

STATE OF OHIO                 )  
  )ss:  
COUNTY OF SUMMIT         )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No.       25174

Appellee

v.

ROBERT K. OWENS

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CR 07 06 1982(A)

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 29, 2010

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MOORE, Judge.

{¶1} Appellant, Robert Owens, appeals from the decision of the Summit County Court of Common Pleas. This Court reverses and remands for proceedings consistent with this opinion.

I.

{¶2} On July 3, 2007, Owens was indicted on 14 counts of aggravated robbery, first-degree felonies, and 14 counts of robbery, second-degree felonies. On October 17, 2007, a supplemental indictment was filed, adding gun specifications to 13 of the aggravated robbery charges. On October 22, 2007, Owens pled guilty to the 14 robbery charges. As a result, the State dismissed the aggravated robbery charges along with the gun specifications. By entry dated October 26, 2007, the trial court sentenced Owens to a total of 15 years of incarceration.

{¶3} On September 16, 2009, Owens filed a pro se motion to withdraw his plea and notified the court that his original sentence improperly imposed post-release control. He argued

that his sentence was therefore void. The State conceded that Owens' original sentence was void. On December 4, 2009, the trial court held a hearing on Owens' motion to withdraw his plea. At the conclusion of the hearing, the trial court denied the motion and proceeded to resentence Owens.<sup>1</sup> The trial court sentenced Owens to 15 years of incarceration.

{¶4} Owens timely appealed from the trial court's decision and has raised one assignment of error for our review.

## II.

### **ASSIGNMENT OF ERROR**

"THE TRIAL COURT ERRED IN DENYING [OWENS'] MOTION TO WITHDRAW HIS GUILTY PLEAS BECAUSE IN ACCEPTING HIS PLEAS THE COURT FAILED TO FOLLOW THE CONSTITUTIONAL MANDATE OF INFORMING [OWENS] THAT HE WAS WAIVING HIS RIGHT TO A JURY TRIAL[.]"

{¶5} In his sole assignment of error, Owens contends that the trial court erred in denying his motion to withdraw his guilty pleas because in accepting his pleas the trial court failed to follow the constitutional mandate of informing him that he was waiving his right to a jury trial.

{¶6} Pursuant to Crim.R. 11(C)(2)(c), the trial court

"shall not accept a plea of guilty or no contest without first addressing the defendant personally and \*\*\*

"Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a

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<sup>1</sup> The trial court, while justifiably relying upon Ohio Supreme Court case law, was incorrect in its determination that Owens' 2007 sentence was void. On December 22, 2009, the Ohio Supreme Court held that for sentences imposed after July 11, 2006, the failure of the trial court to properly provide notification of postrelease control does not result in a void judgment. *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, at ¶27.

reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.”

{¶7} The trial court must strictly comply with the requirement to notify a defendant of the waiver of the constitutional rights set forth in Crim.R. 11(C)(2)(c). *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, at syllabus. “When a trial court fails to strictly comply with this duty, the defendant’s plea is invalid.” *Id.* We review whether the trial court strictly complied with Crim.R. 11(C)(2)(c) de novo. *State v. Gardner*, 9th Dist. No. 08CA009520, 2009-Ohio-6505, at ¶6.

{¶8} We must look to the language the trial court utilized to determine if it strictly complied with its duty. *Veney*, supra, at ¶28. In the instant case, the trial court, prior to accepting Owens’ guilty plea, informed him that “by entering the plea of guilty you’re giving up the right to a trial.”

{¶9} “Although the trial court may vary slightly from the literal wording,” *Veney*, supra, at ¶29, of Crim.R. 11(C)(2)(c), there is nothing in the record before this Court to indicate that the trial court ever mentioned the waiver of a *jury* trial, or otherwise discussed what type of trial Owens’ was waiving. In fact, at no time did the trial court mention the word “jury.” Accordingly, the trial court has failed to perform its duty and Owens’ “plea is constitutionally infirm, making it presumptively invalid.” *Veney*, supra, at ¶29. Owens’ assignment of error is sustained.

### III.

{¶10} Owens’ assignment of error is sustained. The judgment of the Summit County Court of Common Pleas is reversed and remanded for proceedings consistent with this opinion.

Judgment reversed,  
and cause remanded.

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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 Appellee.

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CARLA MOORE  
FOR THE COURT

WHITMORE, J.  
DICKINSON, P. J.  
CONCUR

APPEARANCES:

JEFFREY N. JAMES, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.