

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2010-T-0105
TAMIRA PARISH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Warren Municipal Court, Case No. 2009 CRB 02186.

Judgment: Affirmed.

Nicholas J. Graham, Assistant Law Director, 141 South Street, S.E., Warren, OH 44483 (For Plaintiff-Appellee).

J. Gerald Ingram, 7330 Market Street, Youngstown, OH 44512-5610 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Tamira Parish, appeals the judgment of the Warren Municipal Court denying her post-sentence motion to withdraw her no contest plea. For the following reasons, we affirm the judgment of the trial court.

{¶2} Parish was charged with two counts of falsification, in violation of R.C. 2921.13(A)(3).¹ On April 1, 2010, Parish pled no contest to one count of falsification. Parish was sentenced to pay a fine of \$1,000 of which \$850 was suspended. In addition, Parish was sentenced to a 60-day jail term which also was suspended.

{¶3} After sentencing, Parish filed a motion to withdraw her plea. The trial court held a hearing and, subsequently, denied her motion. Parish now appeals and raises the following issues for review:

{¶4} “[1.] The trial court erred when it denied the Appellant’s motion to withdraw [her] plea because the court failed to comply with Ohio Crim.R. 11, and Appellant was not fully apprised of how pleading no contest to one count of falsification would adversely, and substantially, affect her constitutional rights.

{¶5} “[2.] The trial court erred when Magistrate/‘Acting Judge’ Dan Gerin denied the Appellant’s motion to withdraw [her] plea because under Ohio Crim.R. 19(C)(1), the Magistrate did not have authority to enter such an order absent the Appellant’s written consent, or oral consent on the record in open court.”

{¶6} Under her first assignment of error, Parish contends the trial court erred in denying her motion to withdraw her no contest plea, as the trial court failed to inform her of the consequences of pleading no contest. Parish claims that although she did not object to the trial court’s failure to follow Crim.R. 11(E) below, the failure constitutes

1. We note that the complaint states that Parish was charged with a violation of R.C. 2921.13(B), which is falsification in relation to purchasing a firearm. However, the complaint describes the essential facts as follows: that “Tamira Parish in the City of Warren, Trumbull County, Ohio; on or about 04/05/2009 *** did knowingly make a false statement or knowingly swear or affirm the truth of a false statement previously made when the statement was made with purpose to mislead a public official in performing his official function[.]” We further note Parish did not raise this error at the trial court level or assign it as error on appeal.

plain error, and the trial court's decision to deny her motion should be reversed in order to correct a manifest injustice.

{¶7} Parish entered a plea of no contest to one count of falsification, a first-degree misdemeanor in violation of R.C. 2921.13(A), which is subject to a maximum sentence of 180 days. R.C. 2929.24(A)(1). As stated in Crim.R. 2(D), a petty offense is a “misdemeanor other than a serious offense.” In such a case, the trial court is instructed, pursuant to Crim.R. 11(E), that it “may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty.”

{¶8} In *State v. Jones*, 116 Ohio St.3d 211, 2007-Ohio-6093, the Supreme Court of Ohio was asked to “clarify the trial judge’s duties under Crim.R. 11 when accepting a plea in a misdemeanor case involving a petty offense.” *Id.* at ¶1. The court held that “[i]n accepting a plea to a misdemeanor involving a petty offense, a trial court is required to inform the defendant only of the effect of the specific plea being entered.” *Id.* at paragraph one of the syllabus. See, also, Crim.R. 11(E). In order to satisfy this requirement, the trial court “must inform the defendant of the appropriate language under Crim.R. 11(B).” *Id.* at paragraph two of the syllabus.

{¶9} For purposes of the instant appeal, the trial court was required to inform Parish that “[t]he plea of no contest is not an admission of defendant’s guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.” Crim.R. 11(B)(2). The record reveals that the trial court did not inform Parish, either orally or in writing, of the effect of her no contest plea. In

fact, the record reveals that after Parish's attorney addressed the court regarding the facts of the instant case, the trial court sentenced Parish; it failed to inform Parish of the language contained in Crim.R. 11(B)(2) prior to accepting her plea of no contest. The record is also devoid of any written reference to Crim.R. 11(B)(2). Thus, we find the trial court did not comply with Crim.R. 11 as it failed to inform Parish of the effect of her no contest plea to a misdemeanor involving a petty offense.

{¶10} Although the trial court failed to comply with Crim.R. 11(B)(2), the Supreme Court of Ohio has observed that “failure to comply with nonconstitutional rights (such as the information in Crim.R. 11(B)(2)) will not invalidate a plea unless the defendant thereby suffered prejudice.” *Jones*, supra, at ¶52, citing *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, at ¶12. (“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. *** Under the substantial-compliance standard, we review the totality of circumstances surrounding [the appellant's] plea and determine whether he subjectively understood that a guilty plea is a complete admission of guilt.”) (Citations omitted.) “The test for prejudice is ‘whether the plea would have otherwise been made.’” *Jones*, supra, at ¶52. (Citation omitted.)

