

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. Andrew J. King, J.
	:	
-vs-	:	
	:	Case No. 24-CAA-04-0022
JOSHUA JOHNSON	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Delaware County Court of
Common Pleas, Case No. 23-CRI-09-0563

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 3, 2024

APPEARANCES:

For Plaintiff-Appellee

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Gwin, J.,

{¶1} In this appeal, defendant-appellant Joshua Johnson [“Johnson”] argues that his negotiated guilty plea was not knowingly, voluntarily, and intelligently entered because he did not orally enter a plea of “guilty” on the record.

{¶2} Johnson, his attorney and the prosecutor executed a written, four-page “Withdrawal of Former Plea of Not Guilty and Written Pleas of Guilty to Counts One and Three of the Indictment and Judgment Entry on Guilty Plea.” In this document, Johnson admitted that he committed the crimes of Theft charged in Counts One and Three of the Indictment. Johnson acknowledged on the record that he read and understood the document, and that he knowingly, intelligently and voluntarily signed it after discussing it with his attorney. The record in this case shows the trial judge’s compliance with Criminal Rule 11, and supports the trial judge’s determination that Johnson’s pleas were knowingly, intelligently, and voluntarily made. Nothing forbids a criminal defendant from entering a written, as opposed to an oral, plea of guilty.

{¶3} We therefore overrule Johnson’s sole assignment of error, and affirm the judgment of the Delaware County Court of Common Pleas.

Facts and Procedural History

{¶4} On September 28, 2023, Johnson was indicted on two counts of Theft in violation of R.C. 2913.02, felonies of the fifth degree; one count of Theft from a Person in a Protected Class [elderly person] in violation of R.C. 2913.02, a felony of the fifth degree; and one count of Receiving Stolen Property in violation of R.C. 2913.51, a felony of the fifth degree. Johnson was incarcerated in prison on an unrelated offense at the time of his arraignment.

{¶5} On March 26, 2024, a Judgement Entry Scheduling a Change of Plea Hearing for April 5, 2024 was filed by the trial judge. [Docket Entry No. 65].

{¶6} Johnson, his attorney, and the prosecutor signed a Written Text of Criminal Rule 11(F) Agreement on April 5, 2024. Johnson agreed to enter guilty pleas to Counts One and Three of the indictment; the state agreed to dismiss counts Two and Four of the indictment; the parties jointly recommended the sentences run concurrent to one another, and the state agreed to cap its sentencing recommendation at six months in prison. Johnson acknowledged that he understood the agreement and had reviewed the agreement with his attorney. Id.

{¶7} Johnson, his attorney and the prosecutor also executed a written, four-page Withdrawal of Former Plea of Not Guilty and Written Pleas of Guilty to Counts One and Three of the Indictment and Judgment Entry on Guilty Plea. [Docket Entry No. 71]. In this document, Johnson admitted that he committed the crimes of Theft charged in Counts One and Three of the Indictment. He further acknowledged that “my pleas of Guilty are freely, voluntarily, and intelligently made with full and complete understanding of the nature of the charge and the consequences, including the maximum penalty.” Id. at 2. Johnson further acknowledged in the written plea of guilty document,

I have been advised of the following by the Court and by my counsel and understand that: Prison terms for multiple charges, even if consecutive sentences are not mandatory, may be imposed consecutively by the Court. Id. at 2.

{¶8} During the change of plea hearing, the following exchange, relevant to this appeal, occurred,

THE COURT: The maximum possible penalty for Count 1 is a 12-month prison term, and the maximum possible penalty for Count 3 is also a 12-month prison term.

I can also, instead of following the joint recommendation of a concurrent prison term, order those prison terms be served consecutively, which means one after another. That means the maximum possible penalty, the maximum stated prison term I can impose here would be a 24-month prison term.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

...

THE COURT: And do you understand that by pleading guilty today you are giving up all those rights?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Is that what you want to do based on everything we've talked about here today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And I have a plea agreement and a plea form here that I think outlines all the things that we have discussed.

Mr. Johnson, did you have a chance to discuss those and go through those with [your attorney] before you came in here today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Did you understand everything that was in those documents?

THE DEFENDANT: Yes, sir.

THE COURT: And did you sign them both voluntarily of your own free will?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The Court will find that Mr. Johnson has made a knowing, intelligent, and voluntary plea. The Court would accept his plea and find him guilty of two counts of theft, both felonies of the fifth degree.

Plea T., Apr. 5, 2024 at 8; 10-11.

{¶9} The parties agreed to proceed directly to sentencing. Plea T., Apr. 5, 2024 at 11.

{¶10} The judge noted that Johnson had previously been indicted in 2013 for ninety-nine counts of theft, to which he entered negotiated guilty pleas to twenty-two of those counts. Id. at 13. He was given an eight-year prison sentence in 2013. Id. at 15. After his release, Johnson was again convicted of several more theft offenses. Id. Johnson was presently serving a two- and one-half-year prison term for five counts of theft. Id. at 13-14. The judge noted that Johnson had forgery charges in 2001; misuse of credit cards, theft, receiving stolen property, and identity fraud in 2007; theft in 2008, and then the string of “90-some charges of theft” in 2013. Id. at 15-16. The trial judge stated,

The criminal history here is through the roof; and it appears as though, Mr. Johnson, at least in my opinion, you’re not able to stop stealing people’s

stuff. I—This is concerning to me going back now over a decade, and I've never seen that many theft charges in a case before.

Obviously, Judge Krueger was concerned enough to impose, on a series of F5's, eight years of prison time. Now, you're facing two and a half years of prison time on more F5's out of Franklin County.

So, I disagree, I think, wholeheartedly with the joint recommendation.

Plea T., Apr. 5, 2024 at 17-18.

{¶11} The trial judge sentenced Johnson to a prison term of twelve months on Count One and twelve months on Count Three, to be served consecutively and consecutive to prison terms imposed in Franklin County. Post release control is optional for up to two years.

Assignment of Error

{¶12} Jonson raises one Assignment of Error,

{¶13} "I. THE TRIAL COURT ERRED WHEN IT FAILED TO OBTAIN AN ORAL GUILTY PLEA FROM JOHNSON AS REQUIRED BY CRIM. R. 11(A)."

Standard of Appellate Review

{¶14} When reviewing a plea's compliance with Crim.R. 11(C), we apply a de novo standard of review. *State v. Nero*, 56 Ohio St.3d 106, 108-109 (1990); *State v. Lebron*, 2020-Ohio-1507, ¶9 (8th Dist.); *State v. Groves*, 2019-Ohio-5025, ¶7 (5th Dist.).

{¶15} The constitutional rights that the trial court must advise a defendant who desires to enter a guilty plea are: (1) the right to a jury trial; (2) the right to confrontation of witnesses against him; (3) the right to compulsory process for obtaining witnesses in his favor; (4) that the state must prove the defendant's guilt beyond a reasonable doubt

at trial; and (5) that the defendant cannot be compelled to testify against himself. *State v. Veney*, 2008-Ohio-5200, ¶ 19. If the trial court fails to strictly comply with these requirements, the defendant's plea is invalid. *Id.* at ¶ 31.

{¶16} The non-constitutional rights that the defendant must be informed of are: (1) the nature of the charges; (2) the maximum penalty involved, which includes, if applicable, an advisement on post-release control; (3) if applicable, that the defendant is not eligible for probation or the imposition of community control sanctions; and (4) that after entering a guilty plea or a no contest plea, the court may proceed directly to judgment and sentencing. Crim.R. 11(C)(2)(a)(b); *Veney* at ¶ 10-13; *State v. Sarkozy*, 2008-Ohio-509 (post-release control is a non-constitutional advisement).

{¶17} For the non-constitutional rights, the trial court must substantially comply with Crim.R. 11's mandates. *State v. Nero*, 56 Ohio St.3d 106, 108 (1990). "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." *Veney* at ¶ 15. Furthermore, a defendant who challenges his guilty plea on the basis that the advisement for the non-constitutional rights did not substantially comply with Crim.R. 11(C) must also show a prejudicial effect, meaning the plea would not have been otherwise entered. *Veney* at ¶ 15; *State v. Stewart*, 51 Ohio St.2d 86, 93 (1977); *State v. Griggs*, 2004-Ohio-4415, ¶12, *citing State v. Nero*, 56 Ohio St.3d at 107.

