[Cite as *State v. Lancaster*, 2009-Ohio-5373.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 92463 and 92842

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

WINSTON LANCASTER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-505039 and CR-507092

BEFORE: Rocco, P.J., Sweeney, J., and Jones, J.

RELEASED: October 8, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

KENNETH A. ROCCO, P.J.:

{¶ 1} After entering guilty pleas in two separate cases, defendant-appellant Winston Lancaster appeals, asserting the trial court erred in accepting his pleas and in imposing sentence.

{¶ 2} Lancaster presents three assignments of error. He argues the trial court failed to fulfill its duty to ascertain whether his pleas were knowingly, voluntarily and intelligently made. He further argues the trial court's decision to impose a consecutive sentence for the two cases was excessive.

{¶ 3} Upon a review of the record, this court disagrees. Consequently, Lancaster's convictions and sentences are affirmed.

{¶ 4} Lancaster originally was indicted in CR-505039 [1] on six counts, charged with two counts of crack cocaine possession, one count of crack cocaine trafficking, one count of having a weapon while under disability ("HWWUD"), one count of carrying a concealed weapon, and one count of possessing criminal tools. The first three counts indicated the amount of the drug was less than five grams and each carried a firearm specification. All the counts carried at least one forfeiture specification.

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[1]App. No. 92463.

{¶ 5} Subsequently, Lancaster also was indicted in CR-507092.[2] He was charged in that case with possession of and trafficking in less than five grams of crack cocaine, and possessing criminal tools. Each count carried at least one forfeiture specification.

{¶ 6} Eventually, Lancaster entered into a plea agreement. The prosecutor presented it as a "package" at the hearing, outlining for the court as follows.

{¶ 7} In CR-505039, the state would amend the trafficking count to delete the reference to "crack" cocaine, delete the firearm specification in that count, and dismiss the other counts in exchange for Lancaster's guilty pleas to the amended trafficking count and to the HWWUD count. In CR-507092, the state would dismiss the remaining counts in exchange for Lancaster's guilty plea to the trafficking count.

{¶ 8} The trial court thereafter conducted a careful colloquy with Lancaster, informing him that it could not accept his pleas until it had "satisfie[d] [it]self that you understand the consequences of what you're doing * * *." When the court asked Lancaster if he "currently had any physical or mental illness," Lancaster responded, "Physical."

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[2]App. No. 92842.

{¶ 9} The court asked him to explain. Lancaster indicated he had a bladder infection that proved to be resistant to antibiotics. Lancaster assured the court, however, that the treatment did not interfere with his ability to "think clearly." Lancaster further assured the court that if the court "sa[id] something during this hearing that [he didn't] understand," Lancaster would "tell" the court.

{¶ 10} The court proceeded to describe in detail each of the constitutional rights Lancaster was relinquishing in entering his pleas along with the penalties involved for each of the offenses. Each time the court asked Lancaster if he understood, he responded, "Yes." The court concluded the colloquy by asking, "Mr. Lancaster, are you pleading guilty of your free choice here this morning?" Lancaster answered, "Yes, I am."

{¶ 11} The court then asked Lancaster for his plea in each case as to each offense. Every time, he answered, "Guilty." At that point, the court accepted Lancaster's pleas and dismissed the remaining counts. The court then referred Lancaster for a presentence investigation and report.

{¶ 12} When the court called Lancaster's case for sentencing, Lancaster's defense attorney acknowledged that his client's criminal record consisted of "several pages," but asserted, "most of it was misdemeanor activity." Defense counsel also indicated Lancaster's infection had not resolved itself.

{¶ 13} The trial court ultimately imposed a sentence that totaled two years, i.e, in CR-505039, nine months on the trafficking count, concurrent to two years on the HWWUD count, consecutive to eleven months on the count in CR-507092.

{¶ 14} Lancaster presents the following three assignments of error:

{¶ 15} "I. The trial court erred in accepting defendant's plea of guilty, as the plea was not knowingly, intelligently, and voluntarily made.

