

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 24932

Appellee

v.

TIMOTHY W. RICE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 08 12 3921

Appellant

DECISION AND JOURNAL ENTRY

Dated: April 28, 2010

CARR, Judge.

{¶1} Appellant, Timothy Rice, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On December 22, 2008, Rice was indicted on one count of rape, one count of gross sexual imposition, and one count of disseminating matter harmful to juveniles. He entered a plea of not guilty to the charges. The trial court scheduled the matter for jury trial on June 29, 2009. On May 8, 2009, a first supplemental indictment was filed, charging Rice with three counts of illegal use of a minor in nudity-oriented material or performance, three counts of pandering sexually oriented matter involving a minor, and three counts of pandering obscenity involving a minor. He entered a plea of not guilty to these nine additional charges. The trial court rescheduled the matter for jury trial on July 20, 2009. On June 25, 2009, a second supplemental indictment was filed, charging Rice with three counts of pandering obscenity

involving a minor. The charges in the second supplemental indictment replaced the three charges of pandering obscenity involving a minor in the first supplemental indictment. Rice entered a plea of not guilty to the charges in the second supplemental indictment. The trial court dismissed the three counts of pandering obscenity in the first supplemental indictment.

{¶3} On July 13, 2009, Rice filed a motion for independent testing of two computers which the State had seized from him. On July 20, 2009, the date scheduled for trial, Rice filed a motion for continuance of trial because he had been precluded from conducting independent testing on the computers.

{¶4} On July 20, 2009, Rice appeared before the trial court and waived his right to a jury trial on the twelve pending charges. The trial court then addressed Rice's motion for independent testing, stating that the parties had resolved the matter in chambers by agreeing that Rice's expert would have access to the defendant's computers at the courthouse that day for analysis. While the trial court denied Rice's motion for a continuance of trial, as submitted, the court granted it in part based on the parties' agreed compromise that Rice's expert would have access to the computers for analysis that day. The trial court then rescheduled the matter for a trial before the bench for the afternoon of July 21, 2009.

{¶5} On July 21, 2009, Rice appeared in open court for a change of plea hearing in lieu of trial based on plea negotiations with the State. The trial court informed him that, by pleading guilty, he would be waiving certain rights, including the right to appeal. Rice indicated that he was prepared to waive that right. In addition, Rice executed a written plea of guilty in which he asserted his understanding that "by pleading guilty I waive my right to appeal any issues that might have been raised had I gone to trial and been convicted, and I understand that right of appeal and it is my intention to waive it."

{¶6} Rice pleaded guilty to one count of rape and three counts of pandering sexually oriented matter involving a minor. The court dismissed the remaining counts. The trial court classified Rice as a Tier III sex offender/child victim offender. The court sentenced him to a total sentence of eight years in prison. Rice filed a timely appeal, raising one assignment of error for review.

II.

ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION FOR CONTINUANCE OF TRIAL.”

{¶7} Rice argues that the trial court erred by denying his motion for a continuance of trial. This Court disagrees.

{¶8} This Court has stated:

“[A] guilty plea represents a break in the chain of events that preceded it in the criminal process; thus, a defendant, who admits his guilt, waives the right to challenge the propriety of any action taken by a trial court or trial counsel prior to that point in the proceedings unless it affected the knowing and voluntary character of the plea.” *State v. Franco*, 9th Dist. No. 07CA0090-M, 2008-Ohio-4651, at ¶28, quoting *State v. Gegia*, 9th Dist. No. 21819, 2004-Ohio-2124, at ¶18.

Moreover, a “defendant who enters a voluntary plea of guilty while represented by competent counsel waives all nonjurisdictional defects in prior stages of the proceedings.” *Akron v. Hendon*, 9th Dist. No. 22791, 2006-Ohio-1038, at ¶16, quoting *Ross v. Common Pleas Court of Auglaize Cty.* (1972), 30 Ohio St.2d 323, 323-324.

{¶9} Rice argues that the trial court abused its discretion by denying his motion for a continuance of trial. By pleading guilty, however, he has waived this issue on appeal. The transcript of the plea hearing indicates both that the trial court informed him that he would be waiving all such issues by entering a guilty plea and that Rice understood those ramifications of

his guilty plea. In addition, he signed a written plea of guilty in which he asserted that he understood that he was waiving his right to appeal by entering a guilty plea and that he wished to do so. Accordingly, Rice waived his right to appeal the trial court's denial of his motion for a continuance of trial.

{¶10} Although Rice emphasizes for the first time in his reply brief that a defendant waives error on appeal only where his guilty plea was voluntary, he has not challenged the voluntary, knowing, or intelligent nature of his plea. As that issue is not properly before this Court on appeal, we decline to address it.

{¶11} Rice's sole assignment of error is overruled.

III.

{¶12} Rice's assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

PAUL F. ADAMSON, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.