

[Cite as *State v. Sanders*, 2010-Ohio-5007.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93957

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DELRAY SANDERS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-517074

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

RELEASED AND JOURNALIZED: October 14, 2010

ATTORNEY FOR APPELLANT

Patricia J. Smith
4403 St. Clair Avenue
The Brownhoist Building
Cleveland, Ohio 44103

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
Margaret A. Troia
Assistant County Prosecutor
The Justice Center - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, J.:

{¶ 1} Appellant, Delray Sanders (“Sanders”), appeals his three-year prison sentence for drug trafficking. Sanders argues that the trial court erred in imposing a three-year prison sentence when he was promised a one-year sentence in exchange for his guilty plea. After a review of the record and applicable law, we affirm.

{¶ 2} The following facts give rise to the instant appeal.

{¶ 3} On November 7, 2008, a four-count indictment was issued against Sanders. Count 1 charged him with drug trafficking, in violation of R.C. 2925.03(A)(2), to wit: marijuana, in an amount less than 200 grams, a felony of the fourth degree. Count 2 charged Sanders with drug trafficking,

in violation of R.C. 2925.03(A)(2), to wit: Benzylpiperazine, in an amount exceeding bulk, but less than five times bulk, a felony of the third degree. Count 3 charged Sanders with drug possession, to wit: Benzylpiperazine, in an amount exceeding bulk, but less than five times bulk, in violation of R.C. 2925.11(A), a felony of the third degree. Count 4 charged Sanders with possession of criminal tools, in violation of R.C. 2923.24(A), a felony of the fifth degree. All four counts contained a forfeiture specification pertaining to the drugs that were seized and \$130 found on Sanders.

{¶ 4} On May 18, 2009, Sanders pled guilty to Count 2, drug trafficking, a felony of the third degree. The remaining three counts were nolle. The trial court scheduled the matter for sentencing the following week and informed Sanders that as long as he was not charged in additional criminal cases during that time, he would receive the minimum sentence of one year of imprisonment.

{¶ 5} On May 26, 2009, the trial court held a sentencing hearing and noted that Sanders had been charged in another criminal case subsequent to his guilty plea the week before. Consequently, the trial court did not sentence Sanders to one year of imprisonment as was discussed at the change of plea hearing; rather, it sentenced Sanders to three years of imprisonment.

{¶ 6} Sanders appeals, raising one assignment of error for our review.

ASSIGNMENT OF ERROR NUMBER ONE

“THE TRIAL COURT ABUSED ITS DISCRETION BY ACCEPTING THE APPELLANT’S INVALID PLEA WHERE THE TRIAL COURT DID NOT EXPLAIN FULLY WHAT CIRCUMSTANCES WOULD RESULT IN THE APPELLANT NOT RECEIVING THE PROMISED ONE YEAR PRISON TERM.”

{¶ 7} Sanders argues that the trial court erred in sentencing him to three years of imprisonment instead of one year as the trial court indicated it would impose at the change of plea hearing. Sanders contends that the trial court did not clearly articulate under what circumstances it would deviate from the one-year sentence. After a review of the record and applicable law, we disagree.

{¶ 8} Essentially, Sanders argues that his plea was involuntary because the trial court did not adequately explain the possible consequences. Pursuant to Crim.R. 11, a defendant’s guilty plea must be made knowingly, intelligently, and voluntarily. *State v. Irizarry*, Cuyahoga App. No. 93352, 2010-Ohio-3868, at ¶7. “Where the trial court promises a certain sentence, that promise becomes an inducement to enter a plea, and unless that sentence is given, the plea is not voluntary.” *State v. Triplett* (Feb. 13, 1997), Cuyahoga App. No. 69237, citing *State v. Simms* (Dec. 6, 1984), Cuyahoga App. No. 47796.

{¶ 9} Sanders argues that he was promised a one-year sentence in exchange for his guilty plea. Prior to Sanders entering his guilty plea, the

trial court explained the possible consequences of pleading guilty to drug trafficking, a felony of the third degree. The trial court specifically advised Sanders that he could receive a mandatory prison term of anywhere between one and five years of imprisonment.

{¶ 10} In regard to the one-year sentence, the trial court stated:

“And I have indicated to your attorney that I would impose, because it is mandatory time, I would impose the minimum, if you return on your sentencing date that we set and nothing else happens in between then and now—or now and then. That would be one year. * * * So I have made that representation. I have made that promise to your attorney. I am telling you about it now so it is on the record and clear. Just keep in mind, sir, that if you don’t come back for the sentencing date that promise is out the window, okay, and *I will have the whole range of penalties, from one to five years to impose. And that’s also true if you pick up some other case or some other trouble between now and then.*” (Emphasis added.)

{¶ 11} In order for this court to determine that Sanders’s plea was involuntary, we would have to conclude that the trial court failed to adequately explain the possible penalties. The trial court’s statements make it clear that the promise of the one-year sentence was contingent upon Sanders returning for his sentencing hearing and not being charged in any additional cases prior to that time. At the sentencing hearing, which was held the following week, Sanders’s counsel acknowledged that Sanders had been charged in another case after his guilty plea. Sanders has never

disputed that another criminal action was brought against him between his change of plea hearing and his sentencing.

{¶ 12} Sanders further argues that he should have been permitted to withdraw his guilty plea pursuant to Crim.R. 32. However, a review of the record demonstrates that Sanders never moved to withdraw his plea, therefore, this argument is without merit.

{¶ 13} Sanders's sole assignment of error is overruled.

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

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

MARY EILEEN KILBANE, PRESIDING JUDGE

MARY J. BOYLE, J., and
JAMES J. SWEENEY, J., CONCUR