

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Case No. 09-1499

Plaintiff-Appellee

On Appeal from the Cuyahoga
County Court of Appeals 8th
Appellate District

vs.

Case No. CA 91567

Javan Johnson,

Defendant-Appellant

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT

Bill Mason, Cuyahoga
County Prosecutor
The Justice Center, 9th floor,
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Cleveland, Ohio 44113

Javan Johnson,
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DEFENDANT-APPELLANT, PRO SE

COUNSEL FOR STATE OF OHIO

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SUPREME COURT OF OHIO

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR
GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION

This case is of great public and general interest because it concerns the guarantees of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and Section 16, Article 1 of the Constitution. Those provisions protect a defendant in a criminal case against deprivation of liberty without due process of law.

Johnson's case offers this Court an opportunity to demand that Ohio courts remain vigilant in protecting criminal defendants' right to not lose their liberty when an Appellate Court refuses accept the merits in a case of consecutive sentences imposed by a trial court contrary to law, although similar previous cases were accepted in Appellate Courts. Consequently, Johnson's case presents a substantial constitutional question in that it challenges the decisions adjudicated in other courts, and further question the Eight District Court of Appeals declining his relevant arguments in the trial court's sentencing entry.

This matter continues to be a great public interest beyond the sentencing laws for protection, for if this Court upholds the rational of the Eight District Court of Appeals on its decision, then the fact pattern remain the same as unconstitutional, and opens the door for multitudes of similar cases in every other jurisdiction under this court.

STATEMENT OF THE CASE

On the month of May 17, 2004, in CR 451828 a Cuyahoga County Grand jury indicted the defendant-appellant (hereafter "appellant") Javan Johnson on three counts; for one count of Misuse of Credit Card violation of R.C. § 2913.21, one count of Forgery in violation R.C. § 2913.31 and one count of Uttering in violation of R.C. § 2913.31. The appellant pleaded not guilty to all counts at his arraignment on December 15, 2004.

On January 11, 2006, the appellant entered a plea of guilt to count two, Forgery. A sentencing date was set. On February 8, 2006 a capias was issued. On February 12, 2008, in Cr 506662, a Cuyahoga County Grand jury indicted the defendant-appellant Javan Johnson on twenty-five counts; for identity Fraud in violation of R.C. § 2913.49B; Misuse of Credit Card violation of R.C. § 2913.31A. The appellant pleaded not guilty to all counts at his arraignment of February 27, 2008. On April 14, 2008, the appellant entered a plea of guilt to four counts; two counts of Identity Theft and two counts of Misuse of a Credit Card.

The trial court found the appellant to be a violator of Community Controlled Sanctions in Cr 451828. The appellant did not appear for his Pre-Sentence Investigation. On May 5, 2008, the trial court sentenced the appellant to serve six months for the CCS violation in CR 451828. That sentence was to run consecutively to eighteen months on counts 2 and 10, twelve in CR 506662. The aggregate sentence was five 1/2 years for both case numbers.

A timely Notice of Appeal was filed.

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STATEMENT OF THE FACTS

On January 11, 2006, the court held a plea hearing in CR 451823. The appellant agreed through counsel to enter a plea of guilt to count two, forgery. In return the state agreed to dismiss counts one and three (T.4, Vol. 1.).

Counsel for appellant represented to the court that there was a factual basis for the plea (T.5, Vol. 1). No underlying facts of the charge were discussed by defense counsel or the state. The court proceeded with the required Rule 11 hearing (T. 5-9, Vol. 1.) However the trial court failed to discuss the nature and circumstances of the charge with the appellant. The appellant, explained to the court that he has been in ill health (t.9, Vol. 1). The appellant has been hospitalized both for diabetes and other health problems, (T10, Vol. 1). The appellant had been scheduled to go to trial on the matter until he missed the court date due to being hospitalized for his illnesses (T.10, Vol. 1).

On April 14, 2008, a plea hearing was held on CR506662. The appellant was charged in a twenty-five count indictment. (T.4, Vol.11). The appellant agreed to enter a plea of guilt to count 2, count 8, count 10, and count 15 (T.5, Vol.11). The court inquired of counsel whether there was a factual basis for the plea. Counsel responded that there was (T.5, Vol. 11).

The facts will be further discussion on the facts as following.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

FIRST PROPOSITION OF LAW

Appellant contends that he did not enter a knowing, voluntary and intelligent plea in which was offer by his attorney. During the sentencing hearing, the appellant's attorney stated to the court that the appellant was not the facilitator to the crime but rather the conduit (T. 22, Vol 11). Even the Trial court Judge expressed doubts about appellant's attorney, after chastising the appellant's counsel for failing to find out any information as to the name of the person who did in fact commit the crimes (T. 26, Vol. 11). The appellant than explained to the court that he has been in ill health (t.9, Vol. 11). In addition to that he has been hospitalized many times for diabetes and other health problems which seem insurmountable for him. (T.9, Vol 11). Then the court again questioned the appellant in spite of his ill health in the court room, did he have any involvement other than receiving packages at his home, where the appellant continued to deny any other involvement. The appellant's counsel believed that a man named Albert Blue was the person they were looking for who had actually committed the fraud (T, 24, Vol 11) All the more the trial court failed to demonstrate to the court. Under the totality of the circumstances surrounding the plea, the court abused its discretion by accepting the plea. The appellant's counsel failed to find out any information as to the name of the person who did in fact commit the crimes, although he believed it was person by the name Albert Blue. The record clearly shows explicitly that Mr. Johnson had no involvement with the forgeries and identity thefts in this case.

CONCLUSION

This case raises a substantial constitutional question, involves a felony and is one of public or great general interest. Review should be granted in this case.



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DEFENDANT-APPELLANT, PRO SE

CERTIFICATE OF SERVICE

I Javan Johnson hereby certify that a true copy of the foregoing Memorandum in Support of Jurisdiction of Appellant Javan Johnson Supreme Court Appeal Motion, has been served by U.S. Mail Postage Pre-Paid to Bill Mason, Prosecutor Attorney at 1200 Ontario Street Cleveland, Ohio 44113 on this 6th day of July 2009.


Signature



Print Name and Number

DEFENDANT-APPELLANT, PRO SE

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91567

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAVAN JOHNSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-451828 and CR-506662

BEFORE: Blackmon, J., Gallagher P.J., and Rocco, J.

RELEASED: June 25, 2009

JOURNALIZED: JUL 6 - 2009

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PATRICIA ANN BLACKMON, J.:

Appellant Javan Johnson assigns the following error for our review:

“The trial court abused its discretion by accepting the appellant’s invalid plea.”

Having reviewed the record and pertinent law, we affirm Johnson’s conviction and sentence; we hold that his guilty plea was knowingly, intelligently, and voluntarily made. The apposite facts follow.

Facts

On February 12, 2008, Johnson was indicted in Case No. CR-506662 for ten counts of identity fraud, nine counts of misuse of a credit card, and six counts of forgery.¹ Johnson entered a plea to two counts of identity fraud and two counts of misuse of a credit card. The trial court sentenced him to five years in prison. The offenses committed in Case No. CR-506662 constituted a violation of Johnson’s community control imposed in Case No. CR-451828; therefore, the trial court added six months to the sentence to be served consecutively to the five-year sentence.

¹Johnson includes Case No. CR-451828 in his notice of appeal. However, the sentence in that case was entered on January 1, 2008. Johnson’s notice of appeal was filed on June 4, 2008, well outside the 30-day time limit in which to file the appeal. App.R. 4(A). A motion for delayed appeal was not filed; thus, we have no jurisdiction to review any error as to Case No. CR-451828. *State v. Chapman*, Cuyahoga App. No. 79812, 2002-Ohio-1081. We note the court did enter a journal entry on May 6, 2008 regarding Johnson’s violation of community control in Case No. 451828. However, Johnson does not set forth an argument as to the community control violation.

Post-Sentence Withdrawal of Guilty Plea

In his sole assigned error, Miller argues the trial court failed to explain the nature and consequences of the offenses when his plea was entered; thus, his guilty plea was not knowingly, intelligently, or voluntarily made.

Pursuant to Crim.R. 32.1, the trial court can set aside a judgment of conviction after it imposes sentence and may allow the defendant to withdraw his or her plea only “to correct a manifest injustice.” The individual seeking vacation of the plea bears the burden of establishing the existence of a “manifest injustice.”² “Manifest injustice” is an extremely high standard that permits the court to allow a plea withdrawal only in “extraordinary cases.”³ It has been referred to as “an extraordinary and fundamental flaw in the plea proceeding.”⁴

We conclude Johnson has failed to show a manifest injustice occurred. The record indicates that the trial court fully informed Johnson of his constitutional rights and made sure that he was knowingly waiving those rights. We also conclude the trial court sufficiently apprised Johnson of the charges to which he pled.

²*State v. Smith*, supra at paragraph one of syllabus.

³*Id.* at 264.

⁴*Id.*

Crim.R. 11(C)(2)(a) states that the court shall not accept a guilty plea without first addressing the defendant personally and "[d]etermining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved ***." The requirements of Crim.R. 11(C)(2)(a) are non-constitutional; thus, we review the plea proceedings to ensure "substantial compliance" with the rule.⁵ "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving."⁶

This court has held that "courts are not required to explain the elements of each offense, or even to specifically ask the defendant whether he understands the charges, unless the totality of the circumstances shows that the defendant does not understand the charges."⁷ Nothing in the record indicates that Johnson did not understand the charges to which he pled. The transcript from the plea hearing shows the court identified each charge to which Johnson was pleading

⁵*State v. Esner*, Cuyahoga App. No. 90740, 2008-Ohio-6654; *State v. Joachim*, Cuyahoga App. No. 90616, 2008-Ohio-4876; *State v. Asberry*, 173 Ohio App.3d 443, 2007-Ohio-5436; *State v. Moviel*, Cuyahoga App. No. 86244, 2006-Ohio-697.

⁶*State v. Nero* (1990), 56 Ohio St.3d 106, 108.

⁷See *State v. Carpenter*, Cuyahoga App. No. 81571, 2003-Ohio-3019; *State v. Krcal*, Cuyahoga App. No. 80061, 2002-Ohio-3634; *State v. Whitfield*, Cuyahoga App. No. 81247, 2003-Ohio-1504; *State v. Steele*, Cuyahoga App. No. 85901, 2005-Ohio-5541; *State v. Swift* (1993), 86 Ohio App.3d 407.

guilty and explained the maximum penalty involved. The state also explained to the court the plea bargain reached by the parties, outlining each individual count and specifying the degree of the offense for each count. There was no indication that Johnson did not understand the offenses to which he agreed to plead.

Additionally, although Johnson claims as part of his argument that he was innocent of the crimes to which he pled, a "plea of guilty is a complete admission of the defendant's guilt."⁸ By entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime.⁹ Accordingly, Johnson's assigned error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

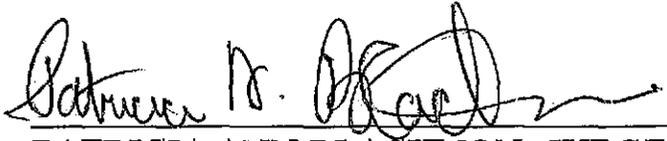
It is ordered that a special mandate be sent to said court to carry this judgment into execution. The defendant's conviction having been affirmed, any

⁸Crim. R. 11(B)(1).

⁹*State v. Barnett* (1991), 73 Ohio App.3d 244, 248, citing, *United States v. Broce* (1989), 488 U.S. 563, 109 S.Ct. 757, 102 L.Ed.2d 927.

bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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


PATRICIA ANN BLACKMON, JUDGE

SEAN C. GALLAGHER, P.J., and
KENNETH A. ROCCO, J., CONCUR