

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2010-07-173
 :
 - vs - : OPINION
 : 4/4/2011
 :
 BRENDA J. MIDDLETON, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2010-03-0509

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamhawi, Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for plaintiff-appellee

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RINGLAND, J.

{¶1} Defendant-appellant, Brenda J. Middleton, appeals from her conviction in the Butler County Court of Common Pleas for one count of rape and one count of gross sexual imposition. For the reasons outlined below, we affirm.

{¶2} Appellant and her husband, William M. Bayless Jr., were each indicted by the Butler County Grand Jury for four counts of rape in violation of R.C. 2907.02(A)(1)(b), a first-degree felony punishable by life imprisonment, and four counts gross sexual imposition in

violation of R.C. 2907.05(A)(4), a third-degree felony, after it was alleged they had engaged in an prolonged illicit sexual relationship with a 12-year-old girl. After agreeing to plead guilty to one count of an amended rape charge in violation of R.C. 2907.02(A)(2), a first-degree felony punishable by a maximum of ten years imprisonment, as well as one count of gross sexual imposition, appellant and her husband both pled guilty at a joint plea hearing. The trial court then sentenced the couple to serve seven years in prison, ordered them to pay fines totaling \$20,000, and notified them that they would be subject to a mandatory five-year period of postrelease control following their release.

{¶3} Appellant now appeals from her conviction, raising one assignment of error for review.

{¶4} "THE TRIAL COURT ERRED TO THE PREJUDICE OF [APPELLANT] WHEN IT ACCEPTED A GUILTY PLEA THAT WAS NOT KNOWING, INTELLIGENT AND VOLUNTARY."

{¶5} In her sole assignment of error, appellant argues that the trial court erred by accepting her guilty plea for it was not knowingly, intelligently, and voluntarily entered. We disagree.

{¶6} A criminal defendant's choice to enter a guilty plea is a serious decision because, by agreeing to plead guilty, the defendant is giving up several constitutional rights. *State v. Clark*, 119 Ohio St.3d, 2008-Ohio-3748, ¶25; *State v. Nero* (1990), 56 Ohio St.3d 106, 107; *Boykin v. Alabama* (1969), 395 U.S. 238, 243, 89 S.Ct. 1709. In turn, because the "exchange of certainty for some of the most fundamental protections in the criminal justice system will not be permitted unless the defendant is fully informed of the consequences of his or her plea," when a defendant enters a guilty plea in a criminal case, the plea must be knowingly, intelligently, and voluntarily made. *State v. Eberle*, Clermont App. No. CA2009-10-065, ¶6, quoting *Clark*, 2008-Ohio-3748 at ¶26; *State v. Engle*, 74 Ohio St.3d 525, 527,

1996-Ohio-179. The failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution. *State v. Douglass*, Butler App. Nos. CA2008-07-168, CA2008-08-199, 2009-Ohio-3826, ¶9.

{¶7} Initially, appellant argues that the trial court erred by accepting her guilty plea because "she did not understand that her plea constituted a complete admission of guilt to rape, as amended." In support of this argument, appellant claims that because she, "through counsel, expressly denied the use or threat of force," an essential element to rape in violation of R.C. 2907.02(A)(2), the trial court erred by accepting her plea without making any further inquiry as to her understanding of the amended rape charge. This argument lacks merit.

{¶8} Pursuant to Crim.R. 11(C)(2)(b), prior to accepting a guilty plea in a felony case, the trial court must address the defendant personally and ensure, among other things, that "the defendant understands the effect of the plea of guilty[.]" *State v. Willenburg*, Clermont App. No. CA2008-06-066, 2009-Ohio-1454, ¶9. As defined by Crim.R. 11(B)(1), the term "the effect of a guilty plea" is a "complete admission of the defendant's guilt." *State v. Dotson*, Preble App. No. CA2007-11-025, 2008-Ohio-4965, ¶20; *State v. Thomas*, Cuyahoga App. No. 94788, 2011-Ohio-214, ¶31. The right to be informed that a guilty plea is a complete admission of guilt is nonconstitutional, and therefore, "subject to review under a standard of substantial compliance." *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, ¶12. 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 her plea and the rights she is waiving. *State v. Phillips*, Butler App. No. CA2008-05-126, 2009-Ohio-1448, ¶13, citing *Clark*, 2008-Ohio-3748 at 31.

