

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 11AP-30
v.	:	(C.P.C. No. 10CR-06-3741)
	:	
Antonio Triplett,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 6, 2011

Ron O'Brien, Prosecuting Attorney, and *Susan M. Suriano*,
for appellee.

Yeura R. Venters, Public Defender, and *Paul Skendelas*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Defendant-appellant, Antonio Triplett, appeals from the judgment of the Franklin County Court of Common Pleas convicting him of one count of having a weapon while under disability, a third-degree felony, in violation of R.C. 2923.13. For the reasons that follow, we affirm.

{¶2} On June 25, 2010, a Franklin County Grand Jury indicted appellant on one count of carrying a concealed weapon ("CCW"), in violation of R.C. 2923.12, one count of tampering with evidence, in violation of R.C. 2921.12, and one count of having a weapon while under disability ("WUD"), in violation of R.C. 2923.13. A jury trial commenced on December 6, 2010.

{¶3} Columbus Police Officer Michael Slivanya testified that on June 5, 2010, at approximately 9:35 p.m., he was working as part of the gun violence reduction program when he came upon appellant on the street. As officers approached, appellant began to run and a foot chase ensued. During the foot chase, Slivanya testified that appellant removed a firearm from his waistband and threw it on the side of the road. After apprehending appellant, Slivanya recovered the firearm which was loaded with ammunition. At the time of this incident, Columbus Police Officer Melvin Romans was also working on the gun violence reduction program. Romans testified he saw Slivanya give chase to appellant and subsequently make the apprehension.

{¶4} On recess during Romans testimony, the state reopened its initial plea offer with a joint recommended sentence. Appellant accepted the state's offer, and, consequently, entered a plea of guilty to one count of WUD, a third-degree felony, in violation of R.C. 2923.13. A nolle prosequi was entered as to the two remaining counts. The trial court proceeded immediately to sentencing, and upon the joint recommendation of the state and defense counsel, imposed a three-year term of incarceration concurrent to case Nos. 09CR-4037 and 09CR-7665.

{¶5} This appeal followed and appellant brings the following assignment of error for our review:

The trial court erred in accepting Appellant's guilty plea in violation of Crim. R. 11 and due process guarantees under the state and federal Constitutions.

{¶6} Prior to addressing appellant's sole assignment of error, we first consider a pro se motion filed by appellant on April 20, 2011, in which appellant requests that this court take "judicial notice of adjudicative fact" as he sets forth in his motion. A review of the motion reveals that what appellant asks this court to recognize are alleged evidentiary inconsistencies. This does not qualify for judicial notice under Evid.R. 201(B), which permits judicial notice of a fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

{¶7} Accordingly, appellant's motion is denied.

{¶8} We now turn to appellant's assignment of error. Appellant asserts the trial court erred in accepting his guilty plea in violation of Crim.R. 11 and constitutional due process guarantees because his guilty plea was not knowingly, voluntarily, and intelligently entered. Specifically, appellant maintains the trial court failed to make a full inquiry into appellant's understanding of the nature of the charges and possible defenses. Appellant also asserts that his monosyllabic responses to the court's questions indicate his lack of understanding of the rights involved.

{¶9} "When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution." *State v. Engle*, 74 Ohio St.3d 525, 527, 1996-Ohio-179. Crim.R.

11(C) addresses guilty pleas in felony cases, and requires a trial judge to determine whether the criminal defendant is fully informed of his or her rights and understands the consequences of his or her pleas. Crim.R. 11(C) provides, in pertinent part:

(2) 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 doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

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

{¶10} "A trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination. When a trial court fails to strictly comply with this duty, the defendant's plea is invalid. (Crim.R. 11(C)(2)(c), applied.)" *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, syllabus. A defendant "need not

be advised of those rights in the exact language of Crim.R. 11(C), but he must be informed of them in a reasonably intelligible manner." *State v. Vinson*, 10th Dist. No. 08AP-903, 2009-Ohio-3240, ¶6, citing *State v. Ballard* (1981), 66 Ohio St.2d 473, paragraph two of the syllabus.

{¶11} Although the trial court must strictly comply with Crim.R. 11 regarding federal constitutional rights, the trial court need only substantially comply with the nonconstitutional provisions of the rule. *State v. Enyart*, 10th Dist. No. 08AP-184, 2008-Ohio-6418, ¶15, citing *Veney* at ¶14-17. The nonconstitutional rights about which a defendant must be informed are the nature of the charges with an understanding of the law in relation to the facts, the maximum penalty, and that, after entering a guilty plea, the court may proceed to judgment and sentence. Crim.R. 11(C)(2)(a) and (b). "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implication of his plea and the rights he is waiving." *Enyart* at ¶15, quoting *State v. Nero* (1990), 56 Ohio St.3d 106, 108. Moreover, "a defendant who challenges a guilty plea on a nonconstitutional basis must demonstrate a prejudicial effect." *State v. Brooks*, 10th Dist. No. 02AP-44, 2002-Ohio-5794, ¶22, citing *State v. Stewart* (1977), 51 Ohio St.2d 86, 92-93, and *Nero* at 108. "The test is whether the plea would otherwise have been made." *Id.* at ¶22, citing *Stewart* at 93.

{¶12} "In determining whether a defendant understood the charge a court should examine the totality of the circumstances." *Enyart* at ¶17, quoting *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, ¶56. "For a trial court to determine whether a defendant is making a plea with understanding of the nature of the charge, 'it is not always necessary that the trial court advise the defendant of the elements of the crime, or

to specifically ask the defendant if he understands the charge, so long as the totality of the circumstances are such that the trial court is warranted in making a determination that the defendant understands the charge.' " *Id.* at ¶17, quoting *State v. Rainey* (1982), 3 Ohio App.3d 441, 442.

{¶13} Here, the totality of the circumstances demonstrates that appellant entered his guilty plea knowingly, intelligently, and voluntarily. On December 6, 2010, prior to the commencement of trial, appellant was permitted an opportunity to make a statement to the court in which appellant explained why he felt he was being falsely imprisoned and treated unfairly. A lengthy dialogue ensued between appellant, appellant's counsel, the trial judge, and the prosecutor. Appellant's counsel explained the state's offer for a plea and joint recommended sentence and appellant's rejection of the same. Appellant confirmed his rejection stating, "I don't want no deals." (Tr. 14.)

{¶14} Thereafter, appellant's counsel indicated a jury waiver would be executed, and the trial court stated the trial would commence at 1:30 p.m. that day. Twenty-five minutes later, proceedings on the record resumed, and appellant requested a continuance, which the trial court denied. A short time later and after consultation with his counsel, appellant indicated he wanted a jury trial on all of the counts in the indictment. Appellant then informed the trial judge that he would not participate in the proceedings, but, instead, would remain in his cell.

{¶15} Prior to beginning voir dire, the matter resumed on the record, and appellant alleged a conflict of interest based on his allegation that his counsel "may have some relationship outside of this courtroom" with the prosecutor. (Tr. 24.) The trial court found

there was not a conflict, and, thereupon proceeded with impaneling a jury and opening statements.

{¶16} The following day, trial resumed and the state presented the testimony of Slivanya and Romans. During a break in the proceedings, the state reopened the initial plea offer to appellant, and this time appellant accepted the offer. A guilty plea form was prepared and signed by appellant and the plea was entered on the record.

{¶17} In response to the trial court's questioning, appellant acknowledged he could read and write English, that he was a citizen of the United States, and that he signed the guilty plea form after having reviewed it with his attorney. Appellant indicated that he understood the nature of the charge to which he was pleading guilty, and that he was not under the influence of drugs, alcohol or prescriptions drugs, nor was he ever found to be mentally incompetent.

{¶18} The trial court informed appellant that he had the right to a trial by a jury, the right to confront witnesses called against him, the right to a compulsory process, the right against self-incrimination, and the right to require the state to prove him guilty of the charges beyond a reasonable doubt. The trial court also informed appellant of his appellate rights and his right to be represented by counsel. Appellant indicated that he understood he was waiving all of these rights by pleading guilty.

{¶19} The trial court also informed appellant of the nature of the charges, the maximum possible sentence, and the terms of post-release control. Additionally, the trial court indicated it heard the facts presented and offered appellant's counsel an opportunity to expound on those facts to which appellant's counsel declined. Upon further inquiry,

appellant indicated that no promises or threats had been made to cause him to enter the guilty plea. Thereafter, the trial court accepted appellant's plea of guilty.

