

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 26799

Appellee

v.

CLINTON LOCKHART

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 12 09 2726 (A)

DECISION AND JOURNAL ENTRY

Dated: March 11, 2015

CARR, Judge.

{¶1} Appellant Clinton Lockhart appeals the judgment of the Summit County Court of Common Pleas. This Court affirms in part, reverses in part, and remands.

I.

{¶2} Lockhart was indicted on one count of illegal cultivation of marijuana, a felony of the third degree; one count of possession of marijuana, a felony of the third degree; and one count of possessing criminal tools. The first two counts also carried criminal forfeiture specifications. After pleading not guilty to the charges, Lockhart moved to suppress all physical evidence in the case. The trial court denied the motion to suppress and scheduled the matter for trial.

{¶3} Prior to trial, the parties entered into plea negotiations. In exchange for Lockhart's guilty plea, the State amended the first two counts to felonies of the fourth degree and dismissed the third count. The trial court sentenced Lockhart to 36 months of community control

on each of the two counts, with the terms to run concurrently, and ordered the forfeiture of a certain amount of cash.

{¶4} Lockhart filed a timely appeal in which he raises four assignments of error for review.

II.

ASSIGNMENT OF ERROR I

APPELLANT LOCKHART’S GUILTY PLEA MUST BE VACATED BECAUSE HE DID NOT ENTER HIS PLEA KNOWINGLY, VOLUNTARILY, OR INTELLIGENTLY.

{¶5} Lockhart argues that his plea must be vacated because he did not enter it in a knowing, voluntary, and intelligent manner. Specifically, he argues that the trial court did not substantially comply with Crim.R. 11(B) and (C) regarding notification of his nonconstitutional rights. This Court disagrees.

{¶6} “A defendant may seek to vacate his guilty plea either by filing a motion to withdraw the plea in the trial court or upon direct appeal.” *State v. Aguilar*, 9th Dist. Wayne No. 10CA0051, 2011-Ohio-6008, ¶ 8. In arguing for vacation of his plea, Lockhart concedes that the trial court complied with the notification requirements of Crim.R. 11(C)(2)(c) addressing his constitutional rights. He challenges the knowing, voluntary, and intelligent entering of his plea solely on nonconstitutional grounds that the trial court failed to inform him regarding the effect of his guilty plea, specifically that his guilty plea constituted an admission of guilt and that the court would proceed directly to sentencing.

{¶7} A plea is invalid where it has not been entered in a knowing, intelligent and voluntary manner. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶ 25, citing *State v. Engle*, 74 Ohio St.3d 525, 527 (1996).

{¶8} Crim.R. 11(B) explains the effect of a guilty plea as follows:

With reference to the offense or offenses to which the plea is entered: (1) The plea of guilty is a complete admission of the defendant's guilt. * * * (3) When a plea of guilty * * * is accepted pursuant to this rule, the court, except as provided in divisions (C)(3) and (4) of this rule, shall proceed with sentencing under Crim.R. 32.

{¶9} Crim.R. 11(C)(2)(b) addresses the issues implicated in Lockhart's argument and states:

In felony cases the court may refuse to accept a plea of guilty * * *, and shall not accept a plea of guilty * * * without first addressing the defendant personally and * * * [i]nforming the defendant of and determining that the defendant understands the effect of the plea of guilty * * *, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

{¶10} These provisions address nonconstitutional notifications. *State v. Stoddard*, 9th Dist. Summit No. 26663, 2013-Ohio-4896, ¶ 7.

{¶11} The Ohio Supreme Court has urged literal compliance with the mandates of Crim.R. 11. *Clark* at ¶ 29. However, in the absence of literal compliance, "reviewing courts must engage in a multitiered analysis to determine whether the trial judge failed to explain the defendant's constitutional or nonconstitutional rights and, if there was a failure, to determine the significance of the failure and the appropriate remedy." *Id.* at ¶ 30. The *Clark* court set forth the following rules for analysis:

When a trial judge fails to explain the constitutional rights set forth in Crim.R. 11(C)(2)(c), the guilty or no-contest plea is invalid under a presumption that it was entered involuntarily and unknowingly. However, if the trial judge imperfectly explained nonconstitutional rights such as the right to be informed of the maximum possible penalty and the effect of the plea, a substantial-compliance rule applies. Under this standard, a slight deviation from the text of the rule is permissible; so long as the totality of the circumstances indicates that the defendant subjectively understands the implications of his plea and the rights he is waiving, the plea may be upheld.

When the trial judge does not substantially comply with Crim.R. 11 in regard to a nonconstitutional right, reviewing courts must determine whether the trial court partially complied or failed to comply with the rule. If the trial judge partially

complied, e.g., by mentioning mandatory postrelease control without explaining it, the plea may be vacated only if the defendant demonstrates a prejudicial effect. The test for prejudice is whether the plea would have otherwise been made. If the trial judge completely failed to comply with the rule, e.g., by not informing the defendant of a mandatory period of postrelease control, the plea must be vacated. A complete failure to comply with the rule does not implicate an analysis of prejudice.

(Emphasis in original.) (Internal quotations and citations omitted.) *Clark* at ¶ 31-32.

{¶12} Lockhart argues that the trial court erred by not determining whether he understood the effect of his guilty pleas, as the court did not ensure that he understood that “[b]y pleading guilty, [he] was admitting that he was guilty of both offenses[,]” and that “[the court] could proceed directly to judgment and sentencing.”

{¶13} At the plea hearing, the State enunciated the terms of the plea negotiations, including the recommendation that Lockhart be sentenced to community control. Defense counsel informed the court that “that is our understanding of the agreement, as well.” The trial court inquired of Lockhart whether he was satisfied with defense counsel’s representation in the case. Lockhart replied that he was. The trial court further inquired of Lockhart: “[D]o you understand that if you do plead guilty here today there will be no further proceedings in this matter. You would be giving up any appeal rights that could arise from a trial if you were to be found guilty at that trial?” After Lockhart replied, “Right”, the trial court clarified whether that was a “yes.” Lockhart replied, “Yes.”

{¶14} This Court reviewed a nearly identical colloquy in *Stoddard*, where we concluded that the trial court properly determined that the defendant understood the effect of his guilty plea. *Stoddard* at ¶ 9, 12. Moreover, the trial court inquired of Lockhart whether he was waiving the presentence investigation in this case. Lockhart, through counsel, asserted that he was.

{¶15} The totality of the circumstances in this case indicates that Lockhart subjectively understood the implications and effect of his guilty plea. *See Clark* at ¶ 31. We conclude that the trial court substantially complied with the nonconstitutional notification requirements of Crim.R. 11. Furthermore, even assuming that the trial court only partially complied with rule, Lockhart has not demonstrated prejudice. He has not made any argument on appeal that he would not otherwise have entered his plea. Based on our review of the record, this Court concludes that Lockhart entered his guilty plea in a knowing, voluntary, and intelligent manner. Lockhart's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DECLINED TO SUPPRESS EVIDENCE GATHERED IN VIOLATION OF LOCKHART'S CONSTITUTIONAL RIGHTS AGAINST UNREASONABLE SEARCH.

ASSIGNMENT OF ERROR III

LOCKHART'S CONVICTIONS MUST BE REVERSED BECAUSE HE WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED TO HIM BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

{¶16} Lockhart argues that the trial court erred by denying his motion to suppress, and that defense counsel was ineffective for failing to cite a certain case and for failing to raise an additional issue in the motion to suppress.

A defendant who enters a plea of guilty waives the right to appeal all nonjurisdictional issues arising at prior stages of the proceedings. Thus, where a defendant voluntarily, knowingly and intelligently pleads guilty, he may not thereafter contest an adverse ruling on a pre-trial motion to suppress on appeal.

(Internal quotations and citations omitted) *State v. Schlauch*, 9th Dist. Medina No.

05CA0077-M, 2006-Ohio-3293, ¶ 7.

{¶17} Based on our conclusion that Lockhart knowingly, voluntarily, and intelligently entered his guilty plea, he has waived the right to appeal any issues relevant to his motion to suppress. Lockhart's second and third assignments of error are overruled.

ASSIGNMENT OF ERROR IV

BEFORE IT SENTENCED LOCKHART, THE TRIAL COURT FAILED TO PERFORM THE ANALYSIS REQUIRED UNDER STATE V. JOHNSON TO DETERMINE WHETHER LOCKHART'S OFFENSES WERE ALLIED OFFENSES OF SIMILAR IMPORT, MERITING REMAND TO THE TRIAL COURT FOR A NEW SENTENCING HEARING.

{¶18} Lockhart argues that the trial court failed to make the necessary inquiry to determine whether the crimes to which he pleaded guilty were allied offenses of similar import. The State concedes error, and this Court agrees.

{¶19} In light of this Court's prior opinion in *State v. Copeland*, 9th Dist. Summit No. 27009, 2014-Ohio-5780, we sustain this assignment of error. In the absence of prior precedent, this Court might have disposed of this issue otherwise. However, on the basis of stare decisis, Lockhart's fourth assignment of error is sustained.

III.

{¶20} Lockhart's first, second, and third assignments of error are overruled. His fourth assignment of error is sustained. The judgment of the Summit County Court of Common Pleas is affirmed in part, reversed in part, and remanded solely for resentencing on the charge elected by the State.

Judgment affirmed in part,
reversed in part,
and cause remanded.

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(C). 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 equally to both parties.

DONNA J. CARR
FOR THE COURT

HENSAL, P. J.
CONCURS.

MOORE, J.
CONCURS IN JUDGMENT ONLY.

APPEARANCES:

JACQUENETTE S. CORGAN, Attorney at Law, for Appellant.

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