[Cite as *State v. Alford*, 2010-Ohio-4130.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93911

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DARRYL ALFORD

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART;
REVERSED AND REMANDED IN PART

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-469026-A

BEFORE: McMonagle, P.J., Dyke, J., and Jones, J.

RELEASED AND JOURNALIZED: September 2, 2010

ATTORNEY FOR APPELLANT

John B. Gibbons
2000 Standard Building
1370 Ontario Street
Cleveland, OH 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
Thorin Freeman
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, OH 44113

CHRISTINE T. McMONAGLE, P.J.:

{¶ 1} Defendant-appellant, Darryl Alford, appeals the trial court's judgment denying his postsentence motion to withdraw his guilty plea. We affirm the conviction and reverse and remand for resentencing.

I.

{¶ 2} Alford was indicted in 2005 in a six-count indictment as follows: Count 1 charged failure to comply with an order or signal of a police officer with a furthermore clause that the operation of the motor vehicle caused a substantial risk of serious physical harm to person or property; Count 2 charged attempted murder (of victim George Harris) with one- and three-year firearm specifications and a body armor specification; Count 3 charged felonious assault (of victim George Harris) with one- and three-year firearm specifications and a body armor specification; Count 4 charged attempted murder (of victim Jennifer Davis) with one- and three-year firearm specifications and a body armor specification; Count 5 charged felonious assault (of victim Jennifer Davis) with one- and three-year firearm specifications and a body armor specification; and Count 6 charged carrying a concealed weapon. The state also petitioned the court for forfeiture of the seized contraband.

{¶ 3} After extensive pretrial negotiations, Alford pleaded guilty to failure to comply with an order or signal of a police officer as charged in Count 1, and felonious assault with one-year firearm specifications and body armor

specifications as charged in Counts 3 and 5. The remaining counts and specifications were nolled. The trial court sentenced Alford to 12 years in prison.

{¶ 4} Alford appealed pro se, but the appeal was dismissed for failure to file the record.[1] A second pro se appeal was dismissed as untimely.[2]

{¶ 5} Alford subsequently filed a motion to withdraw his guilty plea, which the trial court denied. This appeal followed and this court granted Alford the preparation of the transcript at the state's expense; the transcript was filed and has been considered in determining this appeal. In his sole assignment of error, Alford contends that the trial court erred by not granting his postsentence motion to vacate his plea.

II.

{¶ 6} The facts that led to the charges are as follows. Alford worked at New York Frozen Foods in Bedford; his ex-girlfriend, Jennifer Davis, also worked there. On the day of the incident, Alford approached Davis in the plant to talk to her. Davis told Alford that she did not want to talk to him and asked him to move away from her; he did not comply.

{¶ 7} Davis walked away from Alford, but he followed her. Davis found her supervisor and advised him of the situation. Davis then returned to her

[1]*State v. Alford*, Cuyahoga App. No. 87275, motion nos. 379031 and 382174.

[2]*State v. Alford*, Cuyahoga App. No. 87856, motion no. 383933.

work area, where she was again approached by Alford; he told her that if he got fired he would kill her.

{¶ 8} The supervisor paged Alford so that he could speak with him, but was advised by another supervisor that Alford had left on sick leave. Davis's supervisor told her that Alford was gone and Davis told the supervisor of Alford's threat. The police were contacted so that a report could be made. The police arrived at the plant, and while taking Davis's statement, saw Alford's vehicle in the vicinity of the plant. Alford, who was driving the car, parked in the lot of a nearby business, exited the car dressed in camouflage with a black object in his hands. He cut through a wooded area that led to the rear of New York Frozen Foods.

{¶ 9} Alford entered the plant and fired shots; some, but not all, of the employees were evacuated from the building. Employee George Harris remained in the building. Alford believed that Davis had ended her relationship with him to be with Harris. Alford confronted Harris, pulled a gun on him, and told him he was going to shoot Davis after he "finished" with him. Harris scuffled with Alford and was able to restrain him until the police apprehended him.

{¶ 10} Over 20 shotgun shells and a body armor were recovered from the scene and/or from Alford's person. A rifle, machete, shotgun ammunition, and rifle ammunition were recovered from Alford's car.

III.

{¶ 11} Crim.R. 32.1 provides that "to correct manifest injustice[,] the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea." Manifest injustice is "a fundamental flaw in the path of justice so extraordinary that the defendant could not have sought redress from the resulting prejudice through another form of application reasonably available to him or her." *State v. Sneed*, Cuyahoga App. No. 80902, 2002-Ohio-6502, ¶13. The Ohio Supreme Court has also defined manifest injustice as a "clear or openly unjust act." *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208, 1998-Ohio-271, 699 N.E.2d 83. This standard permits a defendant to withdraw his guilty plea only in extraordinary cases. *State v. Smith* (1977), 49 Ohio St.2d 261, 264, 361 N.E.2d 1324. Ordinarily, we review a court's denial of a postsentence motion to withdraw guilty plea under an abuse of discretion standard. *State v. Makupson*, Cuyahoga App. No. 89013, 2007-Ohio-5329, ¶20.

{¶ 12} Alford's motion to withdraw his plea was based on his contention that he was "harassed, abused and made fun of by the Trial Judge at every step of the proceeding." He first contends that "through some mix-up in the County Jail, [he] appeared in open court wearing his orange prison jumpsuit." According to Alford, "[t]he Trial Judge did nothing to rectify this mishap. Instead, [he] was forced to proceed to trial, before a jury, wearing prison garb."

{¶ 13} The record reflects that when Alford arrived in court on the day set for trial, the court asked him why he was not dressed for trial. Alford first responded that he did not have clothes. He later said, "I have suits. I am willing to go to trial." After checking into the situation, the court stated that "[t]he deputies informed the Court what they told [Alford] downstairs. He refused to dress. Which means he refused to dress for the clothes that he had or wouldn't take the clothes they offered him." Thus, Alford's contention of a "mix-up" is belied by the record. Further, although voir dire commenced, the case was ultimately not decided by a jury and therefore Alford was not prejudiced by his attire.

{¶ 14} Alford next contends that despite his dissatisfaction with his attorney, the court "did nothing to determine the exact nature of the problem." This contention is also belied by the record. The court gave Alford ample opportunity to express his dissatisfaction with counsel and to explain why, despite the fact that he had been in jail for some five months on this case, the court was just learning of his dissatisfaction on the morning of trial.

{¶ 15} The record reveals that, as of the trial date, defense counsel and the assistant prosecuting attorney were under the impression that a plea agreement had been reached. However, on that date, Alford indicated that he (1) had been threatened by the state, (2) was not satisfied with his counsel, (3) wanted new counsel and, (4) wanted to go to trial.

{¶ 16} After extensive back-and-forth between Alford and the court about his request for a new attorney, the court told Alford that it was not going to grant his request and that he could proceed either with the counsel he had or pro se, cautioning him about representing himself. Alford indicated that he wanted to go to trial representing himself and the court proceeded to voir dire.

{¶ 17} At the conclusion of the proceedings for that day, the court informed Alford that he would be permitted, after the state, to question the jury the following day and further advised him of the procedure for the remainder of the trial. The court gave him an edition of the Rules Governing the Courts of Ohio and advised him to read the Evidence Rules and Rules of Criminal Procedure. The minimum and maximum sentences under the plea agreement versus a jury finding of guilt on all charges were placed on the record.

{¶ 18} The following morning, Alford indicated that he wanted his counsel to represent him in a change of plