

[Cite as *State v. Butler*, 2010-Ohio-3414.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93424

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

QUIANA BUTLER

DEFENDANT-APPELLANT

JUDGMENT:
CONVICTION VACATED;
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-519086

BEFORE: Celebrezze, J., Rocco, P.J., and Stewart, J.

RELEASED: July 22, 2010

JOURNALIZED:

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant, Quiana Butler, appeals her convictions for burglary and theft. Based on our review of the record and pertinent case law, we vacate appellant's convictions and reverse and remand for further proceedings.

{¶ 2} On December 19, 2008, appellant was indicted in a three-count indictment for burglary in violation of R.C. 2911.12(A)(1) and two counts of theft in violation of R.C. 2913.02(A)(1). A bench trial commenced on April 6,

2009, which resulted in appellant being found guilty on all charges. This appeal followed.

{¶ 3} In her first assignment of error, appellant argues that her waiver of a jury trial was invalid and her conviction should be vacated. The process to be utilized when an offender waives his or her right to a jury trial is enumerated in R.C. 2945.05 and Crim.R. 23(A).

{¶ 4} R.C. 2945.05 states that “[s]uch waiver by a defendant, shall be in writing, signed by the defendant, and filed in said cause and made a part of the record thereof. * * *

{¶ 5} “Such waiver of trial by jury must be made in open court after the defendant has been arraigned and has had opportunity to consult with counsel.”

{¶ 6} Pursuant to Crim.R. 23(A), “[i]n serious offense cases the defendant before commencement of the trial may knowingly, intelligently and voluntarily waive in writing his right to trial by jury.”

{¶ 7} When an offender decides to waive his or her right to a jury trial, the court is required to strictly comply with the mandates of R.C. 2945.05. According to the Ohio Supreme Court’s holding in *State v. Pless*, 74 Ohio St.3d 333, 337, 1996-Ohio-102, 658 N.E.2d 766, if the trial court fails to

strictly comply with R.C. 2945.05, the trial court then lacks jurisdiction to try the offender without a jury.¹

{¶ 8} In *Pless*, the defendant had allegedly signed a jury waiver form and such form was read into the record in open court. On appeal, however, the defendant argued that the jury waiver was invalid because the waiver form was never filed and made part of the record. *Id.* at 337. The Ohio Supreme Court held that, because R.C. 2945.05 specifically requires the jury waiver form to be filed in the cause and made part of the record, the jury waiver was invalid and the trial court lacked jurisdiction to try *Pless* without a jury. *Id.*

{¶ 9} In this case, appellant argues that her jury waiver was invalid because the trial court failed to ensure that she had consulted with counsel before waiving her right to a jury trial. The following exchange took place on the record below:

¹The Court in *Pless* specifically stated: “The requirements of R.C. 2945.05 are clear and unambiguous. The statute requires that in order to effectuate a valid waiver of the right to a trial by jury, the defendant in a criminal action must sign a written waiver, *and the waiver must be filed and made a part of the record in the criminal case.* In the absence of strict compliance with R.C. 2945.05, a trial court lacks jurisdiction to try the defendant without a jury.” (Emphasis in original.) *Pless* at 337.

{¶ 10} “THE COURT: We’re here on case 519086, State versus Quiana Butler. Miss Butler, do you understand you have a right to have your case tried by a jury, but you are apparently going to waive that right and give it up and be tried by a judge, is that right?”

{¶ 11} “THE DEFENDANT: Yes.

{¶ 12} “THE COURT: Is this your signature on this?”

{¶ 13} “THE DEFENDANT: Yes.

{¶ 14} “THE COURT: Mr. DeFranco, you verified this is her signature and you explained all that to her?”

{¶ 15} “MR. DeFRANCO: Yes.

{¶ 16} “THE COURT: Fair enough.”

{¶ 17} Although the transcript reflects that appellant signed a written jury waiver form, such form is missing from the record before us on appeal. The only journal entry on the docket related to appellant’s waiver of her right to a jury trial states: “Defendant executed a written jury trial waiver and on the record orally waived defendant’s right to a trial by jury. Court finds that the defendant knowingly, intelligently and voluntarily waived rights to a trial by jury.”

{¶ 18} Because no jury waiver was filed with the trial court and made part of the record, the trial court lacked jurisdiction to try appellant without a jury. *Pless* at 337. Accordingly, we vacate the trial court’s judgment and

remand this cause to the trial court for a new trial. On remand, appellant has the right to a jury trial unless she waives that right and the trial court strictly complies with R.C. 2945.05.

{¶ 19} Our disposition of appellant's first assignment of error, renders her remaining assignments² moot. See App.R. 12(A)(1)(c).

{¶ 20} Conviction vacated; cause reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee 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.

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

FRANK D. CELEBREZZE, JR., JUDGE

KENNETH A. ROCCO, P.J., and
MELODY J. STEWART, J., CONCUR

APPENDIX

Appellant's Assignments of Error:

"I. Defendant Quiana Butler was denied due process of law as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and

²Appellant's assignments of error are contained in the appendix to this opinion.

Article I, Sections 10 and 16 of the Ohio Constitution when an invalid waiver of jury trial was accepted by the court.”

“II. The court erred when it sentenced defendant Quiana Butler for burglary when there was no finding of guilty to such charge in the verdict in violation of the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, Article I, Sections 10 and 16 of the Ohio Constitution, Criminal Rules 31, 32, and 43, R.C. 2945.78 and R.C. 2945.06.”

“III. The court erred when it sentenced defendant Quiana Butler to [sic] theft a felony of the fourth degree when the verdict substantiated only a misdemeanor theft in violation of the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, Article I, Sections 10 and 16 of the Ohio Constitution, Criminal Rules 31 and 32, as well as R.C. 2945.75 and R.C. 2945.78.”

“IV. Defendant’s convictions for burglary and theft were against the manifest weight of the evidence.”

“V. Defendant Quiana Butler was denied effective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 10 of the Ohio Constitution.”