

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

STATE OF OHIO

CASE NUMBER 5-06-17

PLAINTIFF-APPELLEE

v.

OPINION

JENNIFER L. WEAKS

DEFENDANT-APPELLANT

STATE OF OHIO

CASE NUMBER 5-06-18

PLAINTIFF-APPELLEE

v.

OPINION

JENNIFER L. WEAKS

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeals from Common Pleas Court.

JUDGMENTS: Judgments affirmed.

DATE OF JUDGMENT ENTRIES: October 2, 2006

ATTORNEYS:

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For Appellee.

Shaw, J.

{¶1} The defendant-appellant, Jennifer L. Weaks (“Weaks”), appeals the March 8, 2006 Judgments of conviction and sentence entered in the Common Pleas Court of Hancock County, Ohio.

{¶2} This appeal arises from two cases instituted in the Common Pleas Court of Hancock County, Ohio. In Case Number 2005-CR-77, Weaks was arrested for possession of cocaine. On April 3, 2005, Weaks was indicted by the Hancock County Grand Jury on one count of knowingly possessing a controlled substance in violation of R.C. 2925.11(A), a felony of the fourth degree. On June 27, 2005, Weaks advised the court that she did not wish to tender a change of plea and her attorney requested leave of the court to consider filing a motion to suppress.

{¶3} On July 12, 2005, a second indictment was filed against Weaks instituting Case Number 2005-CR-143. Weaks was indicted by the Hancock

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County Grand Jury on four counts of knowingly selling a controlled substance in violation of R.C. 2925.03(A). Two of the counts were charged as felonies of the fourth degree, and two counts were charged as felonies of the third degree. Two of the counts were committed within one thousand feet of the boundaries of school premises.

{¶4} On November 16, 2005, the State of Ohio filed a motion requesting that Case Number 2005-CR-77 and Case Number 2005-CR-143 be consolidated for trial. As a result of the motion, the trial court ordered on December 12, 2005 that the two cases be consolidated for trial. On January 20, 2006, Weaks' counsel filed a motion to continue claiming Weaks failed to cooperate with him in order to prepare for trial. Counsel also filed a motion to challenge the competency of Weaks because he was concerned that his client was making "bizarre assertions."

{¶5} On January 23, 2006, Weaks decided she did not wish to proceed to trial opting instead to enter into a negotiated plea resolution. Weaks plead guilty to the offenses in both cases. On March 8, 2006, the trial court sentenced Weaks to a prison term of four years and ten months.

{¶6} On April 14, 2006, Weaks filed her notice of appeal raising the following assignments of error:

First Assignment of Error

THE COURT ERRED IN ACCEPTING APPELLANT'S PLEA OF GUILTY, SINCE IT WAS NOT MADE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY.

Second Assignment of Error

APPELLANT WAS DENIED HER CONSTITUTIONAL [RIGHT OF] EFFECTIVE ASSISTANCE OF COUNSEL.

{¶7} Weaks asserts in her first assignment of error that the trial court erred in accepting her guilty plea because it was not made knowingly, intelligently, and voluntarily.

{¶8} Crim. R. 11 (C) states:

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

- (a.) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.**
- (b.) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.**
- (c.) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a**

reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶9} Weaks was properly advised under Crim. R. 11 in the instant case. The record establishes that Crim. R. 11(C)(2)(a) has been satisfied. The trial court personally addressed Weaks regarding her pleas of guilty in accordance with Crim. R. 11(C)(2). Weaks responded that she did understand the nature of the charges. The trial court also informed Weaks of the maximum penalty. Furthermore, the trial court stated that Weaks would not be eligible for judicial release until she served her mandatory term.

{¶10} With respect to Crim. R. 11(C)(2)(b), the record states:

Court: * And the first thing I want to make sure you understand is that you have pled not guilty before and now you are going to change your plea to guilty; is that correct?**

Defendant: Yes.

Court: Do you understand that when you change your plea and say to a judge, I am guilty, you are saying in effect, judge, I did these things?

January 23, 2006 Trans. p. 56.

Court: Have you had enough time to think about this important decision?

Defendant: I believe so.

Court: Are you certain you want to go forward today?

Defendant: Yes.

Court: Do you understand you are pleading guilty, you are admitting to committing these offenses?

Defendant: Yes. Yeah.

Court: If you have any doubts and don't think you are guilty, I am not going to coerce you into changing your mind, that's your decision. You want to go forward and enter your changes of plea this morning or actually this afternoon now?

Defendant: Yeah. Yes.

January 23, 2006 Trans. p. 79-82.