{¶18} The information that a guilty plea is a complete admission of guilt, along with the other information required by Crim.R. 11, ensures that defendants enter pleas with knowledge of rights that they would forgo and creates a record by which appellate

courts can determine whether pleas are entered voluntarily. See *State v. Nero*, 56 Ohio St.3d 106, 107 (1990); see, also, *State v. Ballard*, 66 Ohio St.2d 473, 479–480(1981).

Issue for Appellate Review: *Whether the record reflects that Johnson’s negotiated guilty plea would not have been entered if the trial judge had specifically asked Johnson to enter his plea orally in open court*

{¶19} Crim.R. 11 provides, in relevant part,

(A) Pleas. A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant’s attorney. All other pleas *may be made orally* either in-person or by remote contemporaneous video in conformity with Crim.R. 43(A). The pleas of not guilty and not guilty by reason of insanity may be joined. If a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

Emphasis added. By using the word “may,” the Rule does not mandate an “oral” plea as the only manner for a defendant to enter a plea. The Rule recognizes the difference between a mandatory written plea, i.e. not guilty by reason of insanity, and a permissive oral plea, i.e., all other pleas. Johnson points to no authority for the proposition that a defendant cannot enter a written plea of guilty, as opposed to an oral plea of guilty.

{¶20} In the case at bar, the plea agreement was read into the record. *Id.* at 5. The trial judge informed Johnson prior to accepting his guilty plea that he was not obligated to follow the state’s sentencing recommendation, and that the judge could

impose maximum, consecutive sentences. Plea T., Apr. 5, 2024 at 8. Johnson told the judge that he understood that the judge was not obligated to follow the agreement. Id.

{¶21} The trial judge explained to Johnson his right to a jury trial. Plea T., Apr. 5, 2024 at 9. The trial judge further explained Johnson's right to the confrontation of witnesses against him; the right to compulsory process for obtaining witnesses in his favor, that the state must prove the defendant's guilt beyond a reasonable doubt at trial; and that he cannot be compelled to testify against himself. Id. at 9-10. The judge also explained the maximum penalty involved. Id. at 8. The judge informed Johnson that he could impose the sentences consecutively or concurrently. Id. at 8.

{¶22} A written plea of guilty form was signed by Johnson and his attorney, and filed in the trial court. In this document, Johnson admitted that he committed the crimes of Theft charged in Counts One and Three of the Indictment. Johnson acknowledged to the trial judge that he read the plea forms, and he reviewed the plea forms with his attorney. Plea T., Apr. 5, 2024 at 10-11. Johnson acknowledged that he understood the plea forms. Id.

{¶23} The record demonstrates the trial judge very carefully adhered to Criminal Rule 11, and strictly complied with all of the requirements of Criminal Rule 11's mandates for constitutional rights. The trial judge conducted a complete and thorough colloquy. Johnson acknowledged he understood his rights, the charges, the plea agreement, the maximum penalties, and the specific constitutional rights he was waiving with the plea. The record further supports that the trial judge substantially complied with Crim.R. 11's mandates for non-constitutional rights.

{¶24} The record supports a conclusion that the pleas were properly entered and accepted. The record in this case shows the trial judge's compliance with Criminal Rule 11, and supports the trial judge's determination that Johnson's pleas were knowingly, intelligently, and voluntarily made.

{¶25} We find that Johnson admitted in writing that he committed the crimes of Theft charged in Counts One and Three of the Indictment. Johnson's acknowledgement on the record to the trial judge that he knowingly, intelligently and voluntarily signed a written plea of guilty, after discussions with his attorney, is sufficient to allow the trial judge to find that Johnson made a knowing, intelligent and voluntary plea of guilty. The trial judge could, therefore, accept Johnson's written guilty plea, together with his acknowledgement on the record that he knowingly and voluntarily signed that agreement after discussing same with his attorney, and find Johnson guilty. *See, State v. Barlow*, 2019-Ohio-4384, ¶16 (4th Dist.); *State v. Kennedy*, 2013-Ohio-4553, ¶25 (11th Dist.); *State v. Suttles*, 2010-Ohio-846, ¶ 11 (2nd Dist.); *State v. Thompson*, 1997 WL 596278, *2 (10th Dist. Sept. 25, 1997).

{¶26} Johnson's sole Assignment of Error is overruled.

{¶27} The judgment of the Delaware County Court of Common Pleas is affirmed.

By Gwin, J.,

Delaney, P.J., and

King, J., concur