

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

In the Matter of: M.C.

Court of Appeals No. L-09-1141

Trial Court No. DL 09190940

**DECISION AND JUDGMENT**

Decided: February 19, 2010

\* \* \* \* \*

Timothy Young, Ohio State Public Defender, and Angela Miller,  
Assistant State Public Defender, for appellant.

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Brad A. Smith, Assistant Prosecuting Attorney, for appellee.

\* \* \* \* \*

HANDWORK, J.

{¶ 1} This case is before the court on appeal from the February 26, 2009 judgment of the Lucas County Court of Common Pleas, Juvenile Division, which found appellant, M.C., delinquent following a hearing and after appellant signed a plea of

admission to burglary, in violation of R.C. 2911.12(A)(2), a felony of the second degree. Appellant was ordered to be committed to the legal custody of the Ohio Department of Youth Services ("ODYS") for institutionalization for an indefinite term and for a minimum period of one year to age 21 in a secure facility. Appellant was ordered to cooperate, participate and obey all program terms and conditions of restitution, through the Juvenile Restitution Program ("JRP"), upon his release from ODYS. Any community service work hours completed while at ODYS were ordered to be applied toward restitution owed through JRP. Appellant was given credit for time served in the Juvenile Detention Center if sent to ODYS, rather than a private facility. Appellant was further ordered to have no contact with the co-defendant, the victim, or any former foster parent.

{¶ 2} Also on February 26, 2009, the state filed a motion to exceed the limit on restitution, normally capped at \$1,000, because the victim allegedly suffered damages in the amount of \$51,812.53. Counsel for appellant opposed the motion to exceed limits of restitution. On April 14, 2009, in a document entitled "Notice of Ruling on Motion," the juvenile court granted the state's motion to exceed the limit on restitution and stated the following: "Motion to exceed the limit on restitution is granted up to the amount of \$2,500.00."

{¶ 3} This court granted appellant's request for delayed appeal. On appeal, appellant raises the following assignments of error:

{¶ 4} 1. "M.C.'s admission to burglary was not knowing, voluntary and intelligent, in violation of the Fifth and Fourteenth Amendments to the United States

Constitution, Sections 10 and 16, Article I of the Ohio Constitution, and Juvenile Rule 29."

{¶ 5} 2. "The February 26, 2009 order requiring restitution deprived M.C. of his right to due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 16 of the Ohio Constitution because the juvenile court failed to hold the evidentiary hearing necessary to determine the appropriate amount owed the victim and failed to journalize a specified amount."

{¶ 6} In appellant's first assignment of error, counsel argues that the juvenile court failed to adequately determine whether appellant understood the nature of the allegations against him prior to accepting a plea. Upon a thorough review of the record, we disagree.

{¶ 7} Juv.R. 29(D) sets forth the procedure to be followed by the juvenile court upon an entry of admission, and states:

{¶ 8} "The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

{¶ 9} "(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

{¶ 10} "(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

{¶ 11} "The court may hear testimony, review documents, or make further inquiry, as it considers appropriate, or it may proceed directly to the action required by division (F) of this rule."

{¶ 12} "An admission in a juvenile proceeding, pursuant to Juv.R. 29, is analogous to a guilty plea made by an adult pursuant to Crim.R. 11 in that both require that a trial court personally address the defendant on the record with respect to the issues set forth in the rules." *In re: C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, ¶ 112, quoting *In re: Smith*, 3d Dist. No. 14-05-33, 2006-Ohio-2788. The preferred practice in juvenile delinquency cases is strict compliance with Juv.R. 29(D); however, "if the trial court substantially complies with Juv.R. 29(D) in accepting an admission by a juvenile, the plea will be deemed voluntary absent a showing of prejudice by the juvenile or a showing that the totality of the circumstances does not support a finding of a valid waiver." *Id.* at ¶ 114.

{¶ 13} Appellant, who was 15 years old at the time of the adjudication in this case, had been adjudicated delinquent 27 previous times, one of which was also for burglary. Before accepting appellant's plea with respect to this charge, the juvenile court addressed appellant directly and engaged him in a colloquy regarding the rights he would be relinquishing by entering an admission to burglary. Appellant stated that he understood those rights. Appellant also was able to tell the court the possible penalty he faced by admitting to the charge. Thereafter, when questioned by the state, appellant admitted that on February 19, 2009, he entered, without permission, a residence on Vermont Street for

the purpose of getting "stolen property." Based on the foregoing, we find that the juvenile court substantially complied with the requirements of Juv.R. 29(D). Appellant's first assignment of error is found not well-taken.

{¶ 14} In his second assignment of error, appellant argues that, in ordering restitution be paid, the juvenile court failed to hold an evidentiary hearing to determine, by competent, credible evidence, the amount of restitution owed, and failed to set forth the amount owed at the time of sentencing or in a judgment entry. See *State v. Gears* (1999), 135 Ohio App.3d 297, 300; *In re Holmes* (1980), 70 Ohio App.2d 75, 76-77; and *In re: Boss B.*, 6th Dist. No. L-07-1343, 2008-Ohio-2995, ¶ 17. We agree. Appellant's second assignment of error is found well-taken.

{¶ 15} On consideration whereof, this court finds that appellant's plea to burglary was voluntarily made and affirms the juvenile court's delinquency adjudication. However, we find that appellant was prejudiced by the juvenile court's failure to hold an evidentiary hearing regarding the amount and reasonableness of restitution owed. Accordingly, we reverse the juvenile court's award of restitution and remand this matter to the juvenile court to conduct an evidentiary hearing regarding restitution and to determine the amount of restitution appellant owes. We affirm the juvenile court's decision in all other respects. The parties are ordered to divide equally the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED IN PART  
AND REVERSED IN PART.

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

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

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>.