

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

State of Ohio

Court of Appeals No. WM-08-022

Appellee

Trial Court No. TRC0805688A

v.

Richard D. Meyer, Jr.

DECISION AND JUDGMENT

Appellant

Decided: July 24, 2009

* * * * *

Rhonda L. Fisher, Bryan Municipal Prosecutor, for appellee.

Stephen D. Long, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Bryan Municipal Court, Williams County, Ohio, which found appellant guilty of one count of OMVI, in violation of R.C. 4511.19, a first-degree misdemeanor, and one count of a marked lane violation, in violation of R.C. 4511.33, a minor misdemeanor. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Richard D. Meyer, Jr., sets forth the following three assignments of error:

{¶ 3} "I. THE TRIAL COURT ERRED BY FAILING TO MAKE SUFFICIENT INQUIRY REGARDING DEFENDANT-APPELLANT'S CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL AND THE RECORD HEREIN FAILS TO DEMONSTRATE THAT THE DEFENDANT-APPELLANT EXECUTED A KNOWING AND INTELLIGENT WAIVER OF HIS RIGHT TO COUNSEL.

{¶ 4} "II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO COMPLY WITH TRAF.R. 10(D) IN ACCEPTING APPELLANT'S PLEA OF NO CONTEST.

{¶ 5} "III. APPELLANT WAS DENIED DUE PROCESS WHERE THE SOCIAL SECURITY NUMBER ON THE CHARGING INSTRUMENT WAS AMENDED WITHOUT APPELLANT BEING AFFORDED NOTICE OF THE PROPOSED AMENDMENT AND THE OPPORTUNITY TO BE HEARD THEREON."

{¶ 6} The following undisputed facts are relevant to the issues raised on appeal. On September 20, 2008, at 2:45 a.m., appellant was stopped for speeding and weaving while operating a motor vehicle on S.R. 15 in Williams County, Ohio. The police officer initiating the stop observed appellant to exhibit signs indicative of alcohol intoxication including glassy eyes and slow motor skills. Appellant failed a field sobriety test. A

subsequent blood alcohol content (“BAC”) test, taken with appellant's consent, revealed a prohibited reading of .188 percent.

{¶ 7} On September 25, 2008, appellant was arraigned on one count of OMVI, in violation of R.C. 4511.19, and one count of a marked lane violation, in violation of R.C. 4511.33. Upon listening to a recorded, detailed recitation of his rights as a criminal defendant at arraignment, appellant elected to proceed on the traffic offenses on a pro se basis.

{¶ 8} The trial court properly reviewed the charges and the associated potential legal consequences to appellant. Thereafter, appellant read and executed the requisite waiver of rights document. The record shows that the trial court affirmatively encouraged appellant to make inquiry into anything that he did not understand. Appellant asked no substantive questions, inquired as to precisely where he should initial the form, and executed the document.

{¶ 9} The trial court accepted the plea, found appellant guilty, and sentenced appellant to a 20-day term of incarceration. The court suspended 14 days of the sentence. A timely pro se notice of appeal was filed. Counsel was appointed to represent appellant.

{¶ 10} In the first assignment of error, appellant asserts that the record fails to establish that appellant knowingly executed the waiver of his right to counsel. In support, appellant argues that the trial court did not make adequate inquiry as to whether appellant properly understood his waiver of counsel.

{¶ 11} We have carefully reviewed the record of proceedings in this matter. The record shows that a thorough delineation of appellant's rights was conveyed prior to his arraignment. The record shows that the trial court gave appellant ample time to review waiver documentation and make any necessary inquiry of the court connected to waiver of counsel documentation and its implications. The record shows that appellant exhibited no indication of any miscommunication or misunderstanding. Appellant fully and properly completed the waiver of counsel document.

{¶ 12} Contrary to appellant's assertions, the record unambiguously establishes that adequate inquiry was made and that appellant knowingly and intelligently waived his right to counsel. We find appellant's first assignment of error not well-taken.

{¶ 13} In appellant's second assignment of error, he contends that the trial court did not comply with Traf.R. 10(D) in its acceptance of his no contest plea. In support, appellant again asserts that he did not understand the effect of a no contest plea and that the trial court failed to adequately instruct him on the matter.

{¶ 14} Traf.R. 10(D) states in relevant part, "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."

{¶ 15} As we noted above, the record of evidence clearly establishes that the trial court fully conveyed to appellant each of his rights as a criminal defendant, each of the alternative pleas available, and the consequences and ramifications affiliated with each of the possible pleas.

{¶ 16} On March 19, 2009, this court granted appellee leave to supplement the record with the certification of rights from appellant's September 25, 2008 arraignment. This supplement to the record clearly demonstrates the trial court's compliance with Traf.R. 10(D). We find appellant's second assignment of error not well-taken.

{¶ 17} In appellant's third assignment of error, he contends that the trial court acted improperly in correcting one incorrect digit in appellant's social security number in the caption of the court's final journal entry. In support of his position, appellant cites Crim.R. 7(D). Crim.R. 7(D) vests the trial court with the authority to, "at any time before, during, or after a trial amend the indictment, information, complaint, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged."

{¶ 18} The record shows that the document amended by the trial court to correct the mistaken digit was the final journal entry concluding the case. As such, the amended document was not an indictment, information, complaint, or bill of particulars so as to trigger Crim.R. 7(D). Regardless, we find that the record shows that appellant would be unable to establish prejudice, as required by Crim.R. 7(D), given the application of Crim.R. 36.

{¶ 19} Crim.R. 36 establishes that, "clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time." The record shows that the trial court corrected one

mistaken digit in appellant's social security number in the final judgment entry. This falls within the purview of the authority expressly granted to the trial court pursuant to Crim.R. 36. We find appellant's third assignment of error not well-taken.

{¶ 20} On consideration whereof, we find that substantial justice has been done. The judgment of the Bryan Municipal Court, Williams County, Ohio, is affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