{¶20} Appellant contends the fact that he acknowledged the trial court's questioning with only minimal responses, such as "yes, your honor," and "no, your honor," indicates he failed to understand the nature of the charges in any depth. "However, this court has held that a defendant simply responding 'yes' and 'no' to a court's questions during plea proceedings is sufficient to render a guilty plea valid." *State v. Young*, 10th Dist. No. 10AP-292, 2010-Ohio-5873, ¶18, citing *State v. Marcum* (May 6, 2008), 10th Dist. No. 07AP-905, ¶8. As stated in *Marcum*, "it is not unusual for defendants to respond to a trial judge's questions during the plea discourse with a simple 'yes,' and 'no,' and we cannot assume that these defendants actually desired to say something else." *Id.* at ¶8, citing *State v. Davis*, 10th Dist. No. 07AP-356, 2008-Ohio-107, ¶19. In both *Young* and *Marcum*, we found discussions similar to that which took place here constituted a meaningful colloquy for purposes of accepting a guilty plea.

{¶21} Moreover, appellant signed a written plea agreement that stated his plea was being entered voluntarily. "A written waiver is presumptively voluntary, knowing, and intelligent." *Marcum* at ¶10, citing *Fitzpatrick* at ¶37.

{¶22} In addition, this court has generally determined that a defendant enters a guilty plea with an understanding of the nature of the charges when: (1) the trial court personally addresses the defendant and the defendant indicates that he understands the charges to which he is pleading guilty; (2) his signed guilty plea indicates that he has reviewed the law and the facts with his counsel; and (3) counsel advises the court that he or she has reviewed the facts and the law with his client and that his client has read the

plea form. *Marcum* at ¶11, citing *State v. Cantrell* (Mar. 26, 2002), 10th Dist. No. 01AP-818, 2002-Ohio-1353, citing *State v. Ellis* (June 20, 1996), 10th Dist. No. 95APA10-1399. In the instant case, appellant averred that he understood he was pleading guilty to one count of WUD, that he signed and understood the guilty plea form, and that his counsel reviewed the guilty plea form with him. Additionally, his trial counsel expressly stated on the record that he reviewed the facts and law with appellant, and the guilty plea form, signed by appellant's counsel, indicates that he counseled appellant regarding the facts and law of the case.

{¶23} As to appellant's contention that the trial court did not advise him of possible defenses, we note initially that appellant does not disclose what potential defenses he could have asserted. Furthermore, Crim.R. 11(C)(2) does not require that a trial court advise a defendant concerning all existing affirmative defenses or make a determination that the defendant is aware of the available defenses. Thus, the Supreme Court of Ohio has held that a trial court is not required to apprise a pleading defendant of the availability of defenses, even in circumstances where the same statute that defines the offense defines various affirmative defenses. *State v. Ingram*, 7th Dist. No. 09 MA 98, 2010-Ohio-1093, ¶22, citing *State v. Reynolds* (1988), 40 Ohio St.3d 334, 335-36.

{¶24} Based upon the totality of the circumstances, we conclude that appellant entered his guilty plea knowingly, intelligently, and voluntarily. The trial court engaged in meaningful colloquy with appellant and engaged in an extensive inquiry with appellant regarding the crime to which he was pleading guilty. Not only did the guilty plea form indicate review with defense counsel, but appellant in open court admitted he reviewed the document with his attorney and understood it. The trial court provided appellant the

opportunity to speak, and appellant expressed no confusion about the plea process. We find the trial court clearly complied with the mandates of Crim.R. 11(C).

{¶25} Finally, we decline appellant's invitation to consider other potential errors pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396. In *Anders*, the United States Supreme Court held that if, after a conscientious examination of the record, a defendant's counsel concludes that the case is wholly frivolous, she should so advise the court and request permission to withdraw. *Id.*, 386 U.S. at 744, 87 S.Ct. at 1400. Hence, an *Anders* brief requires a conclusion that no meritorious grounds for appeal exist. Where, as here, appellate counsel has found one or more issues worthy of appellate review, it is not appropriate to discuss or present non-meritorious issues, as if this were an *Anders* brief when it is not. *Young* at ¶29, citing *State v. Padgett* (June 30, 2000), 2d Dist. No. 99 CA 87; *State v. Carter* (Mar. 10, 2000), 6th Dist. No. L-97-1334.

{¶26} Accordingly, appellant's single assignment of error is overruled.

{¶27} In conclusion, appellant's motion requesting judicial notice of adjudicative facts is denied, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

*Motion requesting judicial notice of adjudicative facts denied;
judgment affirmed.*

BROWN and FRENCH, JJ., concur.
