

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
HARDIN COUNTY**

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 6-23-03

v.

DARRELL LEE BODINE,

O P I N I O N

DEFENDANT-APPELLANT.

**Appeal from Hardin County Common Pleas Court
Trial Court No. 20222014 CRI**

Judgment Affirmed in Part and Reversed in Part

Date of Decision: June 29, 2023

APPEARANCES:

***Christopher Bazeley* for Appellant**

***Andrew R. Tudor* for Appellee**

WALDICK, J.

{¶1} Defendant-appellant, Darrell Lee Bodine (“Bodine”), brings this appeal from the December 13, 2022, judgment of the Auglaize County Common Pleas Court sentencing him to five years of community control after he pled guilty to, and was convicted of, two counts of Assault in violation of R.C. 2903.13(A)/(C)(5), both fourth degree felonies. On appeal, Bodine argues that his pleas were not voluntary, that the trial court erred by denying his motions to take “pain medications,” and that the trial court erred by ordering him to pay the fees of his court-appointed attorney. For the reasons that follow, we affirm in part, and reverse in part.

Background

{¶2} On February 17, 2022, Bodine was indicted for two counts of Assault in violation of R.C. 2903.13(A)/(C)(5), both fourth degree felonies, and Resisting Arrest in violation of R.C. 2921.33(B), a first degree misdemeanor. Bodine originally pled not guilty to the charges.

{¶3} On March 14, 2022, Bodine filed a suppression motion, which was heard and ultimately overruled by the trial court on April 8, 2022. On April 13, 2022, a superseding indictment was filed against Bodine reiterating the three original counts against Bodine and adding the additional charge of Disorderly Conduct in violation of R.C. 2917.11(A)(4), a fourth degree misdemeanor.

{¶4} On April 18, 2022, Bodine entered into a negotiated plea agreement wherein he agreed to plead guilty to both counts of Assault in the superseding indictment, and in exchange the State agreed to dismiss the remaining charges. The parties also agreed to a joint sentencing recommendation of community control. A Crim.R. 11 hearing was held and the trial court determined that Bodine was entering knowing, intelligent, and voluntary pleas. Bodine was found guilty of both Assault charges, and the Resisting Arrest charge was dismissed. He was sentenced to serve five years of community control.

{¶5} Bodine appealed to this Court, but we dismissed the appeal because there was no disposition of the Disorderly Conduct charge in the superseding indictment. Subsequently, the Disorderly Conduct charge was dismissed. A final judgment entry memorializing Bodine's sentence was filed December 13, 2022. It is from this judgment that Bodine appeals, asserting the following assignments of error for our review.

First Assignment of Error

Bodine's plea, given under pressure from the trial court, was not knowingly, voluntarily, or intelligently given.

Second Assignment of Error

The trial court erred when it denied four motions filed by Bodine to allow him to take pain medications.

Third Assignment of Error

The trial court erred when it ordered Bodine to pay the fees of his court-appointed attorney without a hearing on whether he had, or will have, the means to pay.

Fourth Assignment of Error

The trial court erred when it taxed appointed counsel fees as costs.

First Assignment of Error

{¶6} In his first assignment of error, Bodine argues that his pleas were not knowing, voluntary, and intelligent. More specifically, he contends that his pleas were not voluntary because the trial court pressured him into accepting them by setting an “arbitrary” and “unreasonable” deadline. (Appt.’s Br. at 3).

Relevant Authority

{¶7} “When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily.” *State v. Engle*, 74 Ohio St.3d 525, 527, 1996-Ohio-179. A plea, if coerced or induced by promises or threats renders the plea involuntary. *State v. Lawson*, 3d Dist. Seneca No. 13-18-20, 2018-Ohio-4922, ¶ 20.

{¶8} With respect to a judge’s participation in the plea-bargaining process, the Supreme Court of Ohio has cautioned that “the judge’s position in the criminal justice system presents a great potential for coerced guilty pleas and can easily compromise the impartial position a trial judge should assume.” *State v. Byrd*, 63

Ohio St.2d 288, 292 (1980). Judicial participation is strongly discouraged, but it does not render a plea *per se* involuntary; rather, the “ultimate inquiry is whether the judge’s active conduct could have led the defendant to believe he could not get a fair trial, including a fair sentence after trial, and whether the judicial participation undermined the voluntariness of the plea.” *Lawson* at ¶ 20. We consider the record in its entirety to determine the voluntariness of the plea. *Id.* citing *State v. Jabbaar*, 8th Dist. Cuyahoga No. 98218, 2013-Ohio-1655, ¶ 29.

{¶9} We will begin by reviewing the steps that led to Bodine entering guilty pleas in this case.

Plea Hearing

{¶10} Following the denial of his suppression motion, Bodine’s case was set for a jury trial on May 5, 2022. A “final” pretrial hearing was held on April 18, 2022. At that hearing, the trial court indicated that jury notices were being sent out for trial on the following day, so the trial court wanted to ensure that Bodine understood the State’s plea offer. The State recited the plea proposal on the record, which included a joint-sentencing recommendation placing Bodine on community control for five years. Bodine indicated that he understood the plea offer, but he was concerned with being placed on community control because he lived next door to an individual who he claimed caused the issue that eventually led to Bodine’s charges in this case. Further, Bodine expressed confusion as to why a superseding

indictment had been filed adding an additional charge against him. The trial court discussed Bodine's issues with him.

{¶11} The trial court then explained to Bodine that its general policy was not to accept plea agreements to anything less than the entire indictment once jury notices had been sent. Bodine responded that since the jury notices were scheduled to go out the next day, he did not have much time to weigh his options. The trial court replied that the case had been pending for multiple months. However, Bodine responded that he had just given his attorney documents relevant to his case and he did not believe he had been given enough time with his attorney. The trial court stated, "[t]his is your option, Mr. Bodine, to go ahead with the proposal and enter pleas of guilty to those two counts or take it to a jury trial." (Apr. 18, 2022, Tr. at 11). Bodine responded that he wanted to go to a jury trial.

{¶12} After an unrelated discussion about Bodine's bond, the trial court stated that the case would proceed to trial. The trial court reiterated to Bodine that it would not accept a plea to anything less than the entire indictment in the event that Bodine changed his mind after the end of the day. Nevertheless, the trial court indicated it would be available if Bodine did change his mind later in the same day.

{¶13} Court recessed, then reconvened later that same day.¹ When court reconvened, the trial court was presented with a written, negotiated plea agreement

¹ It is unclear how much time passed as there are no time references in the transcript.

from the parties. The trial court addressed Bodine directly, indicating that he had to be convinced that Bodine was entering into the plea agreement voluntarily. The trial court emphasized that it would “never take a plea from somebody who thought they were being threatened or forced to do it.” (Tr. at 20-21).

{¶14} The trial court engaged in a thorough Crim.R. 11 colloquy with Bodine. At one point during the dialogue, the trial court asked Bodine if he felt “perfectly clear minded and healthy” because if he did not, the trial court “might continue this.” (*Id.* at 23-24). Bodine responded that it had been a difficult decision to make; however, he did not indicate that he had any issues at that time.

{¶15} The trial court then asked Bodine if he understood the constitutional and non-constitutional rights he was waiving by entering guilty pleas, going through each of the rights individually, and Bodine responded that he understood to each question. Bodine did not express any hesitation or equivocation with his responses whatsoever until the trial court asked if Bodine understood that while he was currently presumed innocent, that presumption would be forfeited if he entered guilty pleas to the two Assault charges. Bodine responded that, “part of me would like to go to a jury trial, Your Honor, but given the fact that my attorney and I haven’t had time to prepare and my attorney – the documents that I presented him he doesn’t feel he has time to prepare for a trial.” (Tr. at 29). The trial court responded that they had addressed that issue before, and this was his opportunity to

enter a plea if he wished to do so before the jury notices were sent out. The trial court stated that there was an upside and a downside “to everything we do in life.” (*Id.*) Bodine indicated he understood, then further indicated he understood that he would lose his presumption of innocence by pleading guilty.

{¶16} The plea colloquy continued and Bodine raised no further issues. Once Bodine had responded that he understood all the rights he was waiving, the State provided a lengthy narrative of the facts that would be presented at trial. The evidence included, *inter alia*, body camera footage of Bodine kicking multiple deputies while they were at his residence. Bodine acknowledged that the State had evidence that could prove his guilt beyond a reasonable doubt.

{¶17} The trial court next explained concurrent and consecutive sentences to Bodine, and Bodine responded that he understood. Afterward, the trial court stated, “at the very beginning * * * I said I needed * * * to be convinced you’re doing this voluntarily, that nobody’s threatening you or forcing you or paying you, giving you a promise of a benefit to get you to make these pleas?” (Tr. at 37). Bodine responded, “[j]ust * * * the offer to me that I avoid prison.” (*Id.*) The trial court clarified that it wanted to ensure that nobody was threatening Bodine or forcing him to enter his plea. Bodine indicated that was not the case.

{¶18} At the conclusion of the Crim.R. 11 dialogue, the trial court had Bodine sign the written plea agreement along with his attorney, and the prosecutor.

The trial court then asked Bodine how he wished to plead to the Assault charge in Count 1 of the indictment and Bodine responded “Guilty.” (Tr. at 45). The trial court asked Bodine how he wished to plead to the Assault charge in Count 2 of the indictment and Bodine responded, “Guilty.” (*Id.*)

{¶19} Based on the dialogue in its entirety, the trial court determined that Bodine was entering his pleas of his own free will, that he was not being threatened, that he was doing it with the advice of competent counsel, and that he understood the rights he was waving. The trial court accepted Bodine’s pleas, and found him guilty of the two counts of Assault as charged in the indictment.

Analysis

{¶20} Bodine argues that the transcript from the plea hearing establishes that the trial court engaged in a “systemic effort” to “pressure him” into entering a plea on the day of the final pretrial hearing. (Appt.’s Br. at 3). He also makes the bald, entirely unsupported, statement that the trial court “suggested [Bodine] would receive more severe penalties if he failed” to enter a plea. (*Id.*) The record, when reviewed in its entirety, does not support Bodine’s claims.

{¶21} It is clear in the record that Bodine, at times, expressed reservations about entering a plea. However, what is also abundantly clear from the record is that the trial court never once tried to dissuade Bodine from exercising his right to a trial. As we stated previously, when evaluating whether a judge’s involvement impacted

the voluntariness of a plea, the key inquiry is whether the judge's conduct "could have led the defendant to believe he could not get a fair trial, including a fair sentence after trial[.]" *Lawson* at ¶ 20. Here, there is nothing in the record from which we conclude that the trial court led Bodine to believe he could not get a fair trial or a fair sentence after a trial. Contrary to Bodine's argument, the trial court never made any threats regarding a harsher punishment if Bodine proceeded to trial.

{¶22} By comparison, the cases where a judge's involvement have impacted the voluntariness of a plea have included significant coercion from the trial court. For example, in *State v. Byrd*, 63 Ohio St.2d 288, 293 (1980), the Supreme Court of Ohio found a plea involuntary due to the trial court's involvement where the trial judge met with the defendant without his lawyer present and urged him to enter a guilty plea, the judge told the defendant that the evidence at trial would determine whether he went to the electric chair, and the judge urged members of the defendant's family, and a family friend, to encourage the defendant to enter a guilty plea.

{¶23} As a second example, in *State v. Howard*, 3d Dist. Hardin No. 6-09-16, 2010-Ohio-4828, ¶ 14, this Court determined that a plea was involuntary due to a trial court's statements where the trial court told a defendant that if he testified at trial he was "setting himself up for additional charges," that the evidence against him was "overwhelming," that there was "no way" the jury would not find him

guilty, and that rejection of any plea offer was “stupid.” Further, the trial court stated “you should’ve been scared the night you did this stupid thing,” indicating that the trial court had already determined the defendant’s guilt. *Id.* All of these statements emphasized the defendant’s futility of pursuing a trial, which is entirely different than the case *sub judice*.

{¶24} Here, the trial court’s “involvement” in the plea negotiations was limited to informing Bodine that there was a deadline for accepting a plea agreement to less than all charges in the indictment. The trial court never explicitly discouraged a trial like in *Byrd* or *Howard* or indicated that a trial would be futile. In fact, the trial court repeatedly mentioned that Bodine could have his trial as scheduled. Despite knowing this, Bodine still elected to enter his guilty pleas and he did so indicating that he understood all of the rights he was giving up. Further, he stated that he was not being pressured, and he was not offered anything beyond the joint sentencing recommendation.

{¶25} Finally, we would note that although Bodine claimed at certain points during the plea hearing that his attorney would not be prepared to go to trial, his attorney made no such statements on the record. At this point in the case Bodine’s attorney had already been through a suppression hearing and he still had just over

two weeks to prepare for trial if it came to that, so Bodine's statements carry little weight.²

{¶26} In sum, when viewing the record in its entirety we do not find that the trial court's statements to Bodine at the plea hearing amounted to coercion that rendered his plea involuntary.³ Therefore, Bodine's first assignment of error is overruled.

Second Assignment of Error

{¶27} In his second assignment of error, Bodine argues that the trial court erred by denying multiple post-sentence motions he filed requesting that he be allowed to take medical marijuana and other pain medications while he was on community control. His motions included letters from medical professionals indicating that he had ulcerative colitis and he had been prescribed medical marijuana to help deal with the pain. Separately, for his other health issues, Bodine was prescribed "Gabapentin."

{¶28} Bodine filed multiple motions with the trial court requesting that he be able to use the substances, even though his conditions of community control would have seemingly otherwise prohibited it. The trial court repeatedly denied

² Nevertheless, it may have been the better practice to question Bodine's attorney regarding Bodine's statements.

³ Bodine also seems to argue in his first assignment of error that the trial court erred by not granting a continuance, even though no continuance was requested. Despite the trial court's early statement in the plea hearing that the end of the day was the deadline for a plea agreement to anything other than the entire indictment, the trial court did indicate later that a continuance was possible if Bodine did not have a "perfectly clear" mind. (Tr. at 23).

Bodine's motions without prejudice, albeit not on the merits of the motions. The trial court determined that because Bodine's case was on appeal when Bodine filed his motions, the trial court lacked jurisdiction to rule on the issues.

{¶29} Contrary to the trial court's determination, while an appeal is pending, a trial court has jurisdiction to preside over issues that are not inconsistent with the judgment appealed from. *State v. Manson*, 3d Dist. Union Nos. 14-98-50, 14-98-55, 14-98-58, 1999-Ohio-786, 1999 WL 417027 at *4. This includes such things as presiding over a community-control violation while the underlying judgment is on appeal. *Id.*; *State v. Buttery*, 1st Dist. Hamilton No. C-170-141, 2018-Ohio-2651. Thus the trial court is vested with authority to administer community control and we do not find that exercising jurisdiction over whether a defendant may use a certain type of medication is inconsistent our jurisdiction.

{¶30} Simply put, "the mere filing of a notice of appeal does not deprive the trial court of its authority to enforce its own judgment." *State v. Lett*, 58 Ohio App.2d 45, 46 (1st Dist.1978). Therefore, the trial court erred by determining it lacked jurisdiction in this matter to rule on Bodine's motions to use medication while on community control. Bodine's second assignment of error is sustained.⁴

⁴ However, we expressly decline to rule on the issue of whether the trial court should have granted Bodine's motion, because that determination is entirely within the trial court's discretion and the trial court has not considered the merits of the motion.

Third Assignment of Error

{¶31} In his third assignment of error, Bodine argues that the trial court erred by ordering him to pay his court-appointed attorney fees without holding a hearing on whether he had, or will have, the ability to pay those fees.

{¶32} We have very recently addressed the exact issue raised by Bodine in *State v. Barnett*, 3d Dist. Hardin No. 6-22-16, 2023-Ohio-678, ¶ 17-19, and we determined that no hearing was specifically required, though the best practice would be for the trial court to at least articulate its findings on the record regarding a defendant's ability to pay to allow for meaningful appellate review. *State v. Taylor*, 163 Ohio St.3d 508, 2020-Ohio-6786, ¶ 2. Nevertheless, as no hearing of the type requested by Bodine was specifically required, his third assignment of error is overruled.

Fourth Assignment of Error

{¶33} In his fourth assignment of error, Bodine argues that the trial court erred by taxing appointed counsel fees as costs. We agree.

{¶34} In *State v. Taylor*, 163 Ohio St.3d 508, 2020-Ohio-6786, the Supreme Court of Ohio directly addressed what is required of a trial court under R.C. 2941.51(D) when ordering that a convicted criminal defendant reimburse a county for the cost of court-appointed counsel. In that same case, the Supreme Court of

Ohio also specifically addressed whether court-appointed counsel fees may be imposed as part of a defendant's sentence. In so doing, the Supreme Court of Ohio noted that R.C. 2941.51 plainly states that court-appointed counsel fees shall not be assessed as costs. *Taylor, supra*, at ¶ 34. The Supreme Court of Ohio then held that "while such fees may be assessed at the sentencing hearing, they cannot be included as a part of the offender's sentence." *Taylor*, at ¶ 37. As a point of clarification, the Supreme Court then held that "if the assessment of the fees is included in the sentencing entry, the court must note that the assessment of the court-appointed counsel fees is a civil assessment and is not part of the defendant's sentence." *Id.* (Emphasis added.)

{¶35} Here, the trial court's judgment entry of sentence ordered Bodine to "[p]ay court costs, including court appointed counsel fees which are hereby Ordered taxed as costs and paid by Defendant[.]" The trial court neglected to include any language indicating that the order relating to court-appointed counsel fees was a civil assessment and because the trial court further specified that such fees were be taxed as costs in the case, Bodine's fourth assignment of error is sustained.

Conclusion

{¶36} For the foregoing reasons the first and third assignments of error are overruled, the second and fourth assignments of error are sustained, and the

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judgment of the Hardin County Common Pleas Court is affirmed in part, and reversed in part.

***Judgment Affirmed in Part
and Reversed in Part***

MILLER, P.J. and WILLAMOWSKI, J., concur.

/jlr