

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-L-054
CHAD G. SHAFFER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 08 CR 000591.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Karen A. Sheppert*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Chad G. Shaffer, PID: A560-520, Pickaway Correctional Institution, P.O. Box 209, Orient, OH 43146 (Defendant-Appellant).

Werner G. Barthol, Werner G. Barthol Co., L.P.A., 7327 Center Street, Mentor, OH 44060 (For Defendant-Appellant).

MARY JANE TRAPP, P.J.

{¶1} Mr. Chad G. Shaffer appeals the judgment of the Lake County Court of Common Pleas, which accepted his guilty plea and sentenced him for rape and burglary.

{¶2} Mr. Shaffer contends on appeal that his plea was not knowingly, intelligently, or voluntarily made because while the trial court advised him that a term of postrelease control would be imposed, it did not advise him of the number of years of

the term or of the specific conditions that could be imposed if the terms of postrelease control were violated.

{¶3} A review of the record, however, reveals Mr. Shaffer's contention is without merit as the trial court specifically informed Mr. Shaffer that a mandatory term of postrelease control would be imposed, and that, if violated, the Adult Parole Authority could impose an additional prison term that would not exceed one-half of his original prison sentence. Moreover, Mr. Shaffer reviewed the written plea agreement prior to and during the hearing, which explicitly stated that a five-year mandatory term of postrelease control would be imposed together with the ramifications if violated.

{¶4} Under the totality of the circumstances, we cannot say the trial court did not substantially comply with the Crim.R. 11 requirement, nor has Mr. Shaffer demonstrated any prejudice resulting from the lack of strict compliance. Further, we fail to find evidence that Mr. Shaffer was confused or so distressed during sentencing that he failed to understand the specific nature of the burglary charge to which he pled guilty. Thus, we find Mr. Shaffer's sole assignment of error to be without merit, and affirm.

{¶5} Substantive and Procedural Facts

{¶6} Mr. Shaffer's conviction stems from his admitted digital rape of his friend's seven-year old daughter. While at the friend's home for a party, Mr. Shaffer, who is confined to a wheelchair, requested assistance into his friend's home. He was taken into the living room and observed the minor victim in the restroom. He then viewed the victim through a crack in the door, at which time she asked him to leave. He declined, proceeded to rape her, and offered her a bribe of \$20 in exchange for her silence about what had just occurred.

{¶7} After negotiations resulted in a joint written plea agreement with the state, Mr. Shaffer pled guilty to one count of rape, a first-degree felony in violation of R.C. 2907.02; and one count of burglary, a second-degree felony in violation of R.C. 2911.12. The state agreed to dismiss a sexually violent offender specification pursuant to R.C. 2941.148, and the plea agreement jointly recommended Mr. Shaffer be sentenced to an eighteen-year term of imprisonment.

{¶8} During the plea hearing, the court engaged in an extensive and thorough colloquy with Mr. Shaffer, informing Mr. Shaffer of his rights, the maximum possible sentence, and the nature of the charges to which he was pleading guilty. Specifically as to postrelease control, the court informed him that it would be imposed, and that if the conditions of postrelease control were violated, the Adult Parole Authority could impose an additional sentence of not more than one-half of his original sentence. The court then inquired whether Mr. Shaffer needed additional time to consult with his counsel, and then asked what plea he wished to enter. At no time did Mr. Shaffer question, comment, or express confusion in regard to postrelease control.

{¶9} The court then gave Mr. Shaffer additional time to again review the written plea agreement, which he had reviewed prior to the hearing. The written agreement also informed him of postrelease control and specified a mandatory five-year term for postrelease control would be imposed. It further advised he could be returned for a total of one-half of his original stated prison term. This was reviewed and signed by Mr. Shaffer, his counsel, and witnessed by the state.

{¶10} The court accepted Mr. Shaffer's plea and proceeded directly to sentencing after Mr. Shaffer waived his right to have the Adult Probation Department prepare a presentencing report.

{¶11} The court accepted the joint sentencing recommendation by Mr. Shaffer and the state; and sentenced Mr. Shaffer to serve a mandatory ten-year term of imprisonment on the count of rape, and a definite eight-year term of imprisonment on the count of burglary, to be served consecutively to each other for a total term of 18 years. The court again informed Mr. Shaffer that postrelease control is mandatory for five years and the consequences for violating the conditions of postrelease control. The court further notified Mr. Shaffer of his duties as a Tier III Sex Offender.

{¶12} Mr. Shaffer now raises one assignment of error for our review:

{¶13} "Appellant's plea of guilty to numerous charges of rape was not knowing and voluntary and ought to be vacated as the trial court failed to substantially comply with the requirements of Crim.R. 11."

{¶14} Substantial Compliance with Crim.R. 11

{¶15} "A criminal defendant's choice to enter a plea of guilty or no contest is a serious decision. The benefit to a defendant of agreeing to plead guilty is the elimination of the risk of receiving a longer sentence after trial. But, by agreeing to plead guilty, the defendant loses several constitutional rights." *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶25, citing *Boykin v. Alabama* (1969), 395 U.S. 238, 243; *State v. Nero* (1990), 56 Ohio St.3d 106, 107. "The exchange of certainty for some of the most fundamental protections in the criminal justice system will not be permitted unless the defendant is fully informed of the consequences of his or her plea. Thus,

unless a plea is knowingly, intelligently, and voluntarily made, it is invalid.” *Id.*, citing *State v. Engle* (1996), 74 Ohio St.3d 525, 527.

{¶16} “To ensure that pleas conform to these high standards; the trial judge must engage the defendant in a colloquy before accepting his or her plea.” *Id.* at ¶26, citing *State v. Ballard* (1981), 66 Ohio St.2d 473, paragraph one of the syllabus; Crim.R. 11(C), (D), and (E). “It follows that, in conducting this colloquy, the trial judge must convey accurate information to the defendant so that the defendant can understand the consequences of his or her decision and enter a valid plea.” *Id.*

{¶17} Thus, under Crim.R. 11(C)(2), “the trial judge may not accept a plea of guilty or no contest without addressing the defendant personally and (1) ‘[d]etermining 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,’ (2) informing the defendant of the effect of the specific plea and that the court may proceed with judgment and sentencing after accepting it, and ensuring that the defendant understands these facts, and (3) informing the defendant that entering a plea of guilty or no contest waives the constitutional rights to a jury trial, to confrontation, to compulsory process, and to require proof of guilt beyond a reasonable doubt and determining that the defendant understands that fact.” *Id.* at ¶27, citing Crim.R. 11(C)(2)(a) through (c).

{¶18} “If a trial court fails to literally comply with Crim.R. 11, reviewing courts must engage in a multitiered analysis to determine whether the trial judge failed to

explain the defendant's constitutional or nonconstitutional rights and, if there was failure, to determine the significance of the failure and the appropriate remedy." *Id.* at ¶30.

{¶19} "When a trial judge fails to explain the constitutional rights set forth in Crim.R. 11(C)(2)(c), the guilty or no-contest plea is invalid 'under a presumption that it was entered involuntarily and unknowingly.'" *Id.* at ¶31, quoting *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, ¶12; see, also, *Nero* at 107, citing *Boykin* at 242-243. If, however, the trial judge "imperfectly explained nonconstitutional rights such as the right to be informed of the maximum possible penalty and the effect of the plea, a substantial-compliance rule applies." *Id.* "Under this standard, a slight deviation from the text of the rule is permissible; so long as the totality of the circumstances indicates that 'the defendant subjectively understands the implications of his plea and the rights he is waiving,' the plea may be upheld." *Id.*, quoting *Nero* at 108.

{¶20} "When the trial court does not substantially comply with Crim.R. 11 in regard to a nonconstitutional right, reviewing courts must determine whether the trial court partially complied or failed to comply with the rule. If the trial judge partially complied, e.g., by mentioning mandatory postrelease control without explaining it, the plea may be vacated only if the defendant demonstrates a prejudicial effect." *Id.* at ¶32, citing *Nero* at 108, citing *State v. Stewart* (1977), 51 Ohio St.2d 86, 93; Crim.R. 52(A), and *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, ¶23. "The test for prejudice is 'whether the plea would have otherwise been made.'" *Id.*, quoting *Nero* at 108, citing *Stewart*.

{¶21} Applying the foregoing principles to Mr. Shaffer and the change of plea hearing, we find it is clear that the trial court discussed postrelease control; thus, the

two-part question arises: did the trial court substantially comply with the mandates of Crim.R. 11, and if only partially so, has Mr. Shaffer demonstrated prejudicial effect?

{¶22} Clearly, the trial court discussed postrelease control during the plea hearing:

{¶23} “The Court: Now, after your prison term you will have what is known as post release control; do you understand that concept?

{¶24} “Mr. Shaffer: Yes, sir.

{¶25} “The Court: If, in fact, you violate your post release control during the period of time you are on it, the Adult Parole Authority could impose an additional prison term upon you that could be part of the sentence I would impose on you in this case and it could not exceed one half of the original sentence; do you understand that?

{¶26} “Mr. Shaffer: Yes, sir.”

{¶27} It is true that the court did not inform Mr. Shaffer that the term imposed would be five years, nor did the court advise him as to all of the specific conditions of postrelease control. There is no question, however, that he was informed that postrelease control was mandatory and, if a violation occurred, a sentence not to exceed one-half his sentence could be imposed. Moreover, before the hearing Mr. Shaffer reviewed with his attorney the written plea agreement, which specified that the mandatory term was five years and that he could be returned for up to nine months for each violation, for a total of one-half of his original stated prison term. He was also given and, indeed took the opportunity, to again review the written agreement during the hearing before signing it in open court and before the court accepted his plea.

