

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-817
	:	(M.C. No. 2011 CR B 017733)
Jonathan L. Kiner,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 21, 2012

Ice Miller LLP, and E. Rod Davisson, for appellee.

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

APPEAL from the Franklin County Municipal Court

CONNOR, J.

{¶ 1} Defendant-appellant, Jonathan L. Kiner ("appellant"), appeals from the August 29, 2011 judgment of the Franklin County Municipal Court, convicting him of telecommunications harassment in violation of R.C. 2917.21, a first-degree misdemeanor. For the following reasons, we affirm.

{¶ 2} On August 6, 2011, Brigitte Davis filed two complaints alleging that, on April 18, 2011, appellant violated a protection order pursuant to R.C. 2919.27, and engaged in telecommunications harassment pursuant to R.C. 2917.21, by sending her an email stating: "I keep track of you," "I've monitored you," and "I have surveyed you and continue to conduct this surveillance." *See* complaint.

{¶ 3} Based upon these allegations, a warrant was issued for appellant's arrest. On August 7, 2011, Officer Benjamin A. Petrovich arrested appellant, and on August 9,

2011, appellant entered a plea of not guilty as to the alleged offenses. Further, on August 29, 2011, appellant changed his plea to guilty as to telecommunications harassment, and the prosecution dismissed the remaining charge alleging that appellant violated the protection order.

{¶ 4} Prior to accepting appellant's guilty plea, the trial court inquired as follows:

THE COURT: Mr. Kiner, in the new case from Grove City, which is 2011 CRB 17733, I'm holding what's called an advice of rights and waiver of trial by jury form. Is this your signature that appears here on this form, sir?

[APPELLANT]: Yes.

THE COURT: And did you review this form with your attorney before you signed it?

[APPELLANT]: Yes.

THE COURT: And you've decided not to have a trial in this case?

[APPELLANT]: Yes.

THE COURT: Did your attorney explain to you and do you understand the details of the trial that you're choosing to give up?

[APPELLANT]: Yes.

THE COURT: Did you make the decision not to have a trial knowingly, intelligently and voluntarily?

[APPELLANT]: Yes.

THE COURT: Okay. I'm accepting the waiver of your right to a trial.

And what is [appellant] pleading to, Mr. Lloyd?

MR. LLOYD: Telecommunications charge, Your Honor.

THE COURT: And what is your plea to the stated offense of telecommunications harassment, a first degree misdemeanor?

[APPELLANT]: Guilty.

THE COURT: Did your attorney explain to you the penalties associated with this offense?

[APPELLANT]: Yes.

THE COURT: Do you understand that a plea of guilty is a complete admission of your guilt to this offense?

[APPELLANT]: Yes.

THE COURT: And are you entering your guilty plea knowingly, intelligently and voluntarily?

[APPELLANT]: Yes.

THE COURT: Okay. I'm accepting your guilty plea to that stated offense.

Pursuant to the plea bargain, count one will be dismissed.

* * *

Do you want to waive second hearing, Mr. Lloyd?

MR. LLOYD: Yes, Judge, go straight to mitigation.

(Tr. 2-4.) During the mitigation portion of the hearing, appellant's attorney stated:

[Appellant] has been in jail for approximately three weeks. You know, he was fairly adamant about a trial in this case, as he was previously. Again, I think the prospect of another month in jail is just too taxing on him, you know, emotionally, and the fact that he can basically go home today and put these matters, hopefully, totally behind him was significant in his decision to take a deal today.

[Appellant's] still adamant in his belief that he did not violate in any way any protection order, and was not ever offered a chance to be heard in that hearing because he was picked up two days before he was arraigned on the actual CPO hearing date. So, you know, in the spirit of resolving the matter and putting the matter behind us and moving forward, we have accepted the one-for-one deal.

(Tr. 4-5.) Further, appellant explained that: (1) he is the victim in this case; (2) he is not violent; and (3) he filed police reports against Brigitte Davis for stealing and forging checks in his name, but the Grove City Police Department has not arrested her. Appellant also stated: "I can't stay in jail for another month. I'm glad I'm going to get out today. I just hope that truth matters at some point during all these things." (Tr. 7.)

{¶ 5} The trial court sentenced appellant as follows:

On the telephone harassment, it's 180 days in jail, credit for 23. 157 days are being suspended. You're on probation for a period of one year. The conditions of your one-year probation are, as you know, the general conditions of probation that you not violate any laws or ordinances. I'm most concerned about any acts of violence or threats of violence against anyone or if you would have any contact whatsoever with Brigitte Davis.

(Tr. 8.)

{¶ 6} On September 23, 2011, appellant timely appealed, raising a single assignment of error for our consideration:

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

{¶ 7} In his sole assignment of error, appellant argues that, given his protestations of factual innocence, his guilty plea was constitutionally involuntary. *See* appellant's brief, at 4-5. In response, plaintiff-appellee, the State of Ohio ("the State"), cites our decision in *State v. George*, 10th Dist. No. 00AP-1071 (Apr. 24, 2001), and argues that, because Crim.R. 2(D) defines telecommunications harassment as a petty offense, the trial court was only required to substantially comply with the provisions of Crim.R. 11(E) prior to accepting appellant's guilty plea. *See* appellee's brief, at 6.

{¶ 8} In *George*, we held that, in accepting a guilty plea for a first-degree misdemeanor petty offense, the trial court must substantially comply with Crim.R. 11(E). Further, we stated that, under these circumstances, Crim.R. 11(C) does not apply, because having to explain the waiver of a defendant's constitutional rights as required by Crim.R. 11(C) in felony cases, extends Crim.R. 11(E) beyond its intended scope.

{¶ 9} Crim.R. 11 provides, in relevant part, that:

(A) Pleas.

A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas may be made orally. The pleas of not guilty and not guilty by reason of insanity may be joined. If a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

* * *

(D) Misdemeanor cases involving serious offenses.

In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily.

(E) Misdemeanor cases involving petty offenses

In misdemeanor cases involving petty offenses 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.

Crim.R. 2(C) defines a serious offense as "any felony, and any misdemeanor for which the penalty prescribed by law includes confinement for more than six months." Further, Crim.R. 2(D) defines a petty offense as "a misdemeanor other than a serious offense." In addition, R.C. 2937.07 states, in relevant part, that:

If the offense is a misdemeanor and the accused pleads guilty to the offense, the court or magistrate shall receive and enter the plea unless the court or magistrate believes that it was made through fraud, collusion, or mistake. If the court or magistrate believes that it was made through fraud, collusion, or mistake, the court or magistrate shall enter a plea of not guilty and set the matter for trial pursuant to Chapter 2938. of the Revised Code. Upon receiving a plea of guilty, the court or magistrate shall call for an explanation of the circumstances of the offense from the affiant or complainant or the affiant's or complainant's representatives unless the offense to which the accused is pleading is a minor misdemeanor in which case the court or magistrate is not required to call for an explanation of the circumstances of the offense. After hearing the explanation of circumstances, together with any statement of the accused or after receiving the plea of guilty if an explanation of the circumstances of the offense is not required, the court or magistrate shall proceed to pronounce the sentence or shall continue the matter for the purpose of imposing the sentence.

{¶ 10} Here, appellant entered a guilty plea as to one count of telecommunications harassment, in violation of R.C. 2917.21, a first-degree misdemeanor. Pursuant to R.C. 2929.21(B)(1), the term of imprisonment for a first-degree misdemeanor shall not be

more than six months. Because the term of imprisonment imposed for violating R.C. 2917.21 shall not be more than six months, telecommunications harassment is a petty offense governed by Crim.R. 11(E).

{¶ 11} The record indicates that, prior to accepting appellant's guilty plea, the trial court informed appellant of the effect of pleading guilty to telecommunications harassment as follows:

THE COURT: And what is your plea to the stated offense of telecommunications harassment, a first degree misdemeanor?

[APPELLANT]: Guilty.

THE COURT: Did your attorney explain to you the penalties associated with this offense?

[APPELLANT]: Yes.

THE COURT: *Do you understand that a plea of guilty is a complete admission of your guilt to this offense?*

[APPELLANT]: *Yes.*

THE COURT: And are you entering your guilty plea knowingly, intelligently and voluntarily?

[APPELLANT]: Yes.

(Emphasis added.) (Tr. 3.) In addition, prior to sentencing, the trial court afforded appellant, and his attorney, the opportunity to address the court with regard to mitigation. At that time, both appellant and his attorney explained the facts of the case from their perspective, and also explained appellant's reasoning for accepting the one-for-one deal. (Tr. 4-8.) Appellant clearly understood the effect of his guilty plea and chose to take the State's offer in order to get out of jail that same day. Further, after careful review, we find no evidence in the record to suggest that appellant entered his guilty plea due to fraud, collusion or mistake.

{¶ 12} Therefore, based upon the record before us, we find that the trial court substantially complied with Crim.R. 11(E) and R.C. 2937.07.

{¶ 13} Accordingly, appellant's single assignment of error is overruled.

{¶ 14} For the foregoing reasons, appellant's single assignment of error is overruled and the judgment of the Franklin County Municipal Court is hereby affirmed.

Judgment affirmed.

BRYANT and KLATT, JJ., concur.
