

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 110298
	:	
v.	:	
	:	
RAYMOND WASHINGTON,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED AND REMANDED
RELEASED AND JOURNALIZED: August 26, 2021

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-19-646701-A and CR-20-653314-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Sarah Denney, Assistant Prosecuting
Attorney, *for appellee*.

Thomas A. Rein, *for appellant*.

MARY EILEEN KILBANE, J.:

{¶ 1} Defendant-appellant Raymond Washington (“Washington”) appeals his conviction for robbery. Specifically, Washington argues that his guilty plea was not knowingly, intelligently, and voluntarily entered because the trial court failed to

comply with the requirements of Crim.R. 11(C). Pursuant to Loc.App.R. 16(B), the state concedes this error. After a thorough review of the record and law, this court vacates Washington's convictions and remands for further proceedings consistent with this opinion.

Factual and Procedural History

{¶ 2} On December 17, 2019, a Cuyahoga County Grand Jury indicted Washington in Cuyahoga C.P. No. CR-19-646701-A on three counts: Count 1, breaking and entering in violation of R.C. 2911.13(B); Count 2, breaking and entering in violation of R.C. 2911.13(A); and Count 3, theft in violation of R.C. 2913.02(A)(1). All three counts were felonies of the fifth degree.

{¶ 3} On January 30, 2020, the court held a plea hearing in that case. The state informed the court that the parties had reached an agreement by which Washington would plead guilty to Count 1 and Count 3 in exchange for the dismissal of Count 2. Washington's counsel confirmed this. The court engaged Washington in a Crim.R. 11 colloquy and accepted his guilty pleas to Count 1 and Count 3. On March 19, 2020, the court sentenced Washington to two years of community control sanctions. Washington does not challenge his January 30, 2020, guilty plea or his community control sentence in this appeal.

{¶ 4} Ten months later, on October 5, 2020, a Cuyahoga County Grand Jury indicted Washington in Cuyahoga C.P. No. CR-20-653314-A on two counts of robbery in violation of R.C. 2911.02(A)(3), each felonies of the third degree, and one count of theft in violation of R.C. 2913.02(A)(1), a misdemeanor of the first degree.

{15} On January 6, 2021, the court held a plea hearing in that case. Washington and his counsel appeared at the hearing via video. The state informed the court that the parties had reached an agreement by which Washington would plead guilty to one count of robbery in exchange for the dismissal of the remaining charges. Washington's counsel confirmed this. The court engaged Washington in a Crim.R. 11 colloquy. The court confirmed that Washington understood the charges and maximum potential penalties he faced. The court also informed Washington that the robbery case was a violation of his probation from Cuyahoga C.P. No. CR-19-646701-A. The court went on to address the constitutional rights that Washington would be waiving as follows:

THE COURT: All right. Do you know, Mr. Washington, that you have a right to have a trial if you wanted to have a trial?

WASHINGTON: Yes.

THE COURT: You could have a trial to a jury or just with me. Do you understand that?

WASHINGTON: Yes.

THE COURT: If you went to trial, it is the job of the prosecutor to prove your guilt beyond a reasonable doubt. She would have to put her witnesses up on the witness stand. The witnesses would say what happened. Your lawyer * * * would ask questions for you. That's called your right to cross-examination. If you have people who would come in and testify for you, you could bring your own witnesses down. If they refuse to come down for you, you would let me know that and I would order the sheriff to get your witnesses. That's called compulsory process. Do you understand that?

WASHINGTON: Yes. I think so. I can't see the Court because the screen is off.

THE COURT: Oh, it is. Can you see me now?

WASHINGTON: No, I can't.

THE COURT: Oh. I don't know what happened because I didn't change my screen. I'm sorry. Got it?

WASHINGTON: Yes.

THE COURT: What part do you want me to start over? I'm happy to start over at any point.

WASHINGTON: Well, no. You can keep going.

THE COURT: All right. So when you plead guilty, do you understand, Mr. Washington, you're giving up all of your trial rights that you have?

WASHINGTON: Yes.

THE COURT: All right. Let me ask you this: do you have any questions about what would happen at your trial, what rights you have at a trial, or what rights you're giving up because you're pleading guilty? Do you have any questions about any of that?

WASHINGTON: No. No.

The court then accepted Washington's guilty plea to one count of robbery. The court referred Washington to the court psychiatric clinic for preparation of a presentence investigation report ("PSI").

{¶ 6} On January 27, 2021, the court held a sentencing hearing. The court stated that it had reviewed the PSI and a report from Washington's probation officer. The court also heard from the assistant prosecuting attorney, the victim in Cuyahoga C.P. No. CR-20-653314-A, Washington's counsel, and Washington. The court sentenced Washington to 30 months in prison for robbery in Cuyahoga C.P. No. CR-20-653314-A. Because the robbery conviction constituted a probation violation in

Cuyahoga C.P. No. CR-19-646701-A, the court terminated Washington's probation in that case and imposed a sentence of six months on Count 1, breaking and entering, and six months on Count 3, theft. The six-month sentences were ordered to be served concurrently to each other and consecutively to the 30 months in Cuyahoga C.P. No. CR-20-653314-A, for an aggregate sentence of 36 months.

{¶ 7} On February 12, 2021, Washington appealed, presenting two assignments of error for our review:

I. Appellant did not enter his guilty plea knowingly, intelligently, or voluntarily because the trial court failed to properly inform him that he cannot be compelled to testify against himself as required by Crim.R. 11(C)(2)(c).

II. The trial court erred by ordering appellant to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14 and H.B. 86.

On May 28, 2021, in lieu of filing an appellee brief, the state of Ohio filed a notice of conceded error pursuant to Loc.App.R. 16(B).

Legal Analysis

{¶ 8} In his first assignment of error, Washington argues that the trial court erred by failing to advise him of his constitutional rights pursuant to Crim.R. 11. The state concedes this error.

{¶ 9} The underlying purpose of Crim.R. 11 is to convey certain information to a defendant so that they can make a voluntary and intelligent decision regarding whether to plead guilty. *State v. Ballard*, 66 Ohio St.2d 473, 479-480, 423 N.E.2d 115 (1981). "The standard for reviewing whether the trial court accepted a plea in compliance with Crim.R. 11(C) is a de novo standard of review." *State v. Cardwell*,

8th Dist. Cuyahoga No. 92796, 2009-Ohio-6827, ¶ 26, citing *State v. Stewart*, 51 Ohio St.2d 86, 364 N.E.2d 1163 (1977).

{¶ 10} In order to ensure that a defendant enters a plea knowingly, intelligently, and voluntarily, a trial court must engage in an oral dialogue with the defendant in accordance with Crim.R. 11(C). *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). Crim.R. 11(C) outlines the trial court's duties in accepting guilty pleas:

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) 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.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

With respect to the nonconstitutional aspects of Crim.R. 11(C), including an understanding of the nature of the charges and the maximum penalty involved, the

trial court must substantially comply with the rule. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 14.

{¶ 11} With respect to the constitutional requirements of Crim.R. 11(C)(2)(c), however, trial courts must strictly comply with the requirements of the rule. *Id.* In conducting a plea colloquy, the trial court’s failure to inform a defendant of any right in that subsection invalidates the plea. *Id.* at ¶ 1. “Strict compliance does not require an exact recitation of the precise language of the rule, but instead focuses on whether the trial court explained or referred to the right in a manner reasonably intelligent to that defendant.” *State v. Schmick*, 8th Dist. Cuyahoga No. 95210, 2011-Ohio-2263, ¶ 8.

{¶ 12} After a thorough review, we conclude that the trial court did not strictly comply with Crim.R. 11. The record indicates that the trial court did not mention Washington’s privilege against compulsory self-incrimination as required by Crim.R. 11(C)(2)(c).

{¶ 13} The Ohio Supreme Court has repeatedly made clear that strict compliance with Crim.R. 11(C)(2)(c) is required when informing a defendant of his constitutional rights, and a trial court “*shall not* accept a plea of guilty” without first informing the defendant of the constitutional rights he will waive by pleading guilty and determining that the defendant understands the waiver. *State v. Brinkman*, Slip Opinion No. 2021-Ohio-2743, ¶ 17-18. The trial court’s failure to strictly comply with the requirements of Crim.R. 11 renders Washington’s plea invalid. *State v.*

Veney, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 1. The state of Ohio concedes this error. Therefore, we sustain Washington's first assignment of error.

{¶ 14} Because Washington's first assignment of error is dispositive of the appeal, we decline to address his second assignment of error challenging the imposition of consecutive sentences because it is moot. Loc.App.R. 12(A). For the foregoing reasons, we vacate Washington's plea, reverse his convictions and sentence, and remand this matter to the trial court for further proceedings consistent with this opinion.

{¶ 15} Judgment vacated and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR