

[Cite as *State v. Simmons*, 2017-Ohio-8891.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105984

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROSCOE C. SIMMONS, III

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-601492-A

BEFORE: Boyle, J., Keough, A.J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: December 7, 2017

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Roscoe C. Simmons, III, appeals the voluntariness and intelligence of his guilty plea. Simmons argues that the trial court erred by failing to strictly comply with Crim.R. 11 during the plea hearing. Plaintiff-appellee, the state of Ohio, agrees that the trial court failed to advise Simmons of his constitutional rights and concedes the error. After review, we agree with Simmons.

{¶2} Accordingly, Simmons's single assignment of error is sustained, and we vacate Simmons's guilty plea and reverse and remand for further proceedings consistent with this opinion.

I. Procedural History and Factual Background

{¶3} On July 20, 2015, Simmons, Shawn Ladson, and Michael Townsend, Jr., allegedly broke into Joshua Freeman's apartment to steal money. During the alleged break-in, Freeman was shot and killed. Shortly after the incident, Simmons went to the police to address the allegations against him.

{¶4} The Cuyahoga County Grand Jury indicted Simmons, Ladson, and Townsend with multiple counts of aggravated murder, murder, aggravated burglary, aggravated robbery, felonious assault, kidnapping, and tampering with evidence. Simmons and the state eventually agreed to a plea deal, which included an amended indictment and a recommended sentence of 15 to 30 years in exchange for testimony against one of the codefendants to the satisfaction of the state. According to the terms of the plea deal, Simmons pleaded guilty to involuntary manslaughter, a felony of the first

degree, in violation of R.C. 2903.04 with a three-year firearm specification; aggravated burglary, a felony of the first degree, in violation of R.C. 2911.11 with a three-year firearm specification; aggravated robbery, a felony of the first degree, in violation of R.C. 2911.01 with a three-year firearm specification; and felonious assault, a felony of the second degree, in violation of R.C. 2903.11 with a three-year firearm specification.

{¶5} At Simmons’s plea hearing, the court asked Simmons some preliminary questions about his age and education and reviewed the revised charges to which he was pleading. In addition, the trial court told Simmons that if he pleaded guilty, there would not be a trial, which Simmons stated he understood.

{¶6} Subsequently, the trial court sentenced Simmons to 22 years of incarceration — 3 years for each of the firearm specifications, all to run concurrent to one another; 8 years for the felonious assault conviction to run consecutive to the firearm specifications and other counts; and 11 years for the involuntary manslaughter, aggravated burglary, and aggravated robbery convictions, also to run consecutive to the firearm specifications and felonious assault conviction.

{¶7} It is from this judgment that Simmons appeals.

II. Crim.R. 11

{¶8} Simmons contends that the trial court violated Crim.R.11 when it failed to advise him of his constitutional rights during the plea hearing. The state concedes the error. We agree.

{¶9} We review the trial court’s compliance with Crim.R. 11 de novo. *State v. McGinnis*, 8th Dist. Cuyahoga No. 99918, 2014-Ohio-2385, ¶ 11, citing *State v. Cardwell*, 8th Dist. Cuyahoga No. 92796, 2009-Ohio-6827. “In other words, this court

will conduct our own independent review of the record without any deference to the trial court.” *State v. Avery*, 4th Dist. Scioto No. 14CA3613, 2015-Ohio-4251, ¶ 5.

{¶10} Crim.R. 11 ensures that a defendant’s guilty plea is voluntary and intelligent by requiring the trial court to convey certain information to the defendant before accepting the plea. *State v. Chiles*, 8th Dist. Cuyahoga No. 103179, 2016-Ohio-1225, ¶ 8. If a plea is not made knowingly, intelligently, and voluntarily, it is unconstitutional to enforce that plea under both the United States and Ohio Constitutions. *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). The record must reflect that the trial court satisfied Crim.R. 11’s requirements through oral dialogue with the defendant at the plea hearing. *Chiles* at ¶ 9; *State v. Martin*, 8th Dist. Cuyahoga Nos. 92600 and 92601, 2010-Ohio-244, ¶ 5.

{¶11} Prior to accepting a defendant’s guilty plea in a felony case, the trial court must inform the defendant of the constitutional rights he or she is waiving, including “the rights to a 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 guilty beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify[.]” Crim.R. 11(C)(2)(c).

{¶12} A trial court must strictly comply with Crim.R. 11’s provisions concerning a defendant’s constitutional rights. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 31. “When a trial judge fails to explain the constitutional rights set forth in Crim.R. 11(C)(2)(c), the guilty or no-contest plea is invalid ‘under a presumption

that it was entered involuntarily and unknowingly.”” *Id.*, quoting *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 12. While a “rote recitation of Crim.R. 11(C) is not required,” the record must show ““that the judge explained these rights in a manner reasonably intelligible to the defendant.”” *State v. McElroy*, 8th Dist. Cuyahoga Nos. 104639, 104640, and 104641, 2017-Ohio-1049, ¶ 19, quoting *State v. Gaines*, 8th Dist. Cuyahoga No. 102024, 2015-Ohio-2397.

{¶13} A defendant’s plea must be vacated even if an explanation of only one of the constitutional rights is omitted in the trial court’s colloquy with the defendant. *See State v. Woods*, 192 Ohio App.3d 494, 2011-Ohio-727, 949 N.E.2d 574, ¶ 40 (8th Dist.) (vacating the defendant’s plea after the trial court failed to explain that the defendant was waiving the state’s responsibility to prove his guilt beyond a reasonable doubt); *State v. Wiley*, 8th Dist. Cuyahoga No. 90828, 2008-Ohio-5266, ¶ 8 (vacating the defendant’s guilty plea after the trial court failed to inform the defendant of his constitutional rights to confront witnesses against him and to have a compulsory process for obtaining favorable witnesses).

{¶14} In this case, the transcript of the plea hearing shows that the trial court failed to explain to Simmons the constitutional rights he was waiving by pleading guilty. Specifically, the trial court failed to explain that Simmons was entitled to a trial by jury where the state would be required to prove he was guilty beyond a reasonable doubt, confront the witnesses against him, and gather witnesses in his favor. Consequently, the trial court failed to strictly comply with Crim.R. 11, and Simmons’s plea is vacated.

Simmons's sole assignment of error is sustained.

{¶15} Judgment reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee the 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.

—
MARY J. BOYLE, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
EILEEN A. GALLAGHER, J., CONCUR