

[Cite as *State v. Wilson*, 2017-Ohio-7076.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105147

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MILTON WILSON

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-605383-C

BEFORE: McCormack, J., Keough, A.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: August 3, 2017

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Also listed:

Milton Wilson
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ATTORNEYS FOR APPELLEE

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By: Edward D. Brydle
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TIM McCORMACK, J.:

{¶1} In 2015, Milton Wilson and two codefendants were involved in a scheme to cash in some illegally obtained blank payroll checks belonging to RTA. For his part in the check-cashing scheme, Wilson was charged with engaging in a pattern of corrupt activity, conspiracy, theft, grand theft, and multiple counts of money laundering, forgery, receiving stolen property, and tampering with records. He pleaded guilty to an attempted offense of engaging in a pattern of corrupt activity, grand theft, and one count of forgery. The trial court sentenced him to two years in prison for attempted offense of engaging in a pattern of corrupt activity and one year each on the remaining two counts, concurrent with each other and also with the pattern-of-corrupt-activity count. The court also imposed restitution in the amount of \$10,542.56.

{¶2} Wilson raises a single assignment of error, which states, “The Court violated Appellant’s U.S. Constitutional Rights to allocation [sic] and to remain silent.”

{¶3} Crim.R. 32(A) codifies a defendant’s constitutional right of allocution. *Garfield Hts. v. Marbury*, 8th Dist. Cuyahoga No. 103849, 2016-Ohio-7960, ¶ 8. The rule requires the court to “[a]fford 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.” Crim.R. 32(A)(1). Crim.R. 32 “does not merely give the defendant a right to allocution; it imposes an affirmative requirement on the trial court to ‘ask if he or she wishes to’ exercise that right.” *State v. Campbell*, 90 Ohio St.3d 320, 324, 738

N.E.2d 1178 (2000). “The remedy for a violation of one’s right of allocution is to vacate the sentence, remand for resentencing, and provide the defendant an opportunity to speak prior to the resentencing.” *Marbury* at ¶ 8, citing *State v. Cook*, 8th Dist. Cuyahoga No. 85186, 2005-Ohio-4010, ¶ 6-7.

{¶4} Here, a review of the sentencing transcript reflects that the trial court did not afford Wilson the opportunity to address the court as required by Crim.R. 32(A)(1). The court failed to ask Wilson if he wished to make a statement in his own behalf before it imposed the sentence.¹ The state, in a Notice of Conceded Error pursuant to Loc.App.R. 16(B), concedes the error. The assignment of error is sustained. Appellant’s sentence is vacated and the matter is remanded for resentencing consistent with the requirement of Crim.R. 32(A)(1).

{¶5} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said 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 common pleas court to carry this judgment into execution.

¹The record reflects that the trial court did not ask if Wilson wished to speak in his own behalf nor allowed his counsel the opportunity to present mitigating factors. After sentencing, his counsel immediately moved the trial court to “reconsider sentence and to reconvene sentencing hearing.” Counsel’s motion was granted. A different trial judge, substituting for the original trial judge, presided over the reconvened sentencing hearing. The judge allowed Wilson’s counsel to present mitigating factors yet still failed to ask Wilson himself if he wished to exercise his right to allocution. The substitute judge reimposed the same sentence given by the original judge.

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

TIM McCORMACK, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
ANITA LASTER MAYS, J., CONCUR