

[Cite as *State v. Meese*, 2007-Ohio-742.]

COURT OF APPEALS  
TUSCARAWAS COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ROBERT MEESE

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Julie A. Edwards, J.

Case No. 2005AP110075

OPINION

CHARACTER OF PROCEEDING:

Appeal from the New Philadelphia  
Municipal Court, Case No. CRB0402047

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

February 16, 2007

APPEARANCES:

For Plaintiff-Appellee

CHRISTINE WEIMER  
714 North Wooster Avenue  
Dover, OH 44622

For Defendant-Appellant

PAUL HERVEY  
P.O. Box 1014  
New Philadelphia, OH 44663

*Farmer, J.*

{¶1} On December 10, 2004, appellant, Robert Meese, was charged with telecommunications harassment in violation of R.C. 2917.21(A)(5). On August 26, 2005, appellant appeared in court to enter a no contest plea. By judgment entry filed October 10, 2005, the trial court sentenced appellant to sixty days in jail.

{¶2} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶3} "THE TRIAL COURT ERRED IN SENTENCING THE APPELLANT WITHOUT COMPLYING WITH CRIMINAL RULE 11(E) AND WITHOUT ENTERING A FINDING OF GUILT ON THE RECORD."

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{¶4} Appellant claims the trial court failed to follow Crim.R. 11 and failed to enter a finding of guilty. We agree.

{¶5} Crim.R. 11 governs pleas. Subsection (E) states, "In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty."

{¶6} We have reviewed the record and find no explanation by the trial court to appellant regarding the effect of his no contest plea. We note appellant never actually entered a plea, as his defense counsel informed the trial court that his client wished to "enter a plea of no contest." August 26, 2005 T. at 2. The prosecutor then stated, "first I think before any pleas are made a withdrawal of the defendant's Motion to Dismiss due

to the unconstitutionality of the statute." Id. The transcript is four pages long and does not include any other references to a plea. In an August 26, 2005 judgment entry, the trial court stated, "Defendant withdrew his motion to dismiss and said motion was granted. Defendant entered a 'no contest' plea and case set for sentencing so that Prosecutor could notify the victim."

{¶7} Not only was Crim.R. 11(E) not complied with, appellant never entered a plea.

{¶8} In addition, the trial court never entered a finding of "guilty." The only reference to a guilty finding is contained in the trial court's October 10, 2005 judgment entry of sentence wherein the trial court stated, "Defendant has previously been found 'GUILTY' of violation(s) of Sec. 2917.21A5." This statement does not reflect that in fact a guilty finding was ever made.

{¶9} Upon review, we find the trial court failed to follow Crim.R. 11 and failed to enter a finding.

{¶10} The sole assignment of error is granted.

{¶11} The judgment of the New Philadelphia Municipal Court of Tuscarawas County, Ohio is reversed.

By Farmer, J.

Hoffman, P.J. and

Edwards, J. concur.

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JUDGES

SGF/sg 0129

