The Supreme Court of Ohio

CASE ANNOUNCEMENTS

October 10, 2023

[Cite as *10/10/2023 Case Announcements #2*, 2023-Ohio-3675.]

APPEALS NOT ACCEPTED FOR REVIEW

2023-0821. State v. Meadows.
Cuyahoga App. No. 111950, 2023-Ohio-1572.
Donnelly, J., dissents, with an opinion joined by Brunner, J.

DONNELLY, J., dissenting.

{¶ 1} During my time on this court, I have noticed that cases in which criminal defendants ask us to review statements made by trial judges during the plea negotiation process are appearing with greater frequency. It seems that in the past, only a few select judges would make what appeared to be threatening or coercive comments during off-the-record conversations with counsel in chambers. Those comments would rarely make it into the official court record for fear of retribution from the trial judge. If the comments were extreme enough, however, they might become part of "courthouse lore," bandied about by practitioners when recalling war stories.

{¶ 2} Now some trial judges seem bolder, saying in open court what they once would say only in private. And I am left wondering whether it is the reluctance of the appellate courts, including our own, to address the allegations, made by criminal defendants, of impropriety by trial judges that has led to this new situation. Indeed, just a few months ago, I dissented from this court's decision not to exercise jurisdiction over a case presenting the same issue for review. *See State v. Mowery*, 170 Ohio St.3d 1499, 2023-Ohio-2574, 213 N.E.3d 704, ¶ 1 (Donnelly, J.,

dissenting). Because this court once again declines to address the issue, I dissent once more from this court's decision to not exercise jurisdiction.

{¶ 3} Reginald Meadows was part of a high-speed chase following a traffic stop for a lane violation. 2023-Ohio-1572, ¶ 2. The chase resulted in injuries to two other drivers and a nine-count indictment for Meadows. *Id.* at ¶ 2–3. The day before the scheduled jury trial, Meadows's counsel informed the trial court that Meadows was considering resolving the case through a guilty plea, but that Meadows wanted clarification about the mandatory penalties he was facing. At that point, the parties went on record, and the trial judge explained the sentence that Meadows could face if found guilty. *Id.* at ¶ 4.

{¶ 4} If the trial judge had stopped there, then there would be no issue. But he didn't. Beyond simply telling Meadows the sentence he could face, the trial judge told Meadows, "[The] 'jury's not going to see it the same way you do. They just won't.' " *Id.* at ¶ 5. He also said that Meadows's counsel " 'would have to throw a no hitter' " for Meadows to avoid "substantial" prison time. *Id.*

{¶ 5} Ultimately, Meadows chose to plead guilty to six counts in the indictment (the remaining counts were nolled and some specifications were dismissed). *Id.* at ¶ 8. But then, during his plea colloquy, Meadows expressed some reservations about moving forward. *Id.* at ¶ 7. So the trial judge's commentary resumed, with the judge telling Meadows as part of the plea colloquy, " '[T]here are no rabbits to be pulled out of a hat here. * * * And there are no miracles [to be had].' " *Id.* And if that weren't enough, the judge concluded by telling Meadows:

> This is a situation where you *should* have given up and nothing like this would have happened. Nothing like this would have happened. You would not have any of these mandatory charges. You wouldn't have had any of these charges that were mandatory charges, if you would [have] just given up.

(Emphasis added.) *Id.*

{¶ 6} When deciding whether to accept a guilty plea, Ohio law requires a trial judge to ensure that the plea is made knowingly, intelligently, and voluntarily. Crim.R. 11(C)(2); *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). Unlike the federal courts, Ohio law permits trial judges to participate in plea negotiations. *Compare* Fed.R.Crim.P. 11(c)(1)

(prohibiting federal judges from participating in plea negotiations) *with State v. Byrd*, 63 Ohio St.2d 288, 293, 407 N.E.2d 1384 (1980) (holding that a judge's involvement in plea negotiations does not automatically render the plea unconstitutional). But a judge's involvement in the plea process may render a plea unconstitutional if "the judge's active conduct could lead a defendant to believe he cannot get a fair trial because the judge thinks that a trial is a futile exercise." *Byrd* at 293.

{¶ 7} Let's be clear about what happened here. When the trial judge made his remarks, Meadows had not entered a plea, the state had presented no evidence of Meadows's guilt, nor had Meadows tried to mount a defense against the charges. Even a first-year law student would recognize that Meadows still enjoyed the presumption of innocence at this point in the proceedings. *See* R.C. 2901.05(A) ("Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution"). Despite this, we have a trial judge telling a criminal defendant that a jury will not believe any defense that he tries to mount *and* that the defendant could have avoided this inevitability had he not committed these alleged acts of which he had not yet been proven guilty. And all this occurs while Meadows is trying to decide whether to exercise his constitutional right to a jury trial.

{¶ 8} According to the Eighth District Court of Appeals, even these comments are not enough to render a defendant's plea constitutionally invalid. To be sure, the appellate court appeared to frown on the trial judge's comments, stating that the comments were "concerning" and that the trial judge's participation in the plea process was not the " 'preferred practice,' " 2023-Ohio-1572 at ¶ 19. But it nevertheless explained away the comments as the trial judge simply doing his job by laying out the worst-case scenario to ensure that Meadows made a knowing and intelligent decision about whether to plead guilty. *Id.* at ¶ 21.

{¶ 9} That analysis, though, glosses over what appears to have happened here and the content of what was said. According to the portions of the transcript that were quoted by the Eighth District, the trial judge did not simply lay out the penalties that Meadows might face as a worst-case scenario. He outright told Meadows that Meadows would fail if he exercised his right to a jury trial. And, just as in *Mowery*, the court of appeals pulled its own proverbial rabbit out of a hat by going to great lengths to arrive at the best construction of the trial judge's comments that was most favorable to the judge and least concerned with maintaining Meadows's

constitutional rights. *Accord State v. Mowery*, 3d Dist. Henry No. 7-22-06, 2023-Ohio-563, ¶ 9; *Meadows*, 2023-Ohio-1572, at ¶ 19.

{¶ 10} If a trial judge telling a defendant that a jury is not going to believe him, that mounting a defense would require his counsel to pull rabbits out of hats and work miracles, and that the defendant could have avoided all this if he hadn't committed the conduct that brought him before the court in the first place—conduct that, at this point, has been charged but not proven—isn't enough to support a defendant's claim that he believed proceeding to trial is futile, I don't know what is.

{¶ 11} Given the reluctance of this court and the courts of appeals to address the brazen language and actions of some trial judges during plea negotiations, it is little wonder that there is an ever-decreasing number of jury trials in this country. *See* Shari Seidman Diamond & Jessica M. Salerno, *Reasons for the Disappearing Jury Trial: Perspectives from Attorneys and Judges*, 81 La.L.Rev. 119, 122 (2020) (reporting that around 3.6 percent of federal criminal cases were resolved through a jury trial, while that number was as low as 1.3 percent in state courts). The state has more than enough in its arsenal—including mandatory-minimum sentences, the specter of consecutive sentences, and sentencing enhancement specifications—to encourage criminal defendants to take guilty pleas. It hardly needs help from trial judges who, during plea negotiations and colloquies, actively discourage criminal defendants from exercising their constitutional rights.

{¶ 12} Unless we choose to address this issue, some judges will be able to make with impunity comments like those made here. And that behavior will continue to entrench itself as an accepted practice of trial courts in this state when resolving criminal cases, further contributing to the vanishing jury trial.

{¶ 13} Because this court has again chosen not to address this issue, I dissent from its decision not to exercise jurisdiction over this appeal.

BRUNNER, J., concurs in the foregoing opinion.