

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JAMAL GOINGS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 21 JE 0008

Criminal Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case No. 21-CR-19

BEFORE:

David A. D'Apolito, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Reversed, Vacated, and Remanded.

Atty. Jane M. Hanlin, Jefferson County Prosecutor and *Atty. George M. Sarap*,
Assistant Prosecuting Attorney, Jefferson County Justice Center, 16001 State Route 7,
Steubenville, Ohio 43952, for Plaintiff-Appellee and

Atty. Myron P. Watson, 75 Erieview Plaza, 1st Floor, Suite 108, Cleveland, Ohio 44114,
for Defendant-Appellant.

Dated: May 5, 2022

D'APOLITO, J.

{¶1} Appellant Jamal Goings appeals his conviction for one count of drug trafficking in violation of R.C. 2925.11, a felony of the first degree, following his entry of a plea of guilty to a bill of information in the Jefferson County Court of Common Pleas. In his sole assignment of error, Appellant asserts that he did not enter his plea knowingly because the trial court provided an incorrect definition of the standard of proof required for an indictment. For the following reasons, Appellant's conviction is reversed and vacated, and this matter is remanded to the trial court for further proceedings.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT INCORRECTLY STATED THE LEGAL AND EVIDENTIARY STANDARD OF PROOF UTILIZE [SIC] IN THE GRAND JURY PROCESS WHICH VIOLATED ACCUSED'S RIGHT TO [BE] FULLY INFORMED OF HIS WAIVER OF HIS CRIMINAL CASE BEING PRESENTED TO THE GRAND JURY.

{¶2} Pursuant to Crim.R. 11(C)(2)(a), the court shall not accept a plea of guilty or no contest in a felony case without first addressing the defendant personally and: "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." Crim.R. 11 serves to ensure the validity of criminal pleas. In conducting the Crim.R. 11 colloquy, the trial court must convey accurate information so the defendant can understand the consequences of his decision and enter a valid plea. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 26. Generally speaking, a plea that was not knowingly, intelligently, and voluntarily made is invalid. *Id.* at ¶ 25.

{¶3} The Ohio Constitution provides that: "no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand

jury.” Section 10, Article I, Ohio Constitution. However, pursuant to Crim.R. 7(A), and R.C. 2941.021, the right may be waived. See also, *Stacy v. Van Coren*, 18 Ohio St.2d 188, 189–90, 248 N.E.2d 603 (1969).

{¶4} R.C. 2941.021, captioned “Prosecution by Information,” reads in its entirety:

Any criminal offense which is not punishable by death or life imprisonment may be prosecuted by information filed in the common pleas court by the prosecuting attorney if the defendant, after he has been advised by the court of the nature of the charge against him and of his rights under the constitution, is represented by counsel or has affirmatively waived counsel by waiver in writing and in open court, waives in writing and in open court prosecution by indictment.

We have observed that, “given the nature of the constitutional right of indictment, the requirements in R.C. 2941.021 must be strictly construed.” *State v. Susany*, 7th Dist. Mahoning No. 07 MA 7, 2008-Ohio-1543, ¶ 17.

{¶5} Crim.R. 7(A), captioned “Use of Indictment or Information,” reads in pertinent part:

A felony that may be punished by death or life imprisonment shall be prosecuted by indictment. All other felonies shall be prosecuted by indictment, except that after a defendant has been advised by the court of the nature of the charge against the defendant and of the defendant's right to indictment, the defendant may waive that right in writing and in open court.

{¶6} The trial court engaged in the following colloquy regarding Appellant’s plea to the bill of information with him at the plea hearing:

The Court: First, I have to tell you that in Ohio, when you’re charged with a felony, as you are, you have the absolute right to insist that your case first be presented to the Grand Jury to see what they’ll do. That has not happened in this case,

I want to explain to you, if you want that to happen, here's how it works:

The State of Ohio would present your case to the Grand Jury, which usually meets on the first Wednesday of the month, so it would be a month from now. If the State can convince seven out of nine Grand Jurors that *you are probably guilty – that that's the test, probably* – then they return an indictment, you're charged, and sit where you are sitting.

If the State cannot convince seven out of nine Grand Jurors that you are probably guilty, then they do not return an indictment, you're not charged, and you never sit where you're sitting.

None of that has happened in this case, and you have the absolute right to insist that it does happen before we do a plea.

So here's my questions; I have two questions for you: The first one is, do you understand what I've explained to you about the Grand Jury?

Mr. Goings: Yes, sir.

The Court: And my second question is, do you have a thought as to whether you want to stop right now and send your case to the Grand Jury to see what they'll do, or do you want to waive all that and get it done today?

Mr. Goings: Get it done today, sir.

(Emphasis added)(Plea Tr., p. 6-7.) Appellant signed a waiver of indictment, which reads, in its entirety, "In open court this 8th day of February 2021, the Defendant waives his right to Indictment and consents to be prosecuted by a BILL OF INFORMATION."

{¶7} During the waiver of indictment, the trial court attempted to fashion an easily-understood definition of "probable cause," stating, "[i]f the State can convince seven out of nine Grand Jurors that you are probably guilty – that that's the test, probably – then they return an indictment, you're charged, and sit where you are sitting." Appellee asserts in its brief that "[t]he Court specifically used the word "probable." (Appellee's Brf., p. 2.) However, the trial court never used the term "probable," only the term "probably."

{¶8} Where the trial court provides incorrect information that is relevant to the waiver of a constitutional right, the waiver must be invalidated. Because we find that the trial court’s explanation of the grand jury process was inaccurate and it misled Appellant regarding the standard of proof required for an indictment, we further find that Appellant did not knowingly waive his constitutional right to indictment.

{¶9} Accordingly, we find that Appellant’s sole assignment of error has merit. Appellant’s conviction is reversed and vacated, and this matter is remanded to the trial court for further proceedings.

Donofrio, P.J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Jefferson County, Ohio, is reversed and vacated. We hereby remand this matter to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.