

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO,

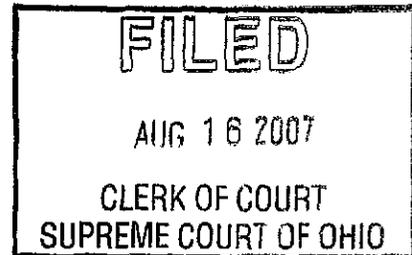
APPELLEE,

vs.

**SUPREME COURT CASE 2007-1361
(COURT OF APPEALS NO. 06CA2927)**

JEREMIE W. NUTT,

APPELLANT.



.....
**ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEALS
ROSS COUNTY, OHIO**
.....

MEMORANDUM IN RESPONSE OF APPELLEE STATE OF OHIO
.....

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EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION

Appellant claims that this case involves a substantial constitutional question. However, the law in this area is settled and the Fourth District Court of Appeals decided the instant case in accordance therewith. Appellant does not raise any novel or unique views of the law and argues only that the Court of Appeals misapplied the law and improperly decided the case. In fact, a large portion of Appellant's Memorandum presents assertions as to his confusion, that he never brought up at the plea hearing. In fact, Appellant himself points out, at Plaintiff's plea hearing the Judge informed him of the necessary correction on the plea form and Appellant indicated that he understood. Also, at the plea hearing, the Court informed Appellant, who appeared with counsel, that he understood the effect of a guilty plea and the maximum penalties involved. Appellant answered in the affirmative that he understood both the penalties involved and the effect of the guilty plea.

Appellant argues that this case presents a substantial constitutional question, but fails to explain why it is of such interest other than "it is plausible that Appellant was confused and misled as to the nature of the charges and the maximum penalty involved." Nonetheless, the law is well-settled in regard to these issues, as the Fourth District cited in the appellate decision rendered in this case. Under a totality of the circumstances, Appellant understood his guilty plea and the rights he waived.

The State suggests that none of the arguments put forth demonstrate that there

is a constitutional issue of such importance that this Honorable Court need take jurisdiction of this case.

Proposition of Law No. 1: The trial court erred by accepting appellant's guilty plea, which was not made knowingly, voluntarily, or intelligently.

"A guilty plea is valid if a trial court substantially complies with the language of Crim.R. 11(C)(2)(a) and (b). Substantial compliance means that, under the **totality of the circumstances**, a defendant subjectively understands the implications of his guilty plea and the rights that he is waiving." *State v. Scarnati* (Feb. 22, 2002), 11th Dist. No. 2001-P-0063, 2002 Ohio App. LEXIS 776, at 11, (emphasis added), citing *State v. Gruber* (Nov. 9, 2001), Lake App. No. 2000-L-031, unreported, 2001 Ohio App.5057. As Appellant points out, at his plea hearing, the Judge informed him of the necessary correction on the plea form. At that time, Appellant indicated to the Judge that he understood. Also, at the plea hearing, the Court informed Appellant, who appeared with counsel, that he understood the effect of a guilty plea and the maximum penalties involved. Appellant answered in the affirmative that he understood both the penalties involved and the effect of the guilty plea.

Likewise, pursuant to Crim.R. 11(C)(2)(c), the Judge informed Appellant that he was waiving the right to a jury of twelve people, the right to confront and cross examine witnesses at that trial, the right to subpoena witnesses and have them come in and testify for him at that trial, and the right to have his guilt proven beyond a reasonable doubt at which time no one could compel him to testify against himself. As to this information, the Appellant acknowledged that he understood each of these terms. Here, the Court

complied with all of the necessary non-constitutional requirements of Crim.R. 11(C)(2)(a) and (b), as well as the constitutional requirements of Crim.R. 11(C)(2)(c).

Appellant argues that it is "plausible" that he was confused and misled as to the nature of the charges. However, when the Judge asked Appellant the questions that specifically cover the requirements in Crim.R. 11, Appellant indicated, each time, that he understood. Specifically, and under a totality of the circumstances, Appellant understood his guilty plea and the rights he waived. Further, Appellant has not met his burden of demonstrating a prejudicial effect of which the test is whether the plea would have otherwise been made. *Scarnati* at 12. Appellant only asserts that it is "plausible" that he was confused and that he did not have time to "really consider" the Judge's questions. In fact, Appellant never asserted at the trial level, or in his brief, that he was confused or that any misunderstanding had a bearing on his decision to make the plea. As such, Appellant's guilty plea was made knowingly, voluntarily and intelligently and should be upheld.

Because Appellant's arguments have all been found to be without merit previously by this court, it is respectfully submitted that Appellant's proposition of law decline to be heard.

CONCLUSION

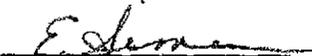
Appellant in the instant case has not explained why his situation presents a substantial constitutional question or is a matter of public or great general interest, he has simply asked this Court to reexamine the issues that the trial court and Appellate Court

each overruled. Other courts have reviewed similar issues in other cases and have clearly stated the law that should apply to these facts. Because there is no need for this

court to clear up confusion in the lower courts and because the case is not one of public or great general interest there is no basis for this Court to grant jurisdiction in this matter, therefore the Appellee respectfully urges this Court to decline jurisdiction.

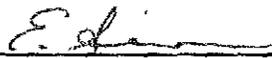
Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Brief of Appellee, State of Ohio was sent to Jeremie W. Nutt, #535-018, P.O. Box 7010, Chillicothe, Ohio, 45601 by regular U.S. Mail, postage prepaid, this 9th day of August, 2007.


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