

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Case No. 24CA4059
	:	
v.	:	
	:	
Dameon Green,	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	

APPEARANCES:

Bruce K. Hust, Cincinnati, Ohio, for Appellant.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay Willis, Scioto County Assistant Prosecuting Attorney, Portsmouth, Ohio, for Appellee.

Smith, P.J.

{¶1} Appellant, Dameon Green, appeals the judgment of the Scioto County Court of Common Pleas convicting him of one first-degree felony count of trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(2) and (C)(9)(g). On appeal, Green raises a single assignment of error, contending that the trial court erred to his prejudice when it accepted a guilty plea that was not made knowingly and intelligently. However, because we find no merit to Appellant’s sole assignment of error, it is overruled and the judgment of the trial court is affirmed.

FACTS AND PROCEDURAL HISTORY

{¶2} We initially note that Green has failed to provide hearing transcripts to this Court. Although his appellate brief cites to a July 10, 2023 hearing transcript, no transcripts were made part of the appellate record. Further, because this matter ultimately resulted in the entry of a guilty plea in which Green's trial counsel waived a statement of the facts and stipulated to the elements of the offense, the facts forming the basis of the charges herein are minimal.

{¶3} After reviewing the record that was transmitted to this Court, it appears that Appellant was initially indicted on eight felony drug-related charges, including trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(2) and (C)(9)(h), a first-degree felony, on November 22, 2022. The trafficking in a fentanyl-related compound charge included two firearm specifications pursuant to R.C. 2941.141(A) and R.C. 2941.1417(A). A superseding indictment was thereafter filed on December 22, 2022, again charging Appellant with first-degree felony trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(2) and (C)(9)(h), along with seven other drug-related felonies. The trafficking in a fentanyl-related compound charge contained in the superseding indictment included the two previous firearm specifications, but added a major drug offender specification pursuant to R.C. 2941.1410(B).

{¶4} The record demonstrates that Appellant eventually entered into plea negotiations with the State which resulted in him pleading guilty to an amended charge of trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(2) and (C)(9)(g), still a first-degree felony, in exchange for the dismissal of all other pending counts. The plea agreement also contained an agreed sentence, which was imposed by the trial court. Appellant was ultimately sentenced to a mandatory, minimum prison term of 11 years, up to a maximum term of 16.5 years by judgment entry dated July 12, 2023.

{¶5} Appellant did not immediately appeal from that judgment; however, he filed a pro se motion for leave to file a delayed appeal on October 30, 2023. That filing was accompanied by a pro se motion for appointment of counsel and a motion for preparation of a complete transcript of proceedings at the State's expense. The State opposed the motions. The trial court denied the motion for appointment of counsel and motion for preparation of the transcripts on November 22, 2023. This Court then denied Appellant's motion for leave to file a delayed appeal on November 27, 2023.

{¶6} Thereafter, another motion for leave to file a delayed appeal was filed on January 18, 2024, this time by retained counsel. At the same time, counsel filed a statement, praecipe, and notice to the court reporter requesting transcripts for hearings held between November 22, 2022 and July 12, 2023. This Court granted

Appellant's second motion for leave to file a delayed appeal on March 6, 2024. A notice of transmission of the record was also filed on March 6, 2024. The notice stated that the record was being transmitted without exhibits. No extensions to obtain the requested transcripts were requested or granted. Although it appears from the record that retained counsel obtained a copy of at least one transcript, the appellate record was never supplemented to include any transcripts. The case was submitted for decision on the briefs on June 17, 2024, and the matter is now before us, Appellant having raised a single assignment of error through retained counsel.

ASSIGNMENT OF ERROR

- I. THE TRIAL COURT ERRED TO THE SUBSTANTIAL PREJUDICE OF DEFENDANT-APPELLANT WHEN IT ACCEPTED A GUILTY PLEA THAT WAS NOT MADE KNOWINGLY AND INTELLIGENTLY.¹

LEGAL ANALYSIS

{¶7} In his sole assignment of error, Appellant contends that the trial court erred to his substantial prejudice when it accepted a guilty plea that was not made knowingly and intelligently. More specifically, he argues that the trial court did

