

[Cite as *State v. Kinebrew*, 2008-Ohio-812.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-060769
	:	TRIAL NO. B-0411298
Plaintiff-Appellee,	:	
	:	<i>OPINION.</i>
vs.	:	
JEROME KINEBREW,	:	
	:	
Defendant-Appellant.	:	

**Criminal Appeal From: Hamilton County Court of Common Pleas**

**Judgment Appealed From Is: Affirmed**

**Date of Judgment Entry on Appeal: February 29, 2008**

*Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *Philip R. Cummings*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

*Chris McEvilley*, for Defendant-Appellant.

**Note: We have removed this case from the accelerated calendar.**

**CUNNINGHAM, Judge.**

{¶1} Defendant-appellant Jerome Kinebrew appeals his conviction for involuntary manslaughter, in violation of R.C. 2903.04(A). Originally indicted for murder, Kinebrew entered a plea of guilty to the lesser offense of involuntary manslaughter. Pursuant to Crim.R. 11(C), the trial court conducted a thorough colloquy with Kinebrew to ensure that his plea had been made knowingly, intelligently, and voluntarily. The trial court accepted the plea, found Kinebrew guilty, and imposed a nine-year term of imprisonment.

{¶2} In his sole assignment of error, Kinebrew contends that the trial court erred in accepting his guilty plea in violation of his right to a jury trial guaranteed by the federal and Ohio constitutions.<sup>1</sup> Relying upon dicta in *State v. McCann*,<sup>2</sup> Kinebrew alleges that because he did not sign a jury waiver, as required by R.C. 2945.05, his plea was not effective.

{¶3} This argument was rejected two years after *McCann*, in *State v. West*, where this court held that a plea of guilty by an accused constitutes a waiver of his right to a jury trial.<sup>3</sup> The mandates of R.C. 2945.05, requiring the filing of a written waiver of a trial by jury, are not applicable when an accused enters a plea of guilty.<sup>4</sup> Thus, a written jury waiver is not required before a guilty plea may be accepted.

{¶4} Moreover, the record demonstrates that Kinebrew was aware that, by entering a guilty plea, he was waiving his right to a jury trial, as evidenced by the guilty-

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<sup>1</sup> See Sixth Amendment to the United States Constitution; Section 5, Article I, Ohio Constitution.

<sup>2</sup> (1997), 120 Ohio App.3d 505, 508, 698 N.E.2d 470 (“We note that the absence of a written jury waiver would require reversal *even if* the trial judge had complied with Crim.R. 11, \* \* \*”).

<sup>3</sup> See (1999), 134 Ohio App.3d 45, 51, 730 N.E.2d 388; see, also, *State v. Abney*, 8th Dist. No. 84190, 2006-Ohio-273, at ¶13-15; *State v. Schofield* (Dec. 10, 1999), 4th Dist. No. 99 CA 10.

<sup>4</sup> See *Martin v. Maxwell* (1963), 175 Ohio St. 147, 191 N.E.2d 838.

**OHIO FIRST DISTRICT COURT OF APPEALS**

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plea form he had signed and by the colloquy conducted by the trial court. The assignment of error is without merit.

{¶5} Therefore, the trial court's judgment is affirmed.

Judgment affirmed.

**SUNDERMANN, P.J., and HILDEBRANDT, J., concur.**

*Please Note:*

The court has recorded its own entry on the date of the release of this opinion.