{¶28} During sentencing, the court again informed Mr. Shaffer of the mandatory imposition of postrelease control:

{¶29} “*** Now I need to tell you once again, Mr. Shaffer, that upon your release from prison you will be subject to post release control for five years. If during the period of time you are on post release control, you violate any of the terms and conditions, the Adult Parole Authority could extend the period of time you are on post release control, the Authority could impose more restrictive post release control sanctions upon you, or the Authority could send you back to prison as part of the sentence I have just imposed upon you for an additional period of time that could not exceed one half of the original prison sentence. If your violation of post release control is for committing a new felony offense, you may also be prosecuted for that new offense with yet an additional prison term being imposed upon you.”

{¶30} Thus, as our review indicates, it is clear the trial court substantially complied with Crim.R. 11(C)(2)(a). Mr. Shaffer was advised at the plea hearing that he would be subject to a mandatory period of postrelease control, and the potential for re-incarceration if such was violated, not to exceed one-half his original sentence. The written plea agreement accurately stated Mr. Shaffer would serve a mandatory five-year term of post-release control, which Mr. Shaffer reviewed with his counsel and signed. Finally, prior to accepting Mr. Shaffer’s plea, the trial court asked Mr. Shaffer if he had reviewed the form with his counsel and if he understood it, to which he replied he did.

{¶31} Under these circumstances, it cannot be said that the trial court did not substantially comply by failing to inform Mr. Shaffer adequately on postrelease control. See *State v. Smiley*, 5th Dist. No. 2008 CA 00192, 2009-Ohio-3269, ¶29; citing *State v.*

Alfarano, 1st Dist. No. C-061030, 2008-Ohio-3476, citing *State v. Moviel*, 8th Dist. No. 86244, 2006-Ohio-697, ¶17-23; *State v. Fleming*, 6th Dist. No. 0T-07-024, 2008-Ohio-3844.

{¶32} Moreover, Mr. Shaffer fails to demonstrate, or even allege any resulting prejudice. His plea agreement was certainly favorable as a sexually violent offender specification, carrying a life term of imprisonment without a chance of parole, was dismissed. See R.C. 2971.03. Mr. Shaffer did not discuss, question, or comment in any regard to postrelease control at the hearing; and gave no indication that postrelease control was of any particular concern or import. Indeed, Mr. Shaffer does not even allege he would have pled not guilty on appeal. See *State v. Lang*, 8th Dist. No. 92099, 2010-Ohio-433, ¶14; *State v. Douglass*, 12th Dist. Nos. CA2008-07-168, CA2008-08-199, 2009-Ohio-3826 (notwithstanding partial compliance on the part of the trial court because it failed to inform the defendant that aggravated murder was not subject to a mandatory term of postrelease control at the plea hearing, there was nothing to suggest the defendant's plea would have been different as the record contained no evidence demonstrating the defendant misunderstood the ramifications of his decision).

{¶33} Mr. Shaffer also contends prejudice resulted from his misunderstanding of the burglary charge against him. He rests this contention upon the state's review of the charges and evidence against him during the hearing. He argues that the state posits first, that he formed the intent to commit the crime when he was already in the residence, but then secondly, that he formed the intent to rape before he entered the residence when he observed the minor victim enter the home.

{¶34} The court, however, specifically clarified the nature of the charges, inquiring if Mr. Shaffer understood the specific nature of the burglary charge after Mr. Shaffer confessed to the details of the rape:

{¶35} “The Court: Okay. Now, did you also by deception then enter the home at some point, remain in that home intending to commit a criminal offense, namely rape or this sexual offense with respect to [the minor victim]?”

{¶36} “Mr. Shaffer: What do you mean, sir?”

{¶37} “The Court: I am referring specifically to the burglary charge, which indicates by force, stealth, or deception, and I think the position that’s being taken here is that your behavior constituted deception that you knowingly trespassed in that home, deceiving them, that allowed you to remain in that home, and the purpose was to commit a criminal offense, namely the sexual conduct perpetrated upon [the minor victim]?”

{¶38} “Mr. Shaffer: Yes, sir.

{¶39} “The Court: Is that basically what you did?”

{¶40} “Mr. Shaffer: Yes, sir.”

{¶41} Then court then asked Mr. Shaffer again if he wished the court to accept his guilty plea to both the rape and burglary charges, and if he admitted to knowingly entering the residence by way of deception to commit the rape, to which he again responded yes.

{¶42} Mr. Shaffer was afforded yet another opportunity to discuss the written plea agreement and charges with his counsel, who advised the court they had reviewed

it that morning. Mr. Shaffer again expressed his understanding, signed the form, and the court accepted his plea.

{¶43} Mr. Shaffer argues that the state's recitation of the underlying facts must have resulted in confusion, but at no time does he actually demonstrate that he was indeed confused. The state's recitation was less than perfect. The court distilled the factual summary and presented it to Mr. Shaffer, which did prompt him to ask for clarification. The court revisited the facts and elements of the crime again and Mr. Shaffer expressed his agreement twice and did not ask for any further clarification or explanation.

{¶44} Mr. Shaffer's sole assignment of error is without merit, and the judgment of the Lake County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.