

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-11-141
- vs -	:	<u>OPINION</u>
	:	10/19/2009
EMMANUEL C. HEIDELBURG,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 08CR24846

Rachel A. Hutzler, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Emmanuel C. Heidelberg, #A490-004, Southern Ohio Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45699, defendant-appellant, pro se

RINGLAND, J.

{¶1} Defendant-appellant, Emmanuel C. Heidelberg, appeals his conviction for illegal conveyance of drugs onto the grounds of a detention facility.¹ We affirm.

{¶2} Following an incident where appellant's girlfriend attempted to smuggle marijuana to appellant while he was serving a prison sentence at the Lebanon Correctional Institution, appellant was indicted for one count of illegal conveyance of drugs onto the

grounds of a detention facility in violation of R.C. 2921.36(A)(2), a felony of the third degree. Appellant entered a no contest plea to a fourth-degree felony charge of illegal conveyance. Appellant was sentenced to six months in prison to be served consecutive to the sentence he was currently serving at the time of the offense. Appellant timely appeals, raising five assignments of error.

{¶3} Assignment of Error No. 1:

{¶4} "THE TRIAL COURT COMMITTED REVERSIBLE AND PREJUDICIAL ERROR IN FAILING TO DISMISS THE INDICTMENT WHERE IT FAILS TO INCLUDE THE ESSENTIAL FACTS CONSTITUTING THE ELEMENTS OF THE OFFENSE IN VIOLATION OF SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION, AND THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION."

{¶5} Assignment of Error No. 2:

{¶6} "THE TRIAL COURT COMMITTED REVERSIBLE AND PREJUDICIAL ERROR IN CONVICTING APPELLANT UPON HIS PLEA OF NO CONTEST WHERE THE FACTS IN THE INDICTMENT ARE NOT SUFFICIENT TO SUSTAIN A CONVICTION."

{¶7} Appellant's first and second assignments of error both claim that the indictment in this case was defective. Appellant first argues that the indictment failed to include the essential facts of the offense. Specifically, appellant argues that the indictment failed to allege what actions appellant took to convey or attempt to convey a drug of abuse. Further, appellant argues that the indictment failed to identify the exact drug of abuse. As a result, in his second assignment of error, appellant argues that the facts alleged in the indictment are insufficient to support a conviction. Due to the similarity of the arguments, we will address both assignments together.

{¶8} A "no contest" plea is "not an admission of defendant's guilt, but is an

1. Pursuant to Loc.R. 6(A), we have sua sponte removed this appeal from the accelerated calendar.

admission of the truth of the facts alleged in the indictment * * *." Crim.R. 11(B)(2); *State ex rel. Stern v. Mascio*, 75 Ohio St.3d 422, 425, 1996-Ohio-93. "Where the indictment, information, or complaint contains sufficient allegations to state a felony offense and the defendant pleads no contest, the court must find the defendant guilty of the charged offense." *State v. Bird*, 81 Ohio St.3d 582, 1998-Ohio-606, syllabus.

{¶9} The indictment in this case provided, in pertinent part, "[O]n or about the 6th day of January, 2008, in the State of Ohio, County of Warren, the defendant, EMMANUEL C. HEIDELBURG AKA HEIDELBURG, did, knowingly convey, or attempt to convey onto the grounds of a detention facility, to wit: Lebanon Correctional Institution, any drug of abuse as defined in Section 3719.011 of the Revised Code, said offense a Felony of the 3rd degree, contrary to and in violation of Section 2921.36(A)(2) of the Ohio Revised Code * * *."

{¶10} Despite appellant's contention, the indictment did not need to include a detailed description of appellant's specific conduct that gave rise to the offense. *State v. Grinnell* (1996), 112 Ohio App.3d 124, 149. The indictment in this case contained sufficient facts, including the date, location, and nature of the offense to satisfy constitutional requirements. *Bird* at 585.

{¶11} With regard to whether the indictment must identify the specific drug appellant attempted to convey, this court is guided by *State v. Headley* (1983), 6 Ohio St.3d 475, and *State v. Childs*, 88 Ohio St.3d 558, 2000-Ohio-425. The defendant in *Headley* was convicted of aggravated trafficking in drugs. *Headley* at 475. Headley's indictment failed to specify the type of drug involved. *Id.* at 479. The Ohio Supreme Court found that state's failure to include the type of drug was a fatal defect to the indictment and Headley's conviction was reversed. *Id.* The court reasoned that since the severity of the offense of drug trafficking is dependent upon the type of controlled substance, the type of controlled substance is an essential element of the crime and must be identified in the indictment. *Id.*

{¶12} In contrast, the defendant in *Childs* was charged with conspiracy to commit aggravated trafficking. *Childs* at 565. Like *Headley*, the indictment failed to allege the specific controlled substance. *Id.* The court found, "[t]he nature of the controlled substance, while an element of aggravated trafficking, is not an element of the conspiracy to commit that offense." *Id.* The court noted that, based upon the indictment, "the severity of the offense and the category of substances involved could be deduced." *Id.* at 566. As a result, the court concluded that, since a charge of conspiracy need not include the specific drug involved, the indictment adequately charged the elements of the offense. *Id.* at syllabus.

{¶13} Like *Childs*, the concerns expressed in *Headley* are also absent for the crime of illegal conveyance. Like a charge of conspiracy, the type of controlled substance does not determine the severity of the offense of illegal conveyance and is not an essential element required to be included in the indictment.

{¶14} Since the indictment in this case mirrored the statute and contained all essential elements, it was sufficient to charge the offense. *Bird* at 585. Accordingly, the trial court did not err in finding appellant guilty of illegal conveyance following his plea of no contest.

{¶15} Appellant's first and second assignments of error are overruled.

{¶16} Assignment of Error No. 3:

{¶17} "THE TRIAL COURT COMMITTED REVERSIBLE AND PREJUDICIAL ERROR IN FAILING TO COMPLY WITH CRIM.R. 10(C) AT ARRAIGNMENT."

{¶18} Assignment of Error No. 4:

{¶19} "THE TRIAL COURT COMMITTED REVERSIBLE AND PREJUDICIAL ERROR IN FAILING TO DISMISS THE CASE WHERE APPELLANT WAS DENIED COUNSEL AT ARRAIGNMENT IN VIOLATION OF APPELLANT'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION."

{¶20} We will also combine appellant's third and fourth assignments of error since

both involve the hearing conducted on March 5, 2008, which appellant characterizes as an "arraignment." Appellant argues that he was unrepresented by counsel at that hearing and the trial court failed to instruct him of his rights under Crim.R. 10(C). As a result, appellant urges that he was prejudicially deprived of his constitutional rights.

{¶21} Appellant's characterization of the March 5, 2008 hearing as an arraignment is improper. Rather, the March 5 hearing was an initial appearance before the court. The subject matter of the hearing primarily concerned whether appellant planned to retain counsel or if counsel was to be appointed. Appellant was not asked to enter a plea. This is also clearly noted by the trial court. Twice during the hearing, the trial court told appellant that arraignment would occur at a later date. Specifically, at the conclusion of the hearing, the trial court directed, "[o]kay sir, if we have not had an attorney enter his appearance on your behalf by three weeks from today I'll see you again at arraignments and then we'll see how you wish to proceed."

{¶22} Appellant responded, "okay sir."

{¶23} Appellant further urges that he was prejudiced because he was required to represent himself pro se on the issue of bail and that, if he were represented during the hearing, counsel could have competently responded to the bail issue. Appellant suffered no prejudice during this initial appearance. *State v. Bonnell* (1991), 61 Ohio St.3d 179, 182. The bail issue was immaterial to the proceeding since appellant was already incarcerated at the time. In addition, appellant made no incriminating statements to the court, nor were any substantive decisions or judgments made against appellant. *Id.* In all proceedings thereafter, appellant was represented by counsel.

{¶24} Appellant's third and fourth assignments of error are overruled.

{¶25} Assignment of Error No. 5:

{¶26} "THE TRIAL COURT WAS WITHOUT JURISDICTION TO ORDER THE

DEPARTMENT OF CORRECTIONS SECURE APPELLANT'S PRESENCE BEFORE THE COURT."

{¶27} In his fifth assignment of error, appellant argues that he was compelled to enter a no contest plea due to the lengthy and debilitating transportation process used to secure his presence for court hearings. Appellant argues that, pursuant to R.C. 2941.41, he should have been transported to the Warren County Jail by a deputy of the Warren County Sheriff's Office instead of being transported by the department of corrections. Appellant argues that the transportation method in this case is an "illegal tool" used to "wear down defendants."

{¶28} After review of the record, we find no prejudice to appellant. Although appellant raised the issue of improper transportation, he never argued or presented any evidence to the trial court that he was compelled to enter the no contest plea due to the transportation procedure, nor did appellant seek to withdraw his plea at the trial level.

{¶29} Appellant's fifth assignment of error is overruled.

{¶30} Judgment affirmed.

BRESSLER, P.J., and POWELL, J., concur.

[Cite as *State v. Heidelberg*, 2009-Ohio-5520.]