¹ Attached to Appellant's brief that was prepared by retained counsel is a document entitled "Appendix A Pro Se Assignments of Error" which purports to raise eight pro se assignments of error in addition to the single assignment of error raised by appellate counsel. As noted by the State, these "assignments" contain no analysis or argument. Further, as also noted by the State, Appellant is not entitled to "hybrid representation." See *State v. Rexroad*, 2023-Ohio-356, ¶ 39 (4th Dist.), citing *State v. Lamb*, 2018-Ohio-1405, ¶ 57 (4th Dist.) (Hybrid representation is prohibited); see also *State v. Sinkovitz*, 2014-Ohio-4492, fn.3 (finding no right to hybrid representation on appeal), citing *State v. Martin*, 2004-Ohio-5471, paragraph one of the syllabus; *State v. Perotti*, 1991 WL 87303, fn. 2 (May 15, 1991, 4th Dist.) ("[A] criminal defendant has no constitutional rights to a 'hybrid' representation which would allow him to file briefs, pro se, to supplement those filed by his counsel"). Thus, we will not address these pro se assignments of error.

not explain the effect of a guilty plea, primarily that a guilty plea is a complete admission of guilt. He argues that in pleading guilty, he did not understand that he was “forsaking any challenge to racial profiling” or “other avenues” of challenging his conviction and therefore, his plea was not knowing and intelligent. The State responds by arguing that Appellant was afforded a hearing that fully complied with Crim.R. 11(C), that the trial court reviewed each of the constitutional rights Appellant was waiving, and that Appellant has failed to show that the trial court’s colloquy with him failed to comply with Crim.R. 11, or that his plea was anything other than knowing, intelligent, and voluntary.

Standard of Review

{¶8} Crim.R. 11(C)(2) governs the acceptance of guilty pleas by the trial court in felony cases and provides that a trial court should not accept a guilty plea without first addressing the defendant personally and:

- (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.

See State v. Littler, 2023-Ohio-4759, ¶ 10.

{¶9} “ ‘Thus, prior to accepting a guilty plea, a “court must inform the defendant that he is waiving his privilege against compulsory self-incrimination, his right to jury trial, his right to confront his accusers, and his right of compulsory process of witnesses.” ’ ” *Littler* at ¶ 11, quoting *State v. Tolle*, 2022-Ohio-2839, ¶ 9 (4th. Dist.), in turn quoting *State v. Ballard*, 66 Ohio St.2d 473 (1981), paragraph one of the syllabus. *See also* Crim.R. 11(C)(2)(c). “In addition to these constitutional rights, the trial court must determine that the defendant understands the nature of the charge, the maximum penalty involved, and the effect of the plea.” *State v. Montgomery*, 2016-Ohio-5487, ¶ 41; *Littler* at ¶ 11.

{¶10} “When reviewing a defendant's constitutional rights (right to a jury trial, right to call witnesses, etc.), a trial court must strictly comply with Crim.R. 11(C)(2)(c).” *Littler* at ¶ 12, citing *Tolle, supra*, at ¶ 10; *State v. Veney*, 2008-Ohio-5200, ¶ 18. “In contrast, when reviewing a defendant's non-constitutional rights (maximum penalty involved, understanding effect of plea, etc.), a trial court must substantially comply with Crim.R. 11(C)(2)(a) and (b).” *Littler* at ¶ 12, citing *Tolle* at ¶ 11; *Veney*, ¶ 18. “ ‘[S]ubstantial compliance’ means that ‘under the totality of the circumstances the defendant subjectively understands the

implications of his plea and the rights he is waiving.’ ” *State v. Morrison*, 2008-Ohio-4913, ¶ 9 (4th Dist.), quoting *State v. Puckett*, 2005-Ohio-1640, ¶ 10 (4th Dist.), citing *State v. Stewart*, 51 Ohio St.2d 86 (1977); *State v. Carter*, 60 Ohio St.2d 34 (1979).

{¶11} The Supreme Court of Ohio held as follows in *Veney* regarding a trial court’s acceptance of guilty pleas:

“When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution.”

Veney, supra, at ¶ 7, quoting *State v. Engle*, 74 Ohio St.3d 525, 527 (1996); *State v. Montgomery, supra*, at ¶ 40; *State v. Barker*, 2011-Ohio-4130, ¶ 9. *See also Tolle, supra*, at ¶ 12.

{¶12} Thus, “ ‘[i]t is the trial court’s duty * * * to ensure that a defendant “has a full understanding of what the plea connotes and of its consequence.” ’ ” *Tolle* at ¶ 13, quoting *Montgomery* at ¶ 40, in turn quoting *Boykin v. Alabama*, 395 U.S. 238, 244 (1969); *State v. Conley*, 2019-Ohio-4172, ¶ 34 (4th Dist.). When appellate courts evaluate whether a defendant knowingly, intelligently, and voluntarily entered a guilty plea, a court must independently review the record to ensure that the trial court complied with the Crim.R. 11 constitutional and procedural safeguards. *See Littler, supra*, at ¶ 14, citing *Tolle* at ¶ 14. *See also*

State v. Leonhart, 2014-Ohio-5601, ¶ 36; *Veney*, *supra*, at ¶ 13. (Internal citations omitted.)