Court: [T]he Court has inquired extensively of Miss Weaks relative to her understanding of these proceedings. She understands the nature of all five offenses, we reviewed the potential penalties, we talked about the Court's sentencing options, she understands the consequences of pleading guilty. She understands that she's losing certain constitutional rights which we reviewed extensively as well.

She understands the recommendations. She understands the consequences of that recommendation, the amount of time she must do, and her eligibility with respect to judicial release. We reviewed a number of matters as well relative to post-release control and her right to an appeal, potential for community control, and the fact that there is no guarantee at sentencing upon entering a plea.

In all respects from my examination of Miss Weaks, I believe that after a discussion with Mr. Galose, a review of her plea agreements, her discussion here in open court, that she is making a knowing, voluntary and intelligent decision to withdraw her pleas of not guilty and tender pleas of guilty.

Therefore, as it relates to case 2005-CR-77, I will accept her change of plea, and I will order that that be accepted, and based upon my findings I find her

guilty of the offense of possession cocaine, a felony of the fourth degree, in violation of Section 2925.11 of the Revised Code.

As it relates to Case 2005-CR-143, moreover the Court makes the same findings, and I will permit Miss Weeks to withdraw her pleas of not guilty, I will accept her pleas of guilty and find her guilty of each of the four offenses of trafficking in cocaine as set forth in the indictment. ***

Having then found the Defendant guilty of each five of the offenses, I do agree while there is a recommendation of, a presentence investigation would be appropriate, I do so order a presentence investigation in this matter.

January 23, 2006 Trans. p. 95-97.

{¶11} Pursuant to Crim. R. 11(C)(2)(c), the record states:

Court: * And the first thing I want to make sure you understand is that you have pled not guilty before and now you are going to change your plea to guilty; is that correct?**

Defendant: Yes.

Court: Do you understand that when you change your plea and say to a judge, I am guilty, you are saying in effect, judge, I did these things?

Court: The other thing I want to make sure you understand as it pertains to both of these cases that are consolidated for trial today has to do with losing your right to a trial by jury. If you plead guilty today, you are not going to have a trial. Do you understand?

Defendant: Yes.

Court: With respect to your right to trial by jury, I want to make sure you understand how this system

works. If we go to trial you are presumed innocent. And by that I mean you do not have to prove yourself innocent, Mr. Miller has the burden through his office to prove your guilt. Do you understand the difference? That is a yes?

Defendant: Yes.

Court: And he has to prove it to a level called beyond a reasonable doubt, a high threshold of evidence that he has to prove at that trial; do you understand that?

Defendant: Yes.

Court: If we go to trial, Mr. Miller will present evidence, Mr. Galose can challenge the evidence, cross examine the witnesses the State calls, and even on your behalf make sure there are witnesses here to testify for you. Do you understand these rights?

Defendant: Yes.

Court: You do not have to testify. You cannot be forced to take the witness stand, nor can your silence if you were to go to trial and not testify be used against you; do you understand that?

Defendant: Yes.

Court: You have the right to testify if you want but only you can make that decision. Do you understand that important distinction?

Defendant: Yes.

January 23, 2006 Trans. p. 56-63.

{¶12} In sum, the record establishes that Crim. R. 11(C)(2) has been satisfied. Moreover, the record indicates that the trial court inquired extensively of Weaks understanding of the proceedings, her rights and the effect of entering a guilty plea. Based on this record, it is our conclusion that Weaks was properly advised under Crim. R. 11 and that the pleas were knowingly, intelligently and voluntarily entered. Accordingly, Weaks' first assignment of error is overruled.

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{¶13} Weaks alleges in her second assignment of error that she was denied effective assistance of counsel. Specifically, she claims that her change of plea from not guilty to guilty on the morning of the trial was not made knowingly, intelligently, or voluntarily. Furthermore, she argues that she and her counsel did not meet for a sufficient period of time to prepare for her case, her counsel did not provide her with the knowledge necessary to enter into trial or the plea discussions, and her counsel did not take the opportunity to respond to the State's motion for consolidation of the two cases.

{¶14} In order to prevail on a claim of ineffective assistance of counsel, Weaks must establish both of the following:

1. **Trial counsel made errors so serious he was no longer functioning as counsel in the manner guaranteed by the Sixth Amendment; and**
2. **There is the reasonable probability that were it not for trial counsel's errors, the results of the trial would have been different.**

See *Strickland v. Washington* (1984), 466 U.S. 668; *State v. Bradley* (1989), 42 Ohio St.3d 136. Thus, under this standard, Weaks must show that her counsel's performance fell below an objective standard of reasonable representation and that prejudice arose from that deficient performance. *Bradley*, 42 Ohio St.3d at 142. Furthermore, the court must look to the totality of the circumstances and not

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isolated instances of an allegedly deficient performance. *State v. Malone* (Dec. 13, 1989), Montgomery App. No. 10564.

{¶15} In this case, the record establishes that there were several pretrial conferences regarding Weaks' two cases. Her counsel did meet with Weaks on these occasions and followed her instructions to schedule the matters for a change of plea, to file a motion for continuing the case, and establishing the trial dates. Her counsel arranged to meet with her on Saturday before the trial; however, she failed to keep this appointment.

{¶16} It is evident Weaks failed to maintain proper communications with her attorney. In fact, at one point she left a meeting with her attorney to move her car and never returned to his office. She further complained that her attorney failed to ensure he had her correct mailing address. However, she failed to assume her responsibility for her criminal case because it was her responsibility to keep her attorney informed of any change of address.

{¶17} Pursuant to the January 23, 2006 plea hearing, Weaks and her counsel stated the following in open court, in response to inquiry from the trial judge:

Galose: Your Honor, as an officer of the Court, I listened to the CD's, I spent the entire weekend just about all day Sunday and the afternoon Saturday. I reviewed the discovery. I have reviewed the witnesses the State would call, I have reviewed impeachment evidence and I am prepared to go

forward, but I believe that some time has to be spent with my client to discuss legal ramifications of potential outcomes of any trial, that's why time is necessary to meet with them the week of trial.

Court: Miss Weaks, why didn't you meet with Mr. Galose on Saturday to prepare for trial?

Defendant: I don't know. Because if you listen to the tapes I heard the tapes. I heard the tapes.

Court: Did he or did he not tell you to be in his office?

Defendant: If I could make it there at 5, I said, yes, I would make it. I couldn't make it, I was out of town, I didn't make it down here because he wanted to talk about the tapes.

Court: Why didn't you make it down?

Defendant: Because it seems the same, every time I go down there the only thing they're telling me, the witness is going to be there, Kim is going to be there. You know, it's the same old thing. I sat in jail for four hours listening four hours worth of nothing on the tapes.

Court: In other words you didn't see any benefit to it, you are otherwise prepared to go to trial?

Court: And so you elected not to appear with Mr. Galose because you didn't see a benefit in assisting him in preparing for the trial for today if I understand what you said. Because you have been through these matters with him before, you thought it would be a repetition of what we talked about previously.

Defendant: Yes.

January 23, 2006 Trans. p. 13-19. Furthermore, Weaks was asked

Court: Now, do you, are you satisfied with the advice and counsel that his office has provided you?

Defendant: Yes, I am.

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January 23, 2006 Trans. p. 56.

{¶18} Weaks also contends that her counsel failed to object to the consolidation of her cases. Her counsel did make a motion to sever the cases during the plea hearing and explained that he had been unable to timely respond to the consolidation motion because he had been on vacation. However, Weaks fails to show that the outcome of her case would have been different, but for this alleged error. Furthermore, the trial court stated:

Court: Moreover, on the merits, I looked at both of these cases, while I know that joinder is favored in the law to save resources and the like, I am very diligent in and don't grant much of these motions for consolidation. In reviewing these two cases, we are talking about four alleged trafficking cases and one possession case. We are talking about the same substance, we are talking about similar elements of the offense in terms of culpable mental states and, which are all critical elements of this offense. The one difference, of course, is the conduct as to whether a person possesses or is involved in the sale of drugs.

And on balance, given it's one additional case to four others, I didn't see that there was substantial prejudice one weighed against the other or benefits so I joined and I still feel the Defendant would not be unfairly prejudiced.

{¶19} Finally, Weaks alleges that her counsel should have filed a more timely request to have her competence evaluated. Her counsel did request a continuance on January 23, 2006 to determine Weaks competency because he

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noticed through her inaction to appear to two scheduled meetings with him, one on January 20, 2006 and the other on January 21, 2006, that she was behaving “eratically.” Her counsel did request to have her competency evaluated on the first possible day after noticing her behavior which shows that he did request her competency be evaluated in a timely manner.

{¶20} Upon review of the record, it is our conclusion that the evidence in this case does not establish that Weaks’ counsel provided ineffective assistance of counsel. The actions taken by Weaks’ counsel does not fall below an objective standard of reasonable representation. Nor, in this case, did they create any reasonable probability of a different outcome. Therefore, Weaks’ second assignment of error is overruled.

{¶21} Accordingly, Weaks’ assignments of error are overruled and the March 8, 2006 Judgments of conviction and sentence entered in the Common Pleas Court of Hancock County, Ohio are affirmed.

Judgments affirmed.

BRYANT, P.J., and CUPP, J., concur.

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