

[Cite as *State v. Terrell*, 2010-Ohio-3026.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio, :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. : No. 09AP-1003  
 : (C.P.C. No. 08CR-09-6463)  
 Michael E. Terrell, : (REGULAR CALENDAR)  
 :  
 Defendant-Appellant. :

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D E C I S I O N

Rendered on June 30, 2010

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*Ron O'Brien*, Prosecuting Attorney, and *John H. Cousins, IV*,  
for appellee.

*Yeura R. Venters*, Public Defender, and *David L. Strait*, for  
appellant.

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APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Defendant-appellant, Michael E. Terrell, appeals from a judgment of the Franklin County Court of Common Pleas finding him guilty, pursuant to guilty plea, of robbery in violation of R.C. 2911.02 and sentencing him to eight years of incarceration.

Defendant assigns a single error:

The trial court erred by entering judgment of conviction based upon a guilty plea that was not knowing, intelligent and voluntary.

Because the trial court failed to comply with the requirements of Crim.R. 11, we reverse.

## I. Procedural History

{¶2} By indictment filed on September 4, 2008, defendant was charged with four counts: (1) aggravated robbery in violation of R.C. 2911.01, a first-degree felony, (2) kidnapping in violation of R.C. 2905.01, a first-degree felony, (3) robbery in violation of R.C. 2911.02, a second-degree felony, and (4) robbery in violation of R.C. 2911.02, a third-degree felony. Each carried a firearm specification pursuant to R.C. 2941.145.

{¶3} On May 18, 2009, defendant, represented by counsel, advised the trial court that he wished to change his plea to the third count of the indictment and plead guilty to robbery as a second-degree felony without the firearm specification. Following the trial court's colloquy with defendant pursuant to Crim.R. 11, the trial court accepted defendant's guilty plea and, pursuant to the prosecution's request, entered a nolle prosequi as to Counts 1, 2, and 4.

{¶4} In a sentencing hearing conducted July 13, 2009, the trial court imposed a sentence of eight years, journalizing its decision in a judgment entry filed July 15, 2009. Pursuant to defendant's App.R. 5(A) motion, we granted defendant leave to appeal.

## II. Assignment of Error

{¶5} In his single assignment of error, defendant contends the trial court failed to comply with the requirements of Crim.R. 11 in conducting the plea proceedings.

{¶6} Crim.R. 11 sets forth the procedure a trial court must follow when accepting a guilty plea. Crim.R. 11(C)(2) allows a trial court to accept a guilty plea after (1) determining the defendant is making the plea voluntarily, understanding the maximum penalty involved and, if applicable, ineligibility for probation or community control sanctions; (2) informing the defendant of, and determining defendant understands, the

effect of the guilty plea, including the trial court's ability on accepting the plea, to proceed with sentencing; and (3) informing the defendant of, and determining defendant understands, the rights the defendant is waiving, including the right to a jury trial, the right to confront witnesses against him, the right to have compulsory process for obtaining witnesses, the right to require the state to prove the defendant's guilt beyond a reasonable doubt, and the right against self-incrimination had the case gone to trial. Crim.R. 11(C)(2) thus requires a trial judge personally to tell a defendant entering a guilty plea about his constitutional rights at trial and about certain other non-constitutional matters. *State v. Nero* (1990), 56 Ohio St.3d 106, 107; see also *State v. Johnson* (1988), 40 Ohio St.3d 130, 132-33, certiorari denied (1989), 489 U.S. 1098, 109 S.Ct. 1574; *State v. Holder* (1994), 97 Ohio App.3d 486, 489.

{¶7} In determining whether a trial court's failure to follow Crim.R. 11(C)(2) requires a plea to be vacated, a reviewing court applies different tests depending on whether the trial court omitted a constitutional or non-constitutional element of the rule. If a challenge involves a trial court's failure to inform the defendant of a constitutional right, we must determine whether the trial court strictly complied with Crim.R. 11(C). *State v. Abrams* (Aug. 2, 1995), 2d Dist. No. 14864; *State v. Patterson* (Sept. 23, 1994), 11th Dist. No. 93-T-4826; *State v. Williams* (1989), 65 Ohio App.3d 70, 73. Cf. *State v. Billups* (1979), 57 Ohio St.2d 31, 38 (noting a defendant's verbal and written waiver of his constitutional rights was sufficient because the defendant acknowledged he heard and understood the judge's colloquy of Crim.R. 11(C) rights with an earlier defendant and because defendant indicated that he did not desire his own recitation). A trial court's

failure to comply strictly with the rule is prejudicial error. See, e.g., *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, ¶1.

{¶8} By contrast, when the dispute involves the trial court's failure to instruct the defendant about a non-constitutional matter, we must determine whether the trial court substantially complied with the rule. *Nero* at 108; *Abrams*, supra. A trial court substantially complies with the rule when a defendant subjectively understands the implications of his plea and the rights he is waiving. *Id.* See also *Holder* at 490, quoting *Nero* at 108. Moreover, if a plea challenge concerns a non-constitutional matter, a defendant must demonstrate prejudice. *Id.*; *State v. Stewart* (1977), 51 Ohio St.2d 86, 93.

{¶9} Here, the state correctly concedes the trial court did not comply with the requirements of Crim.R. 11(C)(2)(c) in that it failed to advise defendant he could not be compelled to testify against himself, one of the constitutional provisions of Crim.R. 11(C) with which the trial court must strictly comply. The trial court thus failed to comply strictly with the provisions of Crim.R. 11(C)(2)(c).

{¶10} Given the trial court's violation of the provisions of Crim.R. 11(C), we sustain defendant's single assignment of error, reverse the judgment of the trial court, and remand for further proceedings consistent with this decision.

*Judgment reversed and  
case remanded.*

KLATT and FRENCH, JJ., concur.

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