{¶9} In this case, after reaching a plea agreement, appellant, her attorney, and the prosecution all signed a written "Plea of Guilty and Jury Waiver" form. This form explicitly

stated that appellant would plead guilty to the amended rape charge in violation of R.C. 2907.02(A)(2), that she "underst[ood] the nature of these charges," and that, by pleading guilty, she understood the court would decide her guilt "based upon a statement by the prosecutor about the evidence which would have been presented at trial."

{¶10} Thereafter, at the joint plea hearing, and upon explaining to appellant and her husband that they would be pleading to an amended rape charge in violation of R.C. 2907.02(A)(2), which, as the trial court stated, "[i]n a nutshell, * * * takes it out of life imprisonment," the following discussion occurred:

{¶11} "THE COURT: Statement of facts, please?"

{¶12} "* * *

{¶13} "[THE STATE]: As to [appellant], Your Honor, Count Nine, rape, on a specific instance on an unspecified date occurring between January 1st, 2010, through February 26th, 2010, [appellant] did engage in sexual conduct with another through the use of force, or compulsion of the threat of force constituting the offense of rape, a felony of the first degree in violation of 2907.02 Subsection (A)(2).

{¶14} "* * *

{¶15} "THE COURT: All right. [Appellant's trial counsel], anything with respect to the alleged facts on behalf of [appellant]?"

{¶16} "[APPELLANT'S TRIAL COUNSEL]: No, Your Honor. His Honor understands – with regard to us asking to incorporate what's been discussed in chambers with the prosecutor * * * and myself with regard to factually what transpired, and obviously *we've had to make an amendment to the rape charge to say there was force*, but his Honor understands based on the discussions with all the counsel that wasn't necessarily the case, but we just want that to be clear for the record. (Emphasis added.)

{¶17} "THE COURT: I'll take into consideration our discussions in chambers."

{¶18} Following this discussion, the trial court engaged appellant in a colloquy stating, in pertinent part, the following:

{¶19} "THE COURT: Do you understand the difference between a guilty plea and not guilty plea, ma'am?"

{¶20} "[APPELLANT]: Yes, I do."

{¶21} The trial court then stated:

{¶22} "THE COURT: Now, [appellant], do you understand that a guilty plea is a complete admission of your guilt and by pleading guilty you are forever waiving your right to a trial and all of your constitutionally guaranteed trial rights?"

{¶23} "[APPELLANT]: I do, Your Honor."

{¶24} In addition, when asked by the trial court if she "understood all of the rights" explained to her and if she "wish[ed] to give up or waive all of those rights by pleading guilty," appellant responded affirmatively. The trial court then asked appellant if she had "any questions regarding [her] plea or the consequences of [her] plea," to which she responded "No, Your Honor." The transcript of the plea hearing also indicates that appellant discussed the nature of the charges with her husband and with her attorney prior to entering her guilty plea.

{¶25} After a thorough review of the record, we find it clear that the trial court properly informed appellant of the effect of her guilty plea as a complete admission of her guilt to the amended charge of rape and that she fully understood the ramifications of making such a plea. See *Dotson* at ¶26; *State v. Sanders* (Mar. 10, 1997), Madison App. No. CA96-01-002, at 3-4; see, also, *State v. Taylor*, Cuyahoga App. No. 94569, 2010-Ohio-5607, ¶4. While appellant now claims that she "expressly denied the use or threat of force," thereby requiring

the trial court to make further inquiry regarding her understanding of the amended rape charge, the record clearly indicates that the parties "had to make an amendment to the rape charge to say there was force" to satisfy the terms of the plea agreement. Accordingly, because the trial court, at minimum, substantially complied, and in this case diligently complied, with the requirements of Crim.R. 11(C)(2)(b) regarding the effect of entering her guilty plea to the amended rape charge, appellant's first argument is overruled.