{¶11} In *Jones*, the Supreme Court of Ohio noted that while the trial court failed to comply with Crim.R. 11(B)(1), Jones did not claim innocence at the time of his plea hearing. *Jones*, supra, at ¶54. Therefore, the court determined that, under *Griggs*, supra, Jones presumably understood the effect of his guilty plea, to wit: that a plea of guilty is a complete admission of guilt. *Id.*

{¶12} Parish, likewise, failed to assert her innocence at the plea hearing. In fact, at the plea hearing, Parish's counsel stated that although it was not her intent to defraud the government, the "facts as alleged would likely lead to a conviction." Moreover, her counsel at the plea hearing indicated that she did not wish to proceed with a trial because of the "emotional stress" of the situation. We therefore hold that, under the totality of the circumstances, Parish was not prejudiced by the trial court's failure to inform her of the effect of pleading no contest, as the record demonstrates that Parish was aware that a plea of no contest is not an admission of guilt but an admission of the truth of the facts alleged in the complaint. Crim.R. 11(B)(2).

{¶13} Next, this court must determine whether the trial court erred in denying her post-sentence motion to withdraw her no contest plea. Crim.R. 32.1 provides:

{¶14} "A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea."

{¶15} In order for the trial court to grant Parish's post-sentence motion, she was required to demonstrate a manifest injustice. Manifest injustice has been defined as a "clear or openly unjust act" and, further, a manifest injustice has occurred where there is "some fundamental flaw in the proceedings which result[s] in a miscarriage of justice or is inconsistent with the demands of due process." *State v. Griffith*, 10th Dist. No. 10AP-94, 2010-Ohio-5556, at ¶15, discretionary appeal not allowed by *State v. Griffith*, 128 Ohio St.3d 1428, 2011-Ohio-1049. (Citations omitted).

{¶16} Absent an abuse of discretion, a reviewing court will not disturb a trial court's decision on whether to grant a motion to withdraw a guilty plea. *State v. Xie* (1992), 62 Ohio St.3d 521, 526. An abuse of discretion is the trial court's "failure to exercise sound, reasonable, and legal decision-making." *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, at ¶62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11.

{¶17} Parish claims that she will no longer be able to work at the United States Parcel Service ("USPS") due to her criminal record. In Parish's motion to withdraw her plea, she argued that at the time of entering her plea of no contest, she was not aware "that by entering [the] plea *and subsequently being found guilty*, [that] it would disqualify her from any workers' compensation awards that she had been litigating for some time." (Emphasis added.) It is clear, therefore, that Parish understood she was going to be found guilty. At the hearing on the motion to withdraw her plea, Parish's counsel informed the trial court that at the time of submitting the motion, he was under the impression that her workers' compensation benefits would lapse; however, her workers' compensation benefits had not been affected by her plea. In fact, Parish stated that following her plea, USPS had offered to send her to school for retraining purposes. Therefore, there is no evidence before us that Parish's employment or workers' compensation benefits have been affected by her plea. However, even if her benefits had been affected, this is not something the trial court would have been obligated to review with Parish prior to taking her plea and, therefore, her failure to comprehend this consequence cannot form the basis for withdrawing her plea.

{¶18} On appeal, Parish now claims for the first time that a manifest injustice occurred when she did not understand the consequences of pleading no contest. Since

this was not argued before the trial court and the trial court never had an opportunity to consider it, this argument will not be entertained for the first time on appeal. However, as previously stated, any error in the trial court's failure to inform Parish of the effect of pleading no contest was not prejudicial.

{¶19} We therefore fail to find the trial court abused its discretion in overruling Parish's motion to withdraw her no contest plea.

{¶20} Parish's first assignment of error is without merit.

{¶21} In her second assignment of error, Parish maintains that because the instant offense is a misdemeanor of the first degree for which imprisonment is a possible penalty, the trial court was required to obtain the unanimous consent of the parties before authorizing a magistrate to decide a post-judgment motion. Parish asserts that at no time during her hearing on the motion to withdraw did the magistrate obtain her consent, either verbal or written.

{¶22} Crim.R. 19(C)(1)(f) states, in pertinent part:

{¶23} "A magistrate is authorized to hear and decide the following motions:

{¶24} "****

{¶25} "(ii) Upon the unanimous consent of the parties in writing or on the record in open court, any pretrial or post-judgment motion in any misdemeanor case for which imprisonment is a possibility."

{¶26} First, we note that appellant did not raise this argument below. Further, we find Crim.R. 19(C)(1)(f) inapplicable to the instant case. Parish has not cited to anything in the record nor has she provided this court with any evidence that the magistrate was acting only in his capacity as a magistrate, not acting judge. In fact, the

contrary is true. A trial court speaks through its judgment entries and, here, the record is clear the magistrate was conducting the hearing in the capacity of acting judge, not magistrate. This is evidenced by the August 13, 2010 judgment entry issued by the trial court overruling Parish's motion to withdraw her plea.

{¶27} Consequently, Parish's second assignment of error is without merit.

{¶28} Based on the opinion of this court, the judgment of the Warren Municipal Court is hereby affirmed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.