[Cite as *State v. Logue*, 2004-Ohio-387.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	CASE NO. 02 BE 29
VS.	)	
	)	OPINION
DAVID THOMAS LOGUE,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Belmont County Court Northern Division, Case No. 01 TRC 02197
JUDGMENT:	Reversed and Remanded
APPEARANCES:	
For Plaintiff-Appellee:	Attorney Frank Pierce Belmont County Prosecutor Attorney Thomas M. Ryncarz Asst. County Prosecutor 147-A West Main Street St. Clairsville, Ohio 43950

For Defendant-Appellant:

David Thomas Logue, Pro Se
c/o 61482 S. Hall Road
Jacobsburg, Ohio 43933

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: January 27, 2004

DONOFRIO, J.

{¶1} Defendant-appellant, David Thomas Logue, appeals from a Belmont County Court, Northern Division decision denying a motion to withdraw his guilty plea to one count of driving under the influence.

{¶2} On or about October 17, 2001, appellant was arrested for driving under the influence, speeding, and driving without an operator's license. While the record is not entirely clear, it appears that the charge was amended to a second offense DUI.

{¶3} Appellant entered into a plea agreement on April 23, 2002. Under the terms of the agreement, appellant pled guilty to DUI as a first offense, in violation of R.C. 4511.19(A)(1)(3). The court sentenced appellant to 100 days in jail, suspended, except for 21 days already served; fined him $250 plus costs; suspended his operator's license for six months; and placed him on supervised probation for three years.

{¶4} Three days after pleading guilty, appellant filed a motion to withdraw his plea alleging, among other things, that the court never inquired if his plea was made knowingly, intelligently, and voluntarily. Upon appellant's oral motion, the trial court

stayed his sentence. At a May 29, 2002 hearing, the court overruled the motion. Appellant filed his timely notice of appeal on June 6, 2002.

{¶5} Appellant, acting pro se, raises 22 assignments of error. Since appellant's 21st assignment of error is dispositive, we need only address it. App.R. 12(A). Appellant's 21st assignment of error states:

> "THE TRIAL COURT ERRED PURSUANT TO OHIO CRIMINAL RULE 11 THAT DEFENDANT-APPELLANT WAS NOT ASKED BY THE TRIAL COURT IF DEFENDANT WAS ENTERING HIS PLEA VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY." (Sic.)

{¶6} Appellant contends that the trial court never had a meaningful dialogue with him pursuant to Crim.R. 11(E) or asked him if he was entering his plea willingly, knowingly, and voluntarily.

{¶7} On reviewing a trial court's decision on a motion to withdraw a guilty plea, this court applies an abuse of discretion standard. *State v. Lintner* (Sept. 21, 2001), 7th Dist. No. 732. Whether an abuse of discretion exists under the circumstances depends on the facts of the particular case. Id.

{¶8} The Ohio Supreme Court most recently addressed this issue in *State v. Watkins*, 99 Ohio St.3d 12, 2003-Ohio-2419. In *Watkins*, the defendant pled no contest to a second offense DUI. The defendant appealed arguing the court should have engaged him in a Crim.R. 11(C) colloquy before sentencing him. The appellate court affirmed the conviction. The supreme court found that a conflict existed between the districts and ordered the parties to brief the issue:

{¶9} "'Where a defendant charged with a petty offense changes his plea of not guilty to a plea of guilty or no contest, does the trial court comply with Traf.R. 10(D) and Crim.R. 11(E) by informing the Defendant of the information contained in

Traf.R. 10(B) or Crim.R. 11(B) or must the trial court engage in a colloquy with the defendant that is substantially equivalent to that required by Crim.R. 11(C) in felony cases?'" Id. at ¶9.

{¶10} The court concluded that, "[w]hen a defendant charged with a petty misdemeanor traffic offense pleads guilty or no contest, the trial court complies with Traf.R. 10(D) by informing the defendant of the information contained in Traf.R. 10(B)." Id. at the syllabus. In so holding, the court noted that the Traffic Rules applied to the case since it involved a DUI and that Crim.R. 11(E), which applies to non-traffic misdemeanors involving petty offenses, is identical in all relevant aspects to Traf.R. 10(D). Traf.R. 10(D) provides:

{¶11} "In misdemeanor cases involving petty offenses, except those processed in a traffic violations bureau, the court 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*." (Emphasis added.)

{¶12} Traf.R. 10(B) provides us with the effect of pleas of guilty and no contest. It states in relevant part:

{¶13} "(B) Effect of guilty or no contest pleas

{¶14} "With reference to the offense or offenses to which the plea is entered:

{¶15} "(1) The plea of guilty is a complete admission of the defendant's guilt.

{¶16} "(2) The 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 complaint and such plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding." Traf.R. 10(B).

{¶17} The *Watkins* court concluded that while a trial court does not have to engage in a Crim.R. 11(C) colloquy with the defendant before accepting his plea to a

petty traffic offense, it must inform the defendant of the effect of his plea. *Watkins*, 99 Ohio St.3d at ¶26.

{¶18} In the case sub judice, the trial court did not comply with Traf.R. 10(D) in accepting appellant's guilty plea. At the plea hearing, the only information the court relayed to appellant before accepting his plea was as follows:

{¶19} "Before a plea is entered in this case, I want to refresh Mr. Logue's memory. I know I'm boring you to death 'cause we keep going over this, but as a first offense, it carries with it a minimum three days in jail to a maximum of six months in jail – though you will get credit for all time served, which according to our calculations, Mr. Logue, is twenty-one days – a minimum fine of two fifty, a maximum of a thousand; driving suspension is six months to three years; and you know you have a right to your own attorney of course, and you have the right to a court appointed attorney and I've provided you with a court appointed attorney.

{¶20} "You also have a right to a jury trial and that is what we're here for today." (Tr. 35).

{¶21} Appellant's counsel then entered his guilty plea, which the court accepted.

{¶22} The court never informed appellant of the effect of his plea as set out in Traf.R. 10(B). In other words, the court never told appellant that a guilty plea is a complete admission of his guilt. The court did inform appellant of the possible sentences he faced and the fact that he was entitled to a jury trial. This information, while helpful to appellant, does not satisfy *Watkins* and Traf.R. 10(D). Therefore, appellant's 21st assignment of error has merit.

{¶23} Based on the merit of appellant's 21st assignment of error, his other alleged errors are moot.

{¶24} For the reasons stated above, appellant's plea is vacated, the trial court's decision is reversed, and this case is remanded for further proceedings according to law and consistent with this opinion.

Waite and DeGenaro, JJ., concur.