Legal Analysis

{¶13} As set forth above, Green argues that the trial court failed to ensure that he understood the effect of a guilty plea, primarily that it was a complete admission of guilt, barring a subsequent challenge to racial profiling, in particular. Because the effect of a guilty plea falls within the notification of nonconstitutional rights, the trial court was required to substantially comply with Crim.R. 11(C)(2)(a) and (b) in providing the advisements. To determine whether the trial court substantially complied with its duty to ensure that Green subjectively understood the nonconstitutional rights that he was waiving by entering a guilty plea, we must consider the totality of the circumstances.

{¶14} Here, as set forth above, Green was originally indicted for first-degree felony trafficking in a fentanyl-related compound, in violation of R.C. 2925.03(A)(2) and (C)(9)(h), along with seven additional drug-related felony offenses. A superseding indictment was later filed charging Green with eight felony offenses, one of which was first-degree felony trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(2) and (C)(9)(h). Green entered into plea negotiations with the State, ultimately agreeing to plead guilty to one amended count of trafficking in a fentanyl-related compound, a first-degree felony

in violation of R.C. 2925.03(A)(2) and (C)(9)(g), in exchange for the dismissal of all remaining counts of the pending indictments.

{¶15} The record before us reveals that the trial court accepted Green's guilty plea and imposed the sentence agreed upon by both Green and the State, which was a minimum, mandatory prison term of 11 years, up to a maximum prison term of 16.5 years. It appears from the dates of the entries filed below that Green's change-of-plea and sentencing hearings were held on the same day. The record further indicates that in conjunction with entering his guilty plea, Green signed a form entitled "Waiver of Rights," which contained his written plea of guilt along with a waiver of his constitutional rights. The form, which was signed by the judge, prosecuting attorney, and defense counsel, stated as follows:

The Court finds that the defendant was advised of all applicable Constitutional rights herein, and further finds that the defendant understands the nature of the charges and the consequences of a guilty plea, and that the guilty plea to each count of the indictment herein was knowingly, voluntarily, and intelligently made.

Thus, there is evidence in the record that Appellant was fully advised of the rights he was waiving by entering a guilty plea, and specifically that he understood the consequences of a guilty plea.

{¶16} Appellant's argument on appeal primarily hinges on a claim that he was not informed of the effect of entering a guilty plea, that entering a guilty plea was a complete admission of guilt, or that in pleading guilty he was waiving the

right to raise a challenge based upon a claim of racial profiling. However, our review of this argument is very limited without a transcript of the proceedings below. As set forth above, Appellant failed to include a transcript of the change-of-plea hearing in the record for purposes of appeal. The trial court record was transmitted to this Court without the transcripts of the proceedings and although it appears appellate counsel obtained a copy of the transcripts, the appellate record was not supplemented to include the transcripts.

{¶17} We encountered a similar situation in *State v. Goff*, 2023-Ohio-4823 (4th Dist.). In *Goff*, we observed that:

“[w]hen portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the Court has no choice but to presume the validity of the lower court's proceedings, and affirm.”

Goff at ¶ 15, quoting *Knapp v. Edwards Lab.*, 61 Ohio St.2d 197, 199 (1980).

In *Goff*, we reasoned that “[b]ased upon the authority of *Knapp* alone, we are authorized to simply presume the regularity of the record and the trial court's decision.” *Goff* at ¶ 16. Even so, we endeavored to review the assignments of error to the extent possible from the information that was properly before us. *Id.*

{¶18} Here, although our review is hampered by the lack of transcripts in the record, after reviewing the information that is present in the record we conclude that, under the totality of the circumstances, the defendant subjectively

understood the implications of his plea and the rights he was waiving. For instance, although the transcript is not actually part of the appellate record, the State's brief quotes the following portion of the plea hearing transcript, as stated by Appellant:

I took my plea. I respect it the deal that you offered for me. I appreciate it and would it have turned out worse, who knows. I don't even wanna see I just want to come home and see my – see my kids and get my life together and I'm going to right. I want to get rehabilitated. I appreciate the deal what you did and it will take me a long way . . . It will take me a long way in life. I accept everything that coming to me.

Despite Appellant's argument that the trial court did not explain the effect of a guilty plea, we must presume the regularity of the record below in the absence of the transcript and further, the portion of the record that is actually before us for review does not support Appellant's arguments. We therefore find that the trial court substantially complied with the notification requirements related to the waiver of Appellant's nonconstitutional rights when it accepted Appellants' guilty plea.

{¶19} In light of the foregoing, we find no merit to Appellant's sole assignment of error and we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J., concur in Judgment and Opinion.

For the Court,

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.