

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

CRISTY JONES

Defendant-Appellant

: JUDGES:

: Hon. Patricia A. Delaney, P.J.

: Hon. W. Scott Gwin, J.

: Hon. John W. Wise, J.

: Case No. 24CA0004

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Coshocton County
Court of Common Pleas, case no.
2023CR00028

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

September 25, 2024

APPEARANCES:

For Plaintiff-Appellee:

CHRISHANA L. CARROLL
ASSISTANT PROSECUTOR
318 Chestnut St.
Coshocton, OH 43812

For Defendant-Appellant:

CHRISTOPHER C. BAZELEY
9200 Montgomery Road, Suite 8A
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Delaney, P.J.

{¶1} Appellant Cristy Jones appeals from the February 21, 2024 Judgment Entry of the Coshocton County Court of Common Pleas revoking her term of ILC and sentencing her to a prison term of 11 months. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} This case arose from appellant's indictment upon one count of aggravated drug possession (methamphetamine) pursuant to R.C. 2925.11(A) and R.C. 2925.11(C)(1)(a), a felony of the fifth degree. Appellant filed a motion for intervention in lieu of conviction (ILC) and the trial court scheduled a hearing.

{¶3} Prior to the hearing, the trial court ordered a presentence investigation. Appellee advised the trial court it would not oppose appellant's motion for ILC if she entered a plea of guilty as charged.

{¶4} On June 23, 2023, the parties came before the trial court; appellant was represented by counsel. Appellant was advised of the maximum possible penalty; the trial court inquired as to appellant's understanding of the charge and the potential penalties. Appellant answered in the affirmative. Appellant further acknowledged she understood no one could make any promises as to sentencing; she had complete confidence in her attorney; and she was voluntarily entering the plea.

{¶5} The trial court accepted appellant's guilty plea and held the plea in abeyance pending completion of the terms of ILC. The trial court imposed a sentence of three years of ILC and set forth the terms and conditions.

{¶6} On January 30, 2024, appellee moved to revoke appellant's ILC sanctions for failure to comply with terms and conditions, to wit: appellant tested positive for

methamphetamine and amphetamine while in Riverside Recovery, was unsuccessfully discharged from Riverside Recovery on June 27, 2023, and failed to report to her supervising officer on July 5, 2023.

{¶7} The matter was scheduled for a hearing on February 13, 2024, and counsel was appointed. Appellant was advised of her constitutional and statutory rights, waived her right to a probable cause hearing, and admitted to the violations asserted in the motion to revoke ILC. The trial court found appellant violated the terms of ILC, accepted her previously-entered plea of guilty, found her guilty of the single count of aggravated drug possession, and sentenced her to a term of 11 months of local incarceration.

{¶8} Appellant appealed from the trial court’s judgment entry of conviction and sentence.

{¶9} Appellant raises two assignments of error:

ASSIGNMENTS OF ERROR

{¶10} “I. JONES’ GUILTY PLEA WAS NOT KNOWINGLY, VOLUNTARILY, OR INTELLIGENTLY GIVEN.”

{¶11} “II. THE TRIAL COURT’S DECISION TO IMPOSE A SENTENCE OF INCARCERATION UPON JONES FOR VIOLATING THE TERMS OF HER INTERVENTION IN LIEU OF CONVICTION (ILC) WAS AN ABUSE OF DISCRETION.”

ANALYSIS

I.

{¶12} In her first assignment of error, appellant argues her guilty plea on June 23, 2023 was not knowingly, voluntarily, or intelligently given. We disagree.

{¶13} In deciding whether to accept a plea, a court must determine whether a defendant is making the plea knowingly, intelligently, and voluntarily. *State v. Sanders*, 5th Dist. Licking No. 2023 CA 00083, 2024-Ohio-2235, ¶ 14, citing *State v. McDaniel*, 4th Dist. Vinton No. 09CA677, 2010-Ohio-5215, ¶ 8. “In considering whether a guilty plea was entered knowingly, intelligently and voluntarily, an appellate court examines the totality of the circumstances through a de novo review of the record to ensure that the trial court complied with constitutional and procedural safeguards.” *Id.* (Internal quotations and citations omitted).

{¶14} “Before accepting a guilty plea, the trial court should engage in a dialogue with the defendant as described in Crim.R. 11(C).” *Sanders*, supra at ¶ 15, internal citation omitted.

{¶15} Crim. R. 11(C)(2) provides:

(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:

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.

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.

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.

{¶16} In the instant case, the trial court advised appellant of the nature of the charges, the minimum and maximum penalties involved. The trial court also informed appellant of the effects of a guilty plea and the rights she would be waiving as a result of her plea. Appellant confirmed her understanding of the trial court's advisements.

{¶17} When asked if it was still her desire to plead guilty to aggravated drug possession, a felony of the fifth degree, appellant at first answered in the negative. T. 11. The trial court then took a brief recess for appellant to consult with counsel; upon returning to the record, counsel stated appellant was confused about the requirements for ILC. The trial court asked whether she understood everything under discussion and if it was still her desire to plead guilty to aggravated drug possession, a felony of the fifth degree, and appellant replied in the affirmative.

{¶18} Appellant indicated that she was satisfied with the representation afforded her and had sufficient time to discuss the matter with her lawyer. Appellant acknowledged that she had not been threatened or promised anything and she was not under the

influence of drugs or alcohol. Appellant indicated that her plea was voluntary and acknowledged that she understood the nature of the charge against her. Appellant acknowledged all of her rights, indicated that she understood them, and signed the Written Plea of Guilty form.

{¶19} Appellant points to her initial hesitation and answering in the negative when first asked whether she chose to enter a plea of guilty as proof her plea was not knowing, voluntary, and intelligent. Instead, upon our reading of the record, the fact that appellant hesitated before entering the guilty plea reinforces the conclusion that she made a rational choice. *State v. Preston*, 8th Dist. Cuyahoga No. 55036, 1989 WL 11300, *1, *appeal dismissed*, 44 Ohio St.3d 710, 542 N.E.2d 348 (1989). She was assisted by competent counsel aware of the evidence against her, and who counseled appellant as to her choices under the circumstances. *Id.*

{¶20} Moreover, the trial court paused the proceedings and allowed appellant additional time to consult with counsel. Upon appellant's initial hesitation, the trial court took considerable time and effort to ensure that she was fully aware of the plea offer and its consequence, as well as the alternatives available to her. *State v. Goode*, 2nd Dist. Montgomery No. 25340, 2013-Ohio-2119, ¶ 4.

{¶21} The trial court conducted a thorough and complete Crim. R. 11 dialogue with appellant, and her plea was ultimately entered in a knowing and voluntary fashion free of any hesitation or objection. *Id.* Finally, the brief recess the trial court granted in order for appellant to confer with counsel provided appellant a reasonable opportunity to resolve any reservations she may have had. *State v. Sexton*, 2nd Dist. Greene No. CIV.A.

04CA14, 2005-Ohio-449, ¶ 16. The court's subsequent questions and appellant's answers were clear and direct. *Id.*

{¶22} We conclude appellant's guilty plea was knowingly, intelligently, and voluntarily entered, and therefore overrule her first assignment of error.

II.

{¶23} In her second assignment of error, appellant argues the trial court's decision terminating her ILC is an abuse of discretion. We disagree.

{¶24} Appellant was granted ILC pursuant to R.C. 2951.041. ILC is a statutory creation that allows a trial court to stay a criminal proceeding and order an offender to a period of rehabilitation if the court has reason to believe that drug or alcohol usage was a factor leading to the offense. R.C. 2951.041(A)(1). If, after a hearing, the trial court determines that an offender is eligible for ILC, then it shall accept the offender's guilty plea, place the offender under the general control and supervision of the appropriate probation or other qualified agency, and establish an intervention plan for the offender. R.C. 2951.041(C) and (D). The intervention plan shall last at least one year, during which the offender is ordered to abstain from alcohol and illegal drug use, to participate in treatment and recovery-support services, and to submit to regular random testing for drug and alcohol use. R.C. 2951.041(D). If the offender successfully completes the intervention plan, the trial court shall dismiss proceedings against the offender without an adjudication of guilt and may order the sealing of records related to the offense. R.C. 2951.041(E). If the offender fails to comply with any term or condition imposed as part of the intervention plan, the court shall enter a finding of guilt and impose the appropriate sanction. R.C. 2951.041(F).

{¶25} In the instant case, there is no dispute appellant failed to comply with the terms of ILC. Appellant stipulated she violated the terms of ILC, to wit, she failed a drug test, failed to successfully complete the treatment program, and failed to remain in contact with her probation officer. The trial court was therefore within its authority to accept her previously-entered guilty plea:

If the court grants an offender's request for intervention in lieu of conviction and the offender fails to comply with any term or condition imposed as part of the intervention plan for the offender, the supervising authority for the offender promptly shall advise the court of this failure, and the court shall hold a hearing to determine whether the offender failed to comply with any term or condition imposed as part of the plan. If the court determines that the offender has failed to comply with any of those terms and conditions, it may continue the offender on intervention in lieu of conviction, continue the offender on intervention in lieu of conviction with additional terms, conditions, and sanctions, or enter a finding of guilty and impose an appropriate sanction under Chapter 2929. of the Revised Code.

R.C. 2951.041(F).

{¶26} In light of appellant's admitted failure to comply with the terms of ILC, the trial court was within its discretion to terminate ILC and enter a finding of guilty.

{¶27} Appellant argues the trial court abused its discretion in imposing an 11-month term of local incarceration because appellant is physically disabled, which contributed to her failure to comply with the terms of ILC. We do not discern, and

[Cite as *State v. Jones*, 2024-Ohio-4685.]

appellant does not explain, how her physical disability contributed to her relapse and failure to successfully complete rehabilitation. The sentence of eleven months in a local correctional facility was reasonable, not contrary to law, and well within the sentencing parameters of R.C. 2925.11(A) and R.C. 2925.11(C)(1)(a), a felony of the fifth degree. See, *State v. Fine*, 5th Dist. Coshocton No. 2024 CA 0010, 2024-Ohio-2928, ¶ 29.

{¶28} The trial court did not abuse its discretion in terminating appellant's ILC and imposing a term of 11 months of local incarceration. The second assignment of error is overruled.

CONCLUSION

{¶29} Having overruled appellant's two assignments of error, the judgment of the Coshocton County Court of Common Pleas is affirmed.

By: Delaney, P.J.,

Gwin, J. and

Wise, J., concur.