

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PIKE COUNTY

STATE OF OHIO, : Case No. 19CA900
Plaintiff-Appellee, :
v. : DECISION AND
 : JUDGMENT ENTRY
TRAVIS E. MARTIN, :
Defendant-Appellant. : **RELEASED 5/21/2020**

APPEARANCES:

Matthew F. Loesch, Portsmouth, Ohio, for appellant.

Marie Hoover, Pike County Assistant Special Prosecutor, Waverly, Ohio, for appellee.

Hess, J.

{¶1} Travis E. Martin pleaded guilty to gross sexual imposition and the trial court sentenced him to a 60-month prison term. On appeal, Martin maintains that the trial court erred when it made a pretrial determination that the eight-year-old victim was competent to testify as a witness. He also asserts that his confrontation clause rights were violated when he was excluded from the competency hearing.

{¶2} Martin does not challenge the validity of his guilty plea. The record here demonstrates that Martin's plea was knowingly, intelligently, and voluntarily made and the trial court complied with all constitutional and nonconstitutional notification requirements. A defendant who enters a valid guilty plea waives independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. Martin's voluntary, knowing, and intelligent guilty plea waives his right to challenge the trial court's competency determination concerning the child witness and

he waives any purported constitutional defects in those pretrial proceedings. We overrule Martin's assignments of error and affirm the trial court's judgment.

I. FACTS

{¶3} The Pike County grand jury indicted Martin on one count of rape in violation of R.C. 2907.02(A)(1)(b), a first-degree felony and one count of gross sexual imposition in violation of R.C. 2907.05(A)(4), a third-degree felony. Martin initially pleaded not guilty. The trial court held a competency hearing of the eight-year-old victim and determined that the child was competent to testify. At a subsequent pretrial conference, Martin entered into a negotiated plea agreement in which he agreed to plead guilty to gross sexual imposition in exchange for a dismissal of the rape count. The trial court accepted his guilty plea and sentenced Martin to a 60-month prison term.

II. ASSIGNMENTS OF ERROR

{¶4} Martin assigns the following errors for our review:

1. The trial court abused its discretion when it found the alleged child victim, A.W., competent to testify as a witness.
2. Appellant's confrontation clause rights were violated when he was excluded by the trial court from the hearing to determine the alleged child victim's competence to testify.

III. LAW AND ANALYSIS

{¶5} Martin pleaded guilty as part of a negotiated plea agreement. Martin does not contest the validity of his guilty plea. The record demonstrates that his plea was knowingly, intelligently, and voluntarily made and the trial court complied with all constitutional and nonconstitutional notification requirements.

{¶6} “The plea of guilty is a complete admission of the defendant’s guilt.” Crim.R. 11(B)(1). See also *State v. Shafer*, 4th Dist. Adams No. 17CA1047, 2018-Ohio-214, ¶ 21, quoting *Menna v. New York*, 423 U.S. 61, 62, 96 S.Ct. 241, 46 L.Ed.2d 195 (1975), fn. 2 (“a guilty plea constitutes ‘an admission of factual guilt so reliable that, where voluntary and intelligent, it quite validly removes the issue of factual guilt from the case’ ”). A guilty plea “ ‘renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established.’ ” *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, 810 N.E.2d 927, ¶ 78, quoting *Menna* at 62, fn. 2. Thus, a defendant who “voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel ‘may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.’ ” *Id.*, quoting *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973). “In other words, a voluntary, knowing, and intelligent guilty plea waives any alleged constitutional violations unrelated to the entry of the guilty plea and nonjurisdictional defects in the proceedings.” *State v. Legg*, 2016-Ohio-801, 63 N.E.3d 424, ¶ 12 (4th Dist.), citing *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48, ¶ 105; *State v. Storms*, 4th Dist. Athens No. 05CA30, 2006-Ohio-3547, ¶ 9.

{¶7} “A valid guilty plea by a counseled defendant, however, generally waives the right to appeal all prior nonjurisdictional defects, including the denial of a motion to suppress.” *State v. Beasley*, 152 Ohio St.3d 470, 2018-Ohio-16, 97 N.E.3d 474, ¶ 15; *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, 810 N.E.2d 927, ¶ 78; *State v. Obermiller*, 147 Ohio St.3d 175, 2016-Ohio-1594, 63 N.E.3d 93, ¶ 56. Here, Martin

challenges the trial court's pretrial, preliminary ruling that the eight-year-old child victim was competent to testify as a witness and the trial court's decision to exclude him from the competency hearing. However, Martin's contentions are not jurisdictional and are unrelated to the validity of his guilty plea. Additionally, the trial court's preliminary decision concerning the competency of a witness is not a final, binding determination. See *Kentucky v. Stincer*, 482 U.S. 730, 740, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987) ("although the preliminary determination of a witness' competency to testify is made at this hearing, the determination of competency is an ongoing one for the judge to make based on the witness' actual testimony at trial."); *State v. Fortune*, 6th Dist. Lucas No. L-04-1227, 2006-Ohio-1118, ¶ 48; *State v. Nasser*, 10th Dist. Franklin No. 02AP-1112, 2003-Ohio-5947, ¶ 45.

{¶8} Martin entered a valid guilty plea and cannot contest a pretrial evidentiary ruling. Recently, the Fifth District Court of Appeals held that a defendant who pleaded guilty waived the right to contest the trial court's pretrial determination concerning a witness's competency:

Jensen cannot contest a pretrial evidentiary ruling after having entered a guilty plea. Such a plea waives any alleged error in the trial court's ruling on witness competency. A voluntary guilty plea waives nonjurisdictional defects. Thus, when a defendant enters a plea of guilty as a part of a plea bargain he waives all appealable errors, unless such errors are shown to have precluded the defendant from entering a knowing and voluntary plea. The effect of a voluntary, knowing, and intelligent guilty plea is the waiver of any "independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Jensen waived any argument he may have had regarding the ruling when he entered a plea of guilty, admitting that he committed the crimes described in the indictment and making the decision regarding Foster's competency and his testimony unnecessary.

Even had the trial court ruled on the motion in Jensen's favor:

A decision denying or granting a motion in limine does not finally determine the admissibility of the evidence to which it is directed. Rather, it is a “ ‘tentative, interlocutory, precautionary ruling by the trial court reflecting its anticipatory treatment of the evidentiary issue.’ ” The trial court is at liberty to change its ruling once the hearing or trial has begun. Therefore, finality does not attach when a motion in limine is decided and those decisions are not final orders.

(Citations omitted.) *State v. Jensen*, 5th Dist. Morgan No. 19 AP 0004, 2020-Ohio-1411,

¶ 33-34.

{¶19} In *State v. Bene, infra*, the Twelfth District Court of Appeals held that the defendant waived her right to challenge the trial court’s decision not to hold competency hearings for the children witnesses and she waived her confrontation rights because she entered a valid guilty plea:

[A]ppellant’s challenge can only logically pertain to the reliability and credibility of witnesses who may have testified against her, had she proceeded to trial. However, such concerns were waived by her voluntary plea of guilty and the waiver of her right to a jury trial and the confrontation of witnesses.

“A plea of guilty is a complete admission of the defendant’s guilt.” Crim.R. 11(B)(1). Crim.R. 11(C)(2)(c) expressly explains that a knowing, voluntary plea of guilty waives a defendant’s right to a jury trial, and the right to confront the witnesses against him or her. Further, the Ohio Supreme Court has clearly stated that a guilty plea “renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established.” *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, ¶ 78. The court went on to explain that “a defendant who * * * voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel ‘may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.’ ” *Id.* Finding that Fitzpatrick’s challenges related to neither the court’s jurisdiction nor the voluntary nature of his plea, the court held the assignments of error were precluded from consideration on appeal.

It is clear that such a rule is applicable in the case before us. Appellant pled guilty to the three counts which she challenges on appeal and she

does not present any argument challenging the informed, knowing, or voluntary nature of her pleas. Had appellant wished to challenge the allegations made by the victims, she had the right to proceed to trial and confront her accusers and challenge the credibility of their statements. Any claims regarding the reliability of the statements of the witnesses against her were waived by her knowing and voluntary plea of guilty. Finding appellant's second and third assignments of error to be entirely without merit, they are overruled.

State v. Bene, 12th Dist. Clermont No. CA2005-09-090, 2006-Ohio-3628, ¶ 13-16.

{¶10} Like the defendants in *Jensen* and *Bene*, Martin entered a valid guilty plea and has waived his right to challenge the trial court's pretrial competency determination concerning the eight-year-old witness and any purported confrontation right he claims is associated with that hearing. We overrule his assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the PIKE COUNTY COURT OF COMMON PLEAS, to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Smith, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.