

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

SHAUNEA D. CRUTE,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 CO 0005

Criminal Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case No. 2019 CR 146

BEFORE:

Cheryl L. Waite, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed.

Atty. Vito Abruzzino, Columbiana County Prosecutor and *Atty. Steven V. Yacovone*, Assistant Prosecuting Attorney, Columbiana County Prosecutor's Office, 135 South Market Street, Lisbon, Ohio 44432, for Plaintiff-Appellee

Atty. Joseph W. Gardner, 1386 NE River Road, Lake Milton, Ohio 44429, for Defendant-Appellant.

Dated: September 28, 2022

WAITE, J.

{¶1} Appellant Shaunea D. Crute appeals a January 14, 2022 judgment entry of the Columbiana County Common Pleas Court. Appellant argues that the trial court did not give her an opportunity to explain her absences from several hearings, including a presentence investigation (“PSI”) interview. For the reasons provided, Appellant’s argument is without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} On April 9, 2019, Appellant was charged through a secret indictment on one count of aggravated possession of drugs, a felony of the fifth degree in violation of R.C. 2925.11(A), and one count of possession of drugs, a misdemeanor of the first degree in violation of R.C. 2925.11(A).

{¶3} This appeal centers on Appellant’s failure to appear for certain court dates. Appellant does not otherwise challenge her conviction or sentence. On October 10, 2019, Appellant failed to appear at her arraignment. On July 2, 2021, Appellant failed to appear at an unspecified hearing. On October 4, 2021, Appellant pleaded guilty. At the plea hearing, she was instructed to appear the next day at the probation office. The court informed her where the office is located and that she was required to appear within twenty-four hours of her release. Appellant confirmed the time and location with the court. The court encouraged her to report as soon as possible and not wait until the last minute. She assured the court that she would appear. However, she did not appear and the PSI was generated without the benefit of her interview. On November 5, 2021, Appellant failed to appear at a status conference. A bench warrant was issued for her arrest. At some point, Appellant was located.

{¶4} On January 13, 2022, the trial court held a sentencing hearing where it imposed a sentence of nine months of incarceration on count one and ninety days of incarceration on count two. The court ordered the sentences to run concurrently. The court granted her twenty-four days of credit. It is from this entry that Appellant timely appeals.

{¶5} After filing for appeal, Appellant filed a motion for stay in both the trial court and this Court. Both were denied.

ASSIGNMENT OF ERROR

The trial court erred by not continuing the sentencing so the probation officer could interview the defendant-appellant and properly complete the PSI report.

{¶6} Appellant argues that the trial court did not give her an opportunity to explain why she failed to appear for several court dates and did not provide her with time to complete the PSI interview before proceeding to the sentencing hearing. Appellant cites no caselaw supporting her argument.

{¶7} The state responds that Appellant did explain her absences to the court during her allocution. Thus, the court was aware of her explanations. The state also notes that Appellant failed to object to the PSI at her sentencing hearing.

{¶8} Appellant attempted to explain her absences during allocution. The record reflects Appellant failed to appear four times but offered an explanation of her absence for only the November 5, 2021 hearing. She told the court that she did not receive notice of the hearing and believed the sentencing hearing was the next scheduled court date.

{¶9} Even if Appellant is truthful that she did not receive notice, the Sixth District has held that where a notice of hearing is received by a defendant's counsel, the attorney's notice is imputed on the defendant. *State v. Connin*, 6th Dist. Fulton No. F-21-001, 2021-Ohio-4445, ¶ 16. The Fourth District has held that a defendant has "a duty to maintain contact with his attorney to ensure that he had knowledge of any impending court dates." *State v. Fitzpatrick*, 4th Dist. Scioto, 2001 WL 1468864, * 6 (Nov. 7, 2001), citing *State v. Balas*, 68 Ohio App.3d 524, 589 N.E.2d 86 (9th Dist.1990.).

{¶10} In regard to Appellant's failure to appear for her October 5, 2021 PSI interview, the Second District held that because an appellant "failed to return to jail and participate in a PSI interview, we find no arguably meritorious claim that the trial court erred in obtaining a previously-prepared PSI to consider, particularly when there is nothing in the record to suggest the information was incorrect or unduly prejudicial." *State v. Deberry*, 2nd Dist. Champaign No. 2020-CA-22, 2021-Ohio-2532, ¶ 50, citing *State v. Lewis*, 2d Dist. Greene No. 2005-CA-66, 2006-Ohio-4402, ¶ 44.

{¶11} There is no evidence in the record that defense counsel failed to receive notice of the court dates in question. Appellant does not cite to any support for her assertion that because the PSI contains no admission by a defendant this precludes her from receiving treatment for drug or alcohol addiction. It is apparent from the charges in this case that Appellant has a drug addiction.

{¶12} At the plea hearing, the court informed Appellant that she had twenty-four hours after her release to appear at the probation office. The record does suggest that Appellant may have been somewhat confused as to when she had to report.

THE COURT: You have 24 hours from when you are released from custody. So if you get out of custody today at 3:30, as long as you report there tomorrow before 3:30, you're okay.

THE DEFENDANT: Okay.

THE COURT: You get out here shortly, an [sic] you can do it this afternoon, then you would be better off served to do it this afternoon.

They will be looking for you. If you don't appear, they will notify me.

THE DEFENDANT: I will be there. I have until 4:00 o'clock today --

THE COURT: 4:00 o'clock, yes.

(10/4/21 Plea Hearing, pp. 21-22.)

{¶13} While the court did not correct Appellant when she said "4:00 *today*," the court clearly communicated to Appellant that she had twenty-four hours *after her release* to report. (Emphasis added.) Regardless, if Appellant was confused, it appears that she may have had the mistaken belief that she had to arrive earlier than required, not later.

{¶14} The record reveals that Appellant was provided an opportunity for her to explain her failures to appear to the court and it appears that the court did not find her excuses to be well taken. As such, Appellant's sole assignment of error is without merit and is overruled.

Conclusion

{¶15} Appellant argues that the trial court did not give her an opportunity to explain her absences from several hearings, including a PSI interview. For the reasons provided, Appellant’s argument is without merit and the judgment of the trial court is affirmed.

Donofrio, P.J., concurs.

D’Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. Costs waived.

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.