

[Cite as *State v. Fox*, 2011-Ohio-126.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23859
vs.	:	T.C. CASE NO. 09CR3790
WILLIAM B. FOX	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 14th day of January, 2011.

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GRADY, P.J.:

{¶ 1} Defendant, William Fox, pled guilty to one count of violating a protection order (prior conviction for the same offense) in violation of R.C. 2919.27(A)(1), a felony of the fifth degree. The trial court sentenced Defendant to a twelve month prison term.

{¶ 2} Defendant timely appealed to this court from his conviction and sentence. Defendant's appellate counsel filed an *Anders* brief, *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 19 L.Ed.2d 493, stating that he could find no meritorious issues for appellate review. We notified Defendant of his appellate counsel's representations and afforded him ample time to file a pro se brief. None has been received. This case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 3} Defendant's appellate counsel has identified one possible issue for appeal.

ASSIGNMENT OF ERROR

{¶ 4} "FOX'S PLEA WAS NOT KNOWINGLY, INTELLIGENT, AND VOLUNTARY, THEREFORE THE REQUIREMENTS OF CRIM.R.11 WERE NOT MET."

{¶ 5} Defendant's appellate counsel concedes that the trial court went over in detail with Defendant both the constitutional rights he was giving up by pleading guilty as well as the other non-constitutional matters set forth in Crim.R. 11(C)(2). Counsel argues, however, that since Defendant conferred with his trial counsel on at least five occasions during the plea colloquy, this demonstrates confusion on Defendant's part that renders his guilty plea less than knowing, intelligent or voluntary. The record of the plea hearing refutes this contention.

{¶ 6} In order to be constitutionally valid and comport with due process, a guilty plea must be entered knowingly, intelligently and voluntarily. *Boykin v. Alabama* (1969), 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274. Compliance with Crim.R. 11(C)(2) in accepting guilty or no contest pleas portrays those qualities.

{¶ 7} In *State v. McGrady*, Greene App. No. 2009CA60, 2010-Ohio-3243, at ¶11-13, this court stated

{¶ 8} "In order for a plea to be given knowingly and voluntarily, the trial court must follow the mandates of Crim. R. 11(C). If a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and is void. *Boykin v. Alabama* (1969), 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274.

{¶ 9} "A defendant who challenges his guilty plea on the basis that it was not knowingly, intelligently, and voluntarily made must show a prejudicial effect. *State v. Stewart* (1977), 51 Ohio St.2d 86, 93; Crim. R. 52(A). The test is whether the plea would have been otherwise made. *Id.* at 108.

{¶ 10} "A trial court must strictly comply with Crim. R. 11 as it pertains to the waiver of federal constitutional rights. These include the right to trial by jury, the right of confrontation, and the privilege against self-incrimination. *Id.* at 243-44. However, substantial compliance with Crim. R. 11(C) is sufficient when waiving non-constitutional rights. *State v. Nero* (1990), 56 Ohio

St.3d 106, 108. The non-constitutional rights that a defendant must be informed of are the nature of the charges with an understanding of the law in relation to the facts, the maximum penalty, and that after entering a guilty plea or a no contest plea, the court may proceed to judgment and sentence. Crim. R. 11(C)(2)(a)(b); *State v. Philpott*, Cuyahoga App. No. 74392, citing *McCarthy v. U.S.* (1969), 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418.

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. *Nero*, 56 Ohio St.3d at 108."

{¶ 11} Our review of the plea hearing demonstrates that the trial court scrupulously complied with all of the requirements in Crim.R. 11(C)(2), and advised Defendant about all of the constitutional rights he was giving up by pleading guilty, as well as all of the other non-constitutional matters. Although Defendant frequently conferred with his trial counsel during the plea hearing, this record does not demonstrate that Defendant was confused about any of the Crim.R 11(C)(2) matters. To the contrary, Defendant indicated in each and every instance that he understood the matters explained to him by the trial court. Defendant stated that he had no questions or concerns. This record does not demonstrate that Defendant's guilty plea was not entered

knowingly, intelligently and voluntarily. The suggested assignment of error lacks arguable merit.

{¶ 12} In addition to reviewing the possible issue for appeal raised by Defendant's appellate counsel, we have conducted an independent review of the trial court's proceedings and have found no error having arguable merit. Accordingly, Defendant's appeal is without merit and the judgment of the trial court will be affirmed.

BROGAN, J. And DONOVAN, J., concur.

Copies mailed to:

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