

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-13-1183

Appellee

Trial Court No. CR0201301743

v.

Deleno Stine

**DECISION AND JUDGMENT**

Appellant

Decided: May 30, 2014

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Lawrence A. Gold, for appellant.

\* \* \* \* \*

**YARBROUGH, P.J.**

**I. Introduction**

{¶ 1} Appellant, Deleno Stine, appeals his judgment of conviction from the Lucas County Court of Common Pleas, following his plea of no contest to one count of felonious assault and his plea of guilty to improper discharge of a firearm into a

habitation. Appellant argues that the trial court failed to substantially comply with Crim.R. 11(C) when it accepted his plea, and thus his plea was not knowingly, intentionally, and voluntarily made. We affirm.

{¶ 2} Appellant was indicted on four counts for his conduct on two separate days in May 2013. Pursuant to a plea agreement, appellant pleaded no contest to felonious assault of a peace officer in violation of R.C. 2903.11(A)(1), a felony of the first degree. He also pleaded guilty to improperly discharging a firearm into a habitation in violation of R.C. 2923.161(A)(1), a felony of the second degree. The remaining counts were dismissed.

{¶ 3} Prior to accepting appellant's plea, the trial court engaged in a detailed plea colloquy. Relevant here, the trial court informed appellant of the potential penalties he faced as a result of his plea of no contest to the count of felonious assault. The court first informed him that he could be subjected to community control. In the alternative, the court informed him that he could be sentenced to prison for up to 11 years. The following exchange then occurred:

THE COURT: Presume for purposes of the plea or in the alternative if I violate you and grant community control under all those scenarios for purposes of this plea now, that you will receive the maximum 11-year sentence. Do you understand what I told you?

THE DEFENDANT: Yes, ma'am.

THE COURT: And knowing that do you maintain your no contest plea?

THE DEFENDANT: Yes, ma'am.

{¶ 4} The trial court ultimately accepted appellant's pleas, found him guilty, and sentenced him to 11 years in prison on the felonious assault count and seven years in prison on the improper discharge of a firearm count. The court further ordered the sentences to be served consecutively for a total prison term of 18 years.

{¶ 5} Appellant has timely appealed his judgment of conviction, bringing one assignment of error:

1. The trial court violated appellant's right to due process of law, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and erred under Crim.R. 11(C) by failing to advise appellant of the mandatory sentence he would receive upon conviction, prior to accepting appellant's no contest plea.

## **II. Analysis**

{¶ 6} Crim.R. 11(C)(2) provides, in pertinent part,

In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining 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.* (Emphasis added).

{¶ 7} In his assignment of error, appellant argues that his plea was not knowingly, intelligently, and voluntarily made because the trial court failed to inform him that he was not eligible for community control on the count of felonious assault. Appellant has correctly identified that although a prison term is presumed for a felony of the first degree, the trial court may order community control if it makes certain findings. R.C. 2929.13(D)(1) and (2). However, because the victim of the felonious assault was a peace officer, a prison term was mandatory. R.C. 2903.11(D)(1)(b) and 2929.13(F). Thus, he argues that the trial court's failure to so inform him did not substantially comply with Crim.R. 11(C)(2).

{¶ 8} The Ohio Supreme Court has held that with respect to the non-constitutional notifications required by Crim.R. 11(C)(2)(a), substantial compliance is sufficient. *State v. Stewart*, 51 Ohio St.2d 86, 92, 364 N.E.2d 1163 (1977). "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." *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990). "Furthermore, a defendant who challenges his guilty plea on the basis that it was not knowingly, intelligently, and voluntarily made must show

a prejudicial effect.” *Id.* “The test is whether the plea would have otherwise been made.”  
*Id.*

{¶ 9} Appellant cites *State v. Ruby*, 4th Dist. Adams No. 03CA780, 2004-Ohio-3708, as support for the proposition that a defendant is prejudiced when the trial court informs him or her that community control is available when, in fact, it is not. In that case, the Fourth District reversed the defendant’s conviction based on his guilty plea because the trial court informed him that he may be sentenced to community control despite the fact that his offenses required a prison sentence. The Fourth District reasoned that the prejudice was apparent because the defendant might have been coerced into pleading guilty by the possibility of community control. *Id.* at ¶ 10-11.

{¶ 10} However, we find the present case to be distinguishable. Unlike in *Ruby*, appellant was not coerced into pleading guilty by the possibility of community control. Indeed, appellant responded directly that he would like to maintain his plea of no contest to the felonious assault count even presuming that he would be sentenced to 11 years in prison. Therefore, the record demonstrates that he would have maintained the plea even had he been properly informed. Because appellant has not shown a prejudicial effect, we need not address whether he subjectively understood that he would be facing a mandatory prison sentence.

{¶ 11} Accordingly, appellant’s assignment of error is not well-taken.

**III. Conclusion**

{¶ 12} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, P.J.  
CONCUR.

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JUDGE

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<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.