{¶ 16} "II. The trial court's sentence of two years in Case No. 505039 and eleven months in Case No. 507092 was excessive.

{¶ 17} "III. The trial court erred in imposing consecutive sentences upon the defendant."

{¶ 18} In his first assignment of error, Lancaster argues the trial court acted improperly in accepting his pleas. He claims the court should have determined whether his infection itself, rather than only his medication for the infection, interfered with his understanding. In view of the trial court's care in complying with Crim.R. 11(C)(2), this court disagrees.

{¶ 19} Crim.R. 11(C)(2) requires a court, prior to accepting a guilty plea, to address the defendant personally; the court must specify each of the constitutional rights the defendant is waiving by entering his plea, and, further, must determine, in pertinent part, that "he is making the plea voluntarily, with an understanding of the nature of the charge and the maximum penalty involved," that "he understands the effect of his plea of guilty" and that he understands the

court "may proceed to judgment and sentence." See *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200.

{¶ 20} In this case, the record reflects that the trial court complied literally with every part of Crim.R. 11(C)(2). Literal compliance with the rule necessarily means that, under the totality of the circumstances, Lancaster subjectively understood the implications of his plea. *State v. Hein*, Cuyahoga App. No. 90807, 2008-Ohio-5880, citing *State v. Staten*, Mahoning App. No. 03 MA 187, 2005-Ohio-1350; see, also, *State v. Nero* (1990), 56 Ohio St.3d 106.

{¶ 21} The trial court asked Lancaster for details concerning his infection, and also required appropriate reassurances from Lancaster about his mental state before proceeding with the plea hearing. Under the circumstances, the trial court cannot be faulted for accepting Lancaster's pleas. *State v. Hein*, supra.

{¶ 22} Accordingly, Lancaster's first assignment of error is overruled.

{¶ 23} Lancaster asserts in his second and third assignments of error that the trial court acted improperly in these cases when it imposed a consecutive sentence that totaled two years. [3] Once again, his assertion lacks persuasiveness.

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[3] In making this assertion, Lancaster does not claim the United States Supreme Court's opinion in *Oregon v. Ice* (2009), __ U.S. __, 129 S.Ct. 711 has "abrogated" *Foster*, and, thus, reestablished the constitutionality of the statutes struck down by that case. Rather, he simply ignores *Foster*.

{¶ 24} The Ohio Supreme Court set forth the applicable standard of appellate review of a felony sentence in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-2372, ¶4:

{¶ 25} "In applying [*State v.*] *Foster* [109 Ohio St.3d 1, 2006-Ohio-856] to the existing statutes, appellate courts must apply a two-step approach. First, they must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court's decision shall be reviewed under an abuse-of-discretion standard."

{¶ 26} Pursuant to *Foster* and *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, trial courts retain "full discretion" to impose a prison sentence within the statutory range; courts no longer are required to make findings or give reasons for imposing consecutive sentences. Thus, as long as the sentence is supported in the record and complies with the law, it will be upheld on appeal. *State v. McCullen*, Cuyahoga App. No. 90214, citing *State v. Goins*, Cuyahoga App. No. 89232, 2007-Ohio-6310.

{¶ 27} Lancaster pleaded guilty to one third-degree felony, one fourth-degree felony, and one fifth-degree felony. Each sentence imposed was within the statutory range for those offenses. R.C. 2929.14.

{¶ 28} In view of the concession by the defense at the sentencing hearing that Lancaster's criminal record consisted of "several pages" and that Lancaster

previously had served a prison term, this court cannot conclude the trial court abused its discretion when it decided to run the terms in these two cases consecutively.

{¶ 29} Lancaster's second and third assignments of error, therefore, also are overruled.

{¶ 30} Lancaster's convictions and sentences are affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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KENNETH A. ROCCO, PRESIDING JUDGE

JAMES J. SWEENEY, J., and
LARRY A. JONES, J., CONCUR