{¶26} Next, appellant argues that the trial court erred by accepting her guilty plea because it "did not personally address [her] to determine her understanding regarding the mandatory term of post-release [sic] control supervision[.]" We disagree.

{¶27} Pursuant to Crim.R. 11(C)(2)(a), prior to accepting a guilty plea in a felony case, the trial court must address the defendant personally and ensure that she comprehends, among other things, the "maximum penalty involved[.]" *State v. Schreiber*, Butler App. No. CA2006-09-237, 2007-Ohio-6030, ¶7. In cases involving a mandatory period of postrelease control, such as the case here, the postrelease control term is part "of the maximum penalty involved in an offense for which a prison term will be imposed." *State v. Mosby*, Cuyahoga App. No. 94676, 2011-Ohio-926, ¶15, quoting *State v. Perry*, Cuyahoga App. No. 82085, 2003-Ohio-6344, ¶10; *State v. McMahon*, Fayette App. No. CA2009-06-008, 2010-Ohio-2055, ¶15. "To uphold a guilty plea, there must be substantial compliance with the Crim.R. 11(C)(2)(a) requirement to disclose the maximum penalties." *State v. Moore*, Clinton App. No. CA2010-02-003, 2010-Ohio-6082, ¶15; *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, ¶19-26.

{¶28} In this case, and contrary to appellant's claim that the trial court "did not personally address [her]," at the joint plea hearing the trial court explicitly stated:

{¶29} "THE COURT: Do you understand, *each of you understand* that upon your

release from prison you'll be subject to a mandatory five year period of post-release [sic] control?" (Emphasis added.)

{¶30} After a thorough review of the record, we find it clear that the trial court did personally address appellant in an effort to determine if she understood her postrelease control obligations. Furthermore, while only appellant's husband responded to the trial court's question, the record is devoid of any evidence indicating appellant failed to comprehend her postrelease control obligations or that she was somehow prejudiced as a result. See *State v. Ericson*, Mahoning App. No. 09 MA 109, 2010-Ohio-4315, ¶14, citing *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, ¶15; see, e.g., *State v. Benson*, Cuyahoga App. No. 83178, 2004-Ohio-1677, ¶13; *State v. Fisher*, Montgomery App. No. 23992, 2011-Ohio-629, ¶33 (defendant's failure to make an oral response at plea hearing was not a basis to conclude that he failed to understand the right the court had explained to him). In fact, not only did appellant respond affirmatively when asked if she understood the nature of the charges and sentencing requirements, the "Plea of Guilty and Jury Waiver" form, a form which appellant signed after consulting with her attorney, specifically stated that by pleading guilty to rape she understood that she would be subject to a mandatory five-year postrelease control term upon her release from prison. *State v. Taylor*, Madison App. No. CA2007-12-037, 2009-Ohio-924, ¶58; see, also, *State v. O'Connor*, Butler App. No. CA2001-08-195, 2002-Ohio-4122, ¶38. Therefore, because the trial court, at minimum, substantially complied, and in this case meticulously complied, with the requirements of Crim.R. 11(C)(2)(a) regarding the maximum penalty involved, appellant's second argument is overruled.

{¶31} In light of the foregoing, we find no error in the trial court's decision to accept appellant's guilty plea to rape and gross sexual imposition as such a plea was knowingly, intelligently, and voluntarily entered. Accordingly, because we find no error in the trial court's

decision to accept her guilty plea to rape and gross sexual imposition, appellant's single assignment of error is overruled.

{¶32} Judgment affirmed.

POWELL, P.J., and HUTZEL, J., concur.

[Cite as *State v. Middleton*, 2011-Ohio-1631.]