BEFORE THE SUPREME COURT OF OHIO

STATE OF OHIO	:	CASE NOS. 2006-1851 2006-1606
PLAINTIFF-APPELLANT		
-vs-	:	ON APPEAL FROM THE SEVENTH DISTRICT, CASE NO. 05 MA 69, DISCRETIONARY AND CONFLICT
JOSEPH W. JONES, SR		
DEFENDANT-APPELLEE	:	

STATE'S REPLY BRIEF

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STATEMENTS OF THE CASE AND FACTS

Standing accused of beating his fiance's children and shocking them with an electric fly swatter in an open-and-shut case, Defendant-Appellant JOSEPH W. JONES, SR. ("Mr. Jones") chose to enter a Crim.R 11 plea agreement rather than to stand trial. On reply, the State submits the following facts.

As previously stated, in an extensive Crim.R. 11 hearing, the trial court determined that Mr. Jones entered a voluntary, knowing, and intelligent plea of guilty. Specifically, the court asked whether Mr. Jones understood the following: (1) that he had a right to a jury trial in the matter in which the State would bear a burden of proof of his guilt beyond a reasonable doubt; (2) that he had the right to subpoena his own witnesses and cross examine witnesses against him; (3) that at trial he could remain silent; (4) that by pleading guilty he placed himself at the mercy of the court as to his sentence; and (5) that in light of the foregoing he wanted to enter a plea of guilty to one count of domestic violence. [See Opinion; accord Rule 11 Tr.] Mr. Jones entered his plea fully aware of what he did and fully aware of the facts against his, and he was sentenced. Notably, Jones did not enter a plea under Alford, infra, or make any other claim of innocence at his Crim.R. 11 hearing.

After his sentence, Mr. Jones moved to withdraw his guilty plea. The court held an extensive Crim.R. 32 hearing. Upon taking the matter under advisement, the trial court determined that Mr. Jones entered a voluntary and knowing guilty plea, and denied his request to withdraw. [See Rule 32 Tr. and Judgment Entry 6/25/2005].

Mr. Jones appealed the court's denial of his motion to withdraw. Given that Mr. Jones entered a voluntary and knowing guilty plea, the State asked the Seventh District to deny his request for relief. Nevertheless, the Seventh District held that where the trial court did not

inform Jones of his the "effect" of a contest plea—a plea that he was not even entering—that he had not entered an informed plea. In its opinion the Seventh District cited this Court's decision in State v. Watkins (2003), 99 Ohio St.3d 12[1] and expressed a difference of viewpoint between its decision in State v. Jones, 7th Dist. No. 2006-Ohio-3636, the Tenth District's decision in State v. Horton-Alomar, 10th Dist. No. 04AP-744, 2005-Ohio-1537, and the Second District's decision in State v. Raby, 2nd Dist. No. 2005-CA-88, 2005-Ohio-3741.

The State filed a discretionary appeal with this Court and a motion to certify conflict with the Seventh District. On motion, the Seventh District certified conflict review relative to the following issue:

> Whether a trial court complies with Crim.R. 11(E) by simply notifying a defendant of the "effect" of his/her plea as set out in Crim.R. 11(B) or whether the trial court complies with Crim.R. 11(e) by notifying a defendant of the maximum penalties that could result from a plea and that the defendant waives his/her right to a jury trial by entering a plea but does not notify a defendant of the "effect" of his/her plea.

The State filed notice of conflict with this Court, and this Court accepted the appeal on conflict review, ordering briefing combined with the State's discretionary appeal relative to the same issue.

The parties having filed their merit and responsive briefs, the State takes issue with much of Appellant-Jones' interpretation of the law and now replies as this brief proceeds to relate. Specifically, on reply, the State submits two points: (1) Jones must show prejudice because he is

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[1] According to this Court addressing Watkins, "we find that where a defendant charged with a petty misdemeanor traffic offense pleads guilty or no contest, the trial court complies with Traf.R. 10 (D) by informing the defendant of the information contained in Traf.R. 10(B)." Traf.R. 10(B) being identical to Crim.R. 11(E). The Watkins opinion did not, however, mandate that recitation of the 10(B) elements was the only form of compliance.

claiming a "nonconstitutional" plea error under Griggs, supra; and (2) given the foregoing, Jones claim to prejudice is bogus because he knew that a guilty plea was a total admission of guilt.

LAW AND DISCUSSION

SOLE PROPOSITION OF LAW: If a court informs a defendant of the rights he/she waives upon entering a plea and of the minimum and maximum sentences he/she may receive upon being found guilty, then a court satisfies Crim.R. 11 (E).

The defense brief neglects an important point: under Ohio Law, there is a distinct difference between constitutional and statutory error. And the latter, according to the courts, requires some showing of actual prejudice. Granted, according to the U.S. Court, "before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." Chapman v. California (1967), 386 U.S. 18, 24, quotations omitted, as detailed in State v. Kapsouris, 7th Dist. No. 06 MA 47, 2006-Ohio-7056 par. 26, overruling the trial chamber on a separate issue, dissent of DeGenaro J. But "[i]n contrast, non-constitutional [i.e. statutory] errors are only reversible when they affect substantial rights [—] a much lower standard." Kapsouris, infra, at par. 26, quotations omitted, citing Crim.R. 52(A); State v. Brown (1992), 65 Ohio St.3d 483, 485.

On point, in Griggs, infra, this Court differentiated statutory rights from constitutional rights as they apply Crim.R. 11. And as it attaches here, the rights of information—to be informed of the "effect" of a given plea—are "nonconstitutional." See Griggs, infra, at pg. 86, citing State v. Nero (1990), 56 Ohio St.3d 106, and stating "The right to be informed that a guilty plea is a complete admission of guilt is nonconstitutional and therefore is subject to review under a standard of substantial compliance."[2] And as nonconstitutioanl rights, detailed infra, reversal

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[2] Griggs did not discuss which rights are constitutional, though logically those rights would include the right to be informed of the constitutional rights one waives by

based on failure to mention the "effect" portions of Crim.R. 11 requires some showing of prejudice.

Relative to prejudice, Mr. Jones argues only that had he been expressly read the option of a no contest plea and the "effect" thereof (1) he would have entered it, and (2) as (Jones argued on brief below) he would have preserved the right to attack the validity of Ohio's domestic violence statute under the Ohio Constitution. [Br. at 26] The second argument has not surfaced on this appeal and Jones now argues, simply, that he "has demonstrated clear prejudice in this case and that he would not have entered a guilty plea had he known of the availability, and understood the effect of, a no contest plea." [Id.] As mentioned below and on brief, Mr. Jones signed a Rule 11 form, which mentioned his right to enter a no contest plea. [See Crim. R. 11 Journal Entry, 3/11/2005, signed by Mr. Jones.] Hence, Jones argument is basically an attempt to capitalize on a peculiar convergence of circumstances and a judge's not mentioning on line in the Crim.R. 11 script. But it is not the stuff of grave breaches of civil liberties or reversible error.

That fact notwithstanding, Jones' argument that he would have plead otherwise had he known of such a thing as a no contest plea fails as a matter of law based on the record under State v. Griggs (2004), 103 Ohio St.3d 85. Griggs stands for, among other things, the principle that "A defendant who has entered a guilty plea without asserting actual innocence is presumed to understand that he has completely admitted his guilt." Griggs at syl.; but c.f. North Carolina v. Alford (1970), 400 U.S. 25, allowing a defendant to maintain innocence while pleading guilty by way of an "Alford plea." And "In such circumstances, a court's failure to inform the defendant of the "effect" of his guilty plea as required by Crim.R. 11 is presumed not to be

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pleading guilty. There is no issue as to whether the trial court informed Jones of his various constitutional rights. U.S. Const. Amend. V; U.S. Const. Amend. VI; U.S. Const. Amend. XIV.

prejudicial." Id.[3] By analogy or extension, then, it stands to reason that a defendant pleading guilty would need no advisement of another available plea—particularly a no contest plea—unless he were pleading guilty while still maintaining some claim of innocence. And that did not occur here. Simply stated, what more would one need to know? Pleading guilty entails one's admitting guilt. And if Jones were admitting something other than total guilt then it stands to reason that he would have said so at some point prior to admitting guilt.

Given the foregoing, then, two propositions hold true: (1) Jones must show prejudice because he is claiming a "nonconstitutional" plea error under Griggs, supra; and (2) given the foregoing, Jones claim to prejudice is bogus. Why? He knew that a guilty plea was a total admission of guilt—if not by the term "guilty plea" then certainly by the fact that he entered no claim to innocence at the time he pled guilty. Hence, reversal was inappropriate.

CONCLUSION

WHEREFORE, the State asks this Court to overrule the Seventh District's reversal of the trial court, to deny Mr. Jones' request for relief as granted below, and to tax the costs of this action to the defense.

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[3] Notably, this Court refers to Crim.R. 11 en blanc, without differentiating the portions that refer to felonies from those that refer to misdemeanors.

Respectfully Submitted,

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