

[Cite as *State v. Leavell*, 2009-Ohio-4616.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 08CA009495

Appellee

v.

DOUGLAS C. LEAVELL

APPEAL FROM JUDGMENT
ENTERED IN THE
OBERLIN MUNICIPAL COURT
COUNTY OF LORAIN, OHIO
CASE No. 08TRC03605

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 8, 2009

MOORE, Presiding Judge.

{¶1} Appellant, Douglas Leavell, appeals the judgment of the Oberlin Municipal Court. This Court affirms.

I.

{¶2} Douglas Leavell pled no contest to charges of operating a motor vehicle while under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a), operating a motor vehicle with a prohibited blood alcohol volume in violation of R.C. 4511.19(A)(1)(d), and driving under suspension in violation of Codified Ordinances of Oberlin 335.07. The trial court found him guilty of each charge, sentenced him to 180 days in jail, suspended his driver’s license, imposed fines against him, and assessed points against his driver’s license. Leavell timely appealed his jail sentence. He has assigned one error for review.

II.

ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED IN IMPOSING A SENTENCE OF CONFINEMENT WHERE [LEAVELL] WAS NOT REPRESENTED BY COUNSEL, AND THE TRIAL COURT DID NOT FULLY ADVISE [LEAVELL] OF HIS RIGHT TO COUNSEL, AND OBTAIN A KNOWING, INTELLIGENT AND VOLUNTARY WAIVER OF THAT RIGHT ON THE RECORD PRIOR TO ACCEPTING HIS PLEA OF NO CONTEST.”

{¶3} In his only assignment of error, Leavell argues that he did not knowingly, intelligently, and voluntarily waive his right to counsel in connection with his no contest plea. As a result, he maintains that his jail sentence must be vacated. This Court disagrees.

{¶4} A petty offense is a misdemeanor for which the penalty required by law includes not more than six months of confinement. Crim.R. 2(D). With respect to petty offenses, Crim.R. 11(E) provides that “the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty.” The provisions of Crim. R. 44(B) and (C) regarding counsel apply to division (E) of this rule. Crim.R. 44(B) governs the appointment of counsel in petty offenses:

“Where a defendant charged with a petty offense is unable to obtain counsel, the court may assign counsel to represent him. When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon him, unless after being fully advised by the court, he knowingly, intelligently, and voluntarily waives assignment of counsel.”

As required by the Ohio Rules of Criminal Procedure, “[a]t the very least *** any waiver of counsel must be made on the record in open court, and in cases involving serious offenses where the penalty includes confinement for more than six months, the waiver must also be in writing and filed with the court.” *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, at ¶24, citing Crim.R. 22 and Crim.R. 44 (modified on other grounds by *State v. Thompson*, 121 Ohio St.3d

250, 2009-Ohio-314). A knowing, intelligent, and voluntary waiver of counsel is demonstrated through inquiry by the trial court that is sufficient “to determine whether defendant fully understands and intelligently relinquishes” representation. *State v. Gibson* (1976), 45 Ohio St.2d 366, paragraph two of the syllabus. See, also, *State v. Combs*, 9th Dist. No. 07CA009173, 2007-Ohio-7035, at ¶16.

{¶5} Leavell received a jail sentence of six months for the crime of operating a motor vehicle while under the influence of alcohol, a violation of R.C. 4511.19(A)(1)(a). Pursuant to R.C. 4511.19(G)(1)(a)(ii), Leavell was subject to a mandatory minimum jail term of three days’ confinement and, in the discretion of the trial court, could be sentenced to a jail term of up to 180 days in accordance with R.C. 2929.24. Because the sentence prescribed by law for this offense was 180 days or less, it is classified as a petty offense. See Crim.R. 2(D). Leavell waived his right to counsel on the record and, although not required in his case, by executing a written waiver of rights.

{¶6} Leavell appeared before the trial court on September 26, 2008, after failing to appear for arraignment. The trial court noted on the record that Leavell’s attorney had withdrawn and began the hearing by telling him, “what we need to do is reschedule your case for a pretrial and make sure that you are properly represented[.]” Leavell informed the trial court that he was unemployed, and the trial court encouraged him to receive a court-appointed attorney. When Leavell insisted that he “just [wanted to] get it over with,” the trial court explained that the case could not be concluded in one day and discouraged him from proceeding without counsel. Leavell maintained that he wanted to plead no contest, and the trial court explained the rights that he would be waiving in the process, including his right to counsel:

“You have this very important bundle of rights. One of the most important rights you have is the right to be represented by an attorney. If you cannot afford an

attorney, and it appears that you cannot right now, the Court will appoint an attorney to represent you at no cost, other than a \$25 application fee. That's the first and probably the most important right that you have."

The trial court informed Leavell of his rights to subpoena and confront witnesses, to have the case against him proven beyond a reasonable doubt, and to refrain from self-incrimination. The trial court also informed him that he may be able to challenge the evidence produced against him if it was secured in violation of his rights under the Fourth and Fifth Amendments. Once again, the trial court cautioned Leavell against proceeding without an attorney, but Leavell indicated that he wanted to proceed by pleading no contest. The trial court explained the charges against him, along with the range of penalties that he could face, and provided Leavell with a written waiver of rights form. Leavell executed that form, indicating that he understood his rights, was mentally competent, and was not under the influence of alcohol or drugs.

{¶7} The trial court below conducted a "textbook" plea colloquy that provided Leavell with all the pertinent information he needed to make an informed decision. The record of proceedings and Leavell's written waiver of rights demonstrate that he knowingly, intelligently, and voluntarily waived his rights in connection with his no contest plea, including his right to counsel. Accordingly, the trial court did not err by imposing a sentence of confinement upon him. See Crim.R. 44(C). Leavell's assignment of error is overruled.

III.

{¶8} Leavell's assignment of error is overruled, and the judgment of the Oberlin Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Oberlin Municipal Court, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

CARR, J.
DICKINSON, J.
CONCUR

APPEARANCES:

PAUL A. GRIFFIN, Attorney at Law, for Appellant.

MICHELLE NEDWICK, Oberlin City Prosecutor, for Appellee.