

[Cite as *State v. Dowdy*, 2017-Ohio-8320.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105396

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SHAUN DOWDY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-09-520345-B

BEFORE: Celebrezze, J., E.A. Gallagher, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: October 26, 2017

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FRANK D. CELEBREZZE, JR., J.:

{¶1} Appellant, Shaun Dowdy, appeals the denial of his postsentence motion to withdraw his guilty pleas to aggravated murder and kidnapping, for which he received a sentence of 33 years to life. He argues that the trial court erred when it denied his motion because the court failed to properly comply with Crim.R. 11 when he pled guilty in 2013. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} After this court's reversal of appellant's convictions for aggravated murder and kidnapping in 2012, the case was remanded to the trial court. *State v. Dowdy*, 8th Dist. Cuyahoga No. 96642, 2012-Ohio-2382. Appellant again pled guilty to those charges and was sentenced to a prison term of 33 years to life. Appellant did not appeal from those convictions, but did appeal from the partial denial of a motion for good-time credit in 2014, which this court affirmed. *State v. Dowdy*, 8th Dist. Cuyahoga No. 101589, 2015-Ohio-318.

{¶3} On June 29, 2016, appellant filed a pro se motion to withdraw his guilty pleas. He argued that the court failed to comply with Crim.R. 11 when the court completely failed to advise him that he would have to serve a mandatory prison term. In opposition, the state pointed out that there was an agreed sentence in this case, which meant that appellant subjectively and objectively understood that he would receive a prison sentence of 33 years to life. In his reply to the state's response, appellant

explained for the first time that his argument about a “mandatory sentence” actually meant that the trial court did not inform him that his sentence was ineligible for reduction through good-time credit. The trial court denied the motion on January 6, 2017, in a lengthy and comprehensive opinion.

{¶4} Appellant then filed the instant appeal assigning two errors for review:

1. The trial court erred as a matter of law in its holding that the failure to advise appellant of the mandatory prison term that was to be imposed was substantially compliant with the mandates of Crim.R. 11.
2. The trial court erred and abused its discretion in failing to grant the motion to withdraw guilty plea upon appellant’s showing of reversible error.

II. Law and Analysis

{¶5} Crim.R. 32.1 provides a means for a criminal defendant to withdraw pleas entered in a case either before or after sentence is imposed. *State v. Xie*, 62 Ohio St.3d 521, 526, 584 N.E.2d 715 (1992). For motions that come after a sentence is imposed, the movant has the burden of showing that a manifest injustice has occurred that requires withdrawal. *State v. Smith*, 49 Ohio St.2d 261, 264, 361 N.E.2d 1324 (1977). This court reviews a trial court’s decision granting or denying such a motion for an abuse of discretion. *Xie* at 526.

{¶6} The issue appellant initially stated in his motion was that the trial court’s plea colloquy did not inform him of the fact that his sentence included mandatory prison time for aggravated murder and the associated three-year firearm specification. The trial court advised appellant during the plea that “[t]here is, again, obviously no possibility for

community control for aggravated murder and there is parole that is associated with the aggravated murder charge.” Therefore, appellant was informed that he faced a mandatory prison sentence.

{¶7} Appellant attempts to distinguish a “mandatory minimum prison term” — something a court informs a defendant about during the plea colloquy as part of the penalties that are faced as a result of the plea — from a “mandatory prison term.” He asserts that a mandatory minimum prison term is “defined as the least that a trial court can impose under the relevant statutes,” and a “mandatory prison term” as the prison term where there is an “inability to diminish the sentence statutorily or through earned credit.” However, there is no such definition recognized in the context of Crim.R. 11.

{¶8} Appellant claims that *State v. Tutt*, 2015-Ohio-5145, 54 N.E.3d 619 (8th Dist.), is directly on point. It does not aid appellant. *Tutt* says that before accepting a guilty or no contest plea, where a charge includes a sentence that is not eligible for community control or probation, a trial court must satisfy itself that a criminal defendant understands that fact. *Id.* at ¶ 19. The *Tutt* court goes on to define the general methods through which that can be accomplished:

by expressly informing the defendant that he or she is subject to a mandatory prison sentence and is therefore ineligible for probation or community control sanctions or by confirming the defendant’s subjective understanding of that fact in some other way, i.e., if the “totality of the circumstances” warrants the trial court in making a determination that the defendant otherwise understands, prior to entering his plea, that he or she is subject to a mandatory prison sentence.

Id. at ¶ 20. That is, where a prison term is required, the court should satisfy itself that the

defendant understands that a prison term is required. It does not mean, as appellant asserts, that a criminal defendant must be told that his sentence for aggravated murder is not subject to good-time credit. For that assertion, he cites no authority.

{¶9} Here, the trial court satisfied this requirement both objectively and subjectively. The trial court explained that appellant faced a mandatory prison sentence. Appellant also agreed to a 33 year to life prison sentence as part of the plea agreement. Further, the trial court informed appellant that he would receive a 33-year-to-life prison sentence. This constitutes evidence that appellant was expressly told, and subjectively understood, that he was not eligible for community control. *See Tutt* at ¶ 20.

{¶10} The Sixth District has addressed a more analogous case to appellant's argument. *State v. Fisher*, 6th Dist. Lucas No. L-15-1262, 2016-Ohio-4750. There, a criminal defendant was misinformed that all his sentences were eligible for reductions through good-time credit when only some were. *Id.* at ¶ 15-16.

{¶11} Where a trial court provides information to a defendant during a Crim.R. 11 colloquy, that information should be accurate. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 41. The *Fisher* court set forth:

To ensure that pleas of guilty and no contest are voluntarily, knowingly, and intelligently made, trial courts must accurately advise defendants of the law in Crim.R. 11 plea colloquies. Fundamental fairness requires courts to hold themselves to exceedingly high standards when explaining the law to defendants who have waived constitutional rights.

Fisher at ¶ 20, citing *Clark*. However, the court went on to find a lack of prejudice and affirmed the denial of the motion to withdraw guilty pleas. *Id.* at ¶ 22-25.

{¶12} To be clear, in order to substantially comply with Crim.R. 11, a trial court is not required to inform a criminal defendant that his sentence may or may not be reduced by provisions for good-time credit. *Fisher* at ¶ 18. Appellant’s own definition of “mandatory prison sentence” bears no relationship to the actual definition of that term as interpreted by the courts of Ohio.

{¶13} Appellant asserts that the trial court completely failed to inform him of the mandatory nature of the sentence, i.e., the court did not inform him of the inapplicability of good-time credit. His own argument distinguishes *Clark* from his situation. The transcript here indicates that the trial court did not mention such credit during the plea colloquy. Therefore, the court did not relay inaccurate information concerning good-time credit.

{¶14} During sentencing, the court did make some statements about good-time credit, but those statements do not affect the knowing, voluntary, and intelligent nature of his pleas that occurred at the change of plea hearing. Appellant’s sole assignment of error is overruled.

III. Conclusion

{¶15} A trial court is not required to explain the applicability or inapplicability of any potential reductions in a sentence that may be earned through good-time credit as part of a Crim.R. 11 plea colloquy. The court’s lack of such an advisement does not constitute error, let alone a manifest injustice.

{¶16} Judgment affirmed.

It is ordered that appellee recover from 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. 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.

FRANK D. CELEBREZZE, JR., JUDGE

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