

[Cite as *State v. Martin*, 2010-Ohio-244.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 92600 and 92601

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DESHAUN MARTIN

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-509564 and CR-501627

BEFORE: McMonagle, J., Kilbane, P.J., and Boyle, J.

RELEASED: January 28, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Deshaun Martin, appeals from the trial court's judgment, entered after guilty pleas, sentencing him to 13 years incarceration. He contends that his pleas were not knowingly, voluntarily, or intelligently made, in violation of Crim.R. 11, because prior to accepting his pleas, the trial court did not explain to him the nature and circumstances of the charges to which he pled guilty.

I

{¶ 2} In October 2007, Martin was indicted in Case No. CR-501627 on five counts of felonious assault, each with one- and three-year firearm specifications, and one count of carrying a concealed weapon. In March 2008, he pled guilty to one count of felonious assault, as amended, with a three-year firearm specification. The remaining counts were dismissed.

{¶ 3} In April 2008, Martin was indicted in Case No. CR-509564 on one count of aggravated burglary, with one- and three-year firearm specifications; one count of receiving stolen property; and one count of having a weapon while under a disability. In September 2008, he pled guilty to the three counts as indicted.

{¶ 4} At a sentencing hearing in November 2008, the trial court sentenced Martin on both cases. The court disregarded the five-year,

agreed-upon sentence in Case No. CR-501627, and sentenced Martin to three years incarceration on the felonious assault charge and three years on the firearm specification, for a total of six years.¹ In Case No. CR-509564, the court sentenced Martin to four years incarceration on the aggravated burglary charge and three years on the firearm specifications, for a total of seven years. The court sentenced him to 12 months incarceration for receiving stolen property and five years for having a weapon while under a disability, both sentences to be served concurrent with the seven-year sentence for the aggravated burglary charge. The trial court ordered that the three-year sentences on the firearm specifications in both cases be served consecutively, followed by the sentences for felonious assault and aggravated burglary, for a total of 13 years incarceration. The trial court also ordered Martin to pay costs, and denied his application for appointment of appellate counsel at the State's expense, despite his indigency.²

II

{¶ 5} Under Crim.R. 11(C), prior to accepting a guilty plea in a felony case, a court must conduct an oral dialogue with the defendant to determine

¹No allegation of error was raised upon this issue.

²This court appointed counsel as required by law. See *Douglas v. California* (1963), 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (an indigent defendant is entitled to counsel on his first appeal as of right from a criminal conviction); Crim.R. 32(B)(3)(b) (after imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right to appeal and that if the defendant is unable to obtain counsel for

that the plea is voluntary and the defendant understands the nature of the charges and the maximum penalty involved, and to personally inform the defendant of the constitutional guarantees he is waiving by entering a guilty plea.

{¶ 6} A trial court must strictly comply with the Crim.R. 11(C)(2) requirements regarding the waiver of constitutional rights. *State v. Veney*, 120 Ohio St.3d 176, 876 N.E.2d 621, 2008-Ohio-5200, ¶18. With respect to the other requirements of Crim.R. 11(C)(2) regarding nonconstitutional rights, “substantial compliance” is sufficient. *Id.* at ¶14, citing *State v. Stewart* (1977), 51 Ohio St.2d 86, 364 N.E.2d 1163.

{¶ 7} “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.” *State v. Nero* (1990), 56 Ohio St.3d 106, 108, 564 N.E.2d 474. Further, a defendant must show prejudice before a plea will be vacated for a trial court’s error involving Crim.R. 11(C) procedure when nonconstitutional aspects of the colloquy are at issue. *Veney* at ¶17. The test for prejudice is whether the plea would have otherwise been made. *Id.*

{¶ 8} Martin contends that his pleas were not knowingly, voluntarily, or intelligently made because the trial court did not explain the nature of the

an appeal, counsel will be appointed without cost).

charges to him in either plea proceeding. The right to be informed of the nature of the charges prior to entering a plea is a nonconstitutional right, and thus we review the plea proceedings to determine if there was substantial compliance with the rule. *State v. Johnson*, Cuyahoga App. No. 91567, 2009-Ohio-3088, ¶7, citing *State v. Esner*, Cuyahoga App. No. 90740, 2008-Ohio-6654; *State v. Joachim*, Cuyahoga App. No. 90616, 2008-Ohio-4876; *State v. Asberry*, 173 Ohio App.3d 443, 878 N.E.2d 1082, 2007-Ohio-5436; and *State v. Moviel*, Cuyahoga App. No. 86244, 2006-Ohio-697.

{¶ 9} At the March 2008 plea hearing regarding Case No. CR-501627, the trial court took pleas from four defendants (including Martin) on three unrelated cases. The record reveals no reason for this procedure. Taking multiple pleas on unrelated cases in a single hearing is likely to lead to confusion by the defendants or even the judge, producing invalid pleas, and the practice is highly discouraged.³ But in this case we find no reason to invalidate Martin's plea.

³For example, the judge told the defendants to answer each question in the order in which they were standing before him. After Martin indicated he could read and write, the judge asked the other three defendants, "Is there anything that you have been given that you didn't understand?" The defendants answered, "No, sir," "Yes, sir," and "Yes, sir." The judge did not ask for any clarification from the defendants who answered yes, and immediately went on to his next question. Later, he asked the same three defendants, "Do you understand you may suffer additional consequences of that other case, including prison time, which may run consecutive to any time that you may receive in this case? Do you understand?" The defendants answered, "Yes, sir," "No,

{¶ 10} The record reflects that Martin understood the charges to which he pled guilty. The judge began the hearing by identifying the charges and accompanying specifications against each of the defendants. The prosecutor then explained the plea agreement with respect to Martin and identified the charges to which he would plead guilty; another prosecutor explained the charges and plea agreements regarding the other defendants. The judge then asked each of the four defendants to answer general questions regarding their level of education, whether they were under the influence of drugs or alcohol, whether they understood what was happening, and whether they were satisfied with their lawyers. Martin responded appropriately to each question and responded affirmatively that he understood what was happening in the plea proceedings. In response to further questioning, Martin indicated that he understood the constitutional rights he was waiving by pleading guilty.

{¶ 11} The trial court then explained the charges that Martin intended to plead guilty to and the potential sentence. Upon questioning, Martin indicated that he understood the potential sentence. The judge then asked him, “In Case No. 501627, how do you plead as to Count 1 of the indictment as amended to felonious assault in violation of Revised Code Section 2903.11

“No, sir.” The judge again did not ask for clarification from the defendants who answered no. Whether these responses are sufficient to invalidate the pleas of these defendants could be issues for their appeals.

deleting the firearm specification, adding the other victims involved here, making that a felony of the second degree?”

{¶ 12} Thus, the record reflects that Martin was advised three times during the hearing as to the nature of the charges to which he was pleading guilty. Despite Martin’s argument that the court should have explained the underlying facts of the charges against him, this court has repeatedly held that “courts are not required to explain the elements of each offense, or even to specifically ask the defendant whether he understands the charges, unless the totality of the circumstances shows that the defendant does not understand the charges.” *Johnson*, supra at ¶8, citing *State v. Carpenter*, Cuyahoga App. No. 81571, 2003-Ohio-3019; *State v. Krcal*, Cuyahoga App. No. 80061, 2002-Ohio-3634; *State v. Whitfield*, Cuyahoga App. No. 81247, 2003-Ohio-1504; *State v. Steele*, Cuyahoga App. No. 85901, 2005-Ohio-5541; *State v. Swift* (1993), 86 Ohio App.3d 407, 621 N.E.2d 513.

{¶ 13} When the defendant “indicates that he understands the nature of the charge, in the absence of evidence to the contrary or anything in the record that indicates confusion, it is typically presumed that the defendant actually understood the nature of the charge against him.” *State v. Wangul*, Cuyahoga App. No. 84698, 2005-Ohio-1175, ¶10. Martin stated that he understood the charges, and there is nothing in the record to indicate that he was confused, coerced, or did not understand the proceeding or his plea.

Moreover, at least with respect to Martin, there is no indication that the group plea dynamic caused him to not make a knowing, voluntary, or intelligent plea.

{¶ 14} With respect to the September 2008 plea hearing in Case No. CR-509564, the record reflects that Martin was likewise repeatedly made aware of the nature of the charges against him, as well as the maximum penalties he could face. Martin stated that he understood the charges and possible maximum penalties and we find nothing in the record to indicate otherwise.

{¶ 15} Finally, even assuming error by the trial court, Martin has made no showing of prejudice relating to his pleas, much less any argument that he would not have pled guilty had the trial court more fully explained the nature and circumstances of the charges against him. Accordingly, we find that Martin's pleas were made knowingly, voluntarily, and intelligently and that the trial court substantially complied with the requirements of Crim.R. 11(C) in accepting the pleas.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's

conviction having been affirmed, any bail pending appeal is terminated.

Case remanded to the trial court for execution of sentence.

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

CHRISTINE T. McMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR