P.J., and
EILEEN T. GALLAGHER, J., CONCUR