

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
SENECA COUNTY**

STATE OF OHIO

CASE NUMBER 13-05-38

PLAINTIFF-APPELLEE

v.

OPINION

CLINTON L. BRACKENS

DEFENDANT-APPELLANT

STATE OF OHIO

CASE NUMBER 13-05-39

PLAINTIFF-APPELLEE

v.

OPINION

CLINTON L. BRACKENS

DEFENDANT-APPELLANT

STATE OF OHIO

CASE NUMBER 13-05-40

PLAINTIFF-APPELLEE

v.

OPINION

CLINTON L. BRACKENS

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeals from Municipal Court.

Case Nos. 13-05-38, 13-05-39, 13-05-40

JUDGMENTS: Judgments affirmed.

DATE OF JUDGMENT ENTRIES: May 1, 2006

ATTORNEYS:

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For Appellee.

Shaw, J.

{¶1} The defendant-appellant, Clinton L. Brackens (“Brackens”), appeals the October 31, 2005, Judgments entered in the Tiffin Municipal Court, Seneca County, Ohio regarding Case Nos. TRD 0503506A, TRD 0503506B, and TRD 0503506C.

{¶2} Although originally placed on our accelerated calendar, we have elected, pursuant to Local Rule 12(5), to issue a full opinion in lieu of a judgment entry.

{¶3} On October 30, 2005, Brackens was charged with three counts of driving under suspension in violation of R.C. 4510.16(A), 4510.11(A), and 4510.21(A), each being a misdemeanor in the first degree. On October 31, 2005 at his arraignment, he plead guilty to all three charges. The trial judge addressed the defendants in the court as a whole by stating that this was their arraignment and explained the procedures to the arraignment. Then he addressed the available plea options and the rights one has under these options. The trial court then advised Brackens as follows:

The Court: Mr. Brackens, this is case number 5-TRD-3506 A through C. These are complaints filed by Officer Vallery. It states that you, Clinton Brackens, on October 30th 2005, at 2103 did operate a motor vehicle upon Apple Street in the City of Tiffin, Seneca County, Ohio. And, you operated said motor vehicle while under a non-compliance suspension in violation of Section 4510.16(A) of the Ohio Revised Code this is a misdemeanor of the first degree with a maximum possible penalty of up to a \$1,000 fine, plus cost, up to six months in jail, up to a one year operator license suspension, a thirty day immobilization impoundment of the vehicle and the plates if it was yours but it was not, so, that does not apply, and six points. The mandatory minimum penalty for this is six points.

You've also been charged with driving while under a license forfeiture suspension in violation of Section 4510.11(A) of the Ohio Revised Code. This is a misdemeanor in the first degree with a maximum possible penalty of up to a \$1,000 fine, plus

costs, with up to six months in jail, up to a one year operator license suspension and six points. A mandatory minimum penalty is six points.

You've also been charged with driving while under a (Inaudible) suspension in violation of Section 4510.21(A) of the Ohio Revised Code. This is a misdemeanor of the first degree with the maximum possible penalty of up to six months in jail and up to a \$1,000 fine, plus cost. It carries with it six points. But, the maximum number of points you can receive out of this entire incident is six.

The Court: Mr. Brackens, I have in front of me this ticket, did you get a copy of it?

Mr. Brackens: Yes.

The Court: Did you read over it?

Mr. Brackens: Yes, sir.

The Court: Do you understand what you've been charged with?

Mr. Brackens: Yes, sir.

The Court: What's that?

Mr. Brackens: Uh, driving under suspensions.

The Court: Do you understand what the maximum possible penalties for each of those offenses are?

Mr. Brackens: yes, sir.

The Court: What are they?

Mr. Brackens: Uh, six months for each one. Uh, I think, uh, at least six points for each one.

The Court: Right. Well, although, the le—the most you can get out of any of this is six points. What else?

Mr. Brackens: Uh, not –

The Court: Up to a \$1,000 fine.

The Court: Up to a, uh ----- uh, one year operator's license suspension. Okay? Any questions about what you've been charged with, or what the maximum possible penalties are?

Mr. Brackens: Uh, no.

The Court: Mr. Brackens, were you present when I was going over the rights in court?

Mr. Brackens: yes.

The Court: Did you understand those rights as I was explaining them?

The Court: Any questions either about the charge, the penalty, or what your plea options are?

Mr. Brackens: No.

The Court: What would you like to do? Do you wish to enter a plea, or do you wish for a short continuance in order to speak with an attorney?

Mr. Brackens: Uh ---- Okay. Now, all three of these are separate, right?

The Court: Hm-hmm.

The Court: So, in other words (Inaudible – overtalking) –

The Court: You have three –

The Court: --- different suspensions.

Mr. Brackens: Yeah. So, I mean, that – I could actually get like, you know, a year and a half in jail?

The Court: Potentially.

Mr. Brackens: Well, I'll just go ahead and I'll just plead guilty.

{¶4} The Court: And, you understand by entering a plea of guilty, it's a complete admission of your guilt?

Mr. Brackens: Yes, sir.

The Court: And, you understand what the maximum possible penalties are?

Mr. Brackens: Yes, sir.

Arrest and Sentencing p. 3-9. Hearing trans. (Emphasis added.)

The trial court accepted Bracken's guilty plea and found him guilty of the charged offenses. The trial court then sentenced him to 180 days in the Seneca County Jail with 120 days conditional suspension and two years of reporting probation on the three convictions to be served concurrently.

{¶5} On November 14, 2005, Brackens filed his notice of appeal raising the following assignment of error:

Assignment of Error

THE TRIAL COURT ERRED BY FAILING TO FULLY ADVISE THE APPELLANT OF THE EFFECT OF HIS GUILTY PLEA AND THEREFORE THE APPELLANT'S PLEA OF GUILTY WAS NOT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY MADE.

{¶6} In Bracken's assignment of error, he alleges that the trial court erred by failing to fully advise him of the effect of his guilty plea and therefore his guilty plea was not made knowingly, intelligently and voluntarily.

{¶7} In *State v. Watkins*, 99 Ohio St.3d 12, 788 N.E.2d 635, 2003-Ohio-2419, the Ohio Supreme Court held that because the defendant's charge for a DUI in violation of R.C. 4511.19(A)(1) involved violations of traffic ordinances, the Traffic Rules applied. Similarly, Brackens was charged with and plead guilty to violations of R.C. 4510.16(A), 4510.11(A), and 4510.21(A) also involving violations of Traffic Rules.

{¶8} In *Watkins*, the Supreme Court held that where a defendant is charged with a petty misdemeanor traffic offense and pleads guilty, a trial court must comply with the requirements of Traf.R. 10(D) by informing the defendant of the information contained in Traf.R. 10(B). *Watkins* at syllabus. The Supreme Court noted that the Traffic Rules applied to the case since it involved a DUI and

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that Crim.R. 11(E), applies to non-traffic misdemeanors involving petty offenses.

Traf. R. 10(D) provides:

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.)

Traf.R. 10(B) states the effect of pleas of guilty and no contest. Traf.R. 10(B) provides in relevant part:

With reference to the offense or offenses to which the plea is entered:

(1) The plea of guilty is a complete admission of the defendant's guilt.

(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 proceedings.

{¶9} The Supreme Court concluded in *Watkins* that there is no constitutional mandated informational requirement for defendants charged with misdemeanors. In addition, it held that “[t]he protections that the Criminal Rules provide to felony defendants should not be read into the Ohio Traffic Rules, which deal only with misdemeanor offenses.” Therefore, 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; however, it must “compl[y] with Traf.R. 10(D) by informing the defendant of the information contained in Traf.R. 10(B).” *Watkins*, 99 Ohio St.3d at ¶26, 788 N.E.2d 1042.

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{¶10} In this case, the trial court did advise Brackens of the effect of his guilty plea under Traf. R. 10(B). Accordingly, Bracken's assignment of error is overruled and the October 31, 2005 Judgments entered in the Tiffin Municipal Court, Seneca County, Ohio regarding Case Nos. TRD 0503506A, TRD 0503506B, and TRD 0503506C are affirmed.

Judgments affirmed.

ROGERS and CUPP, JJ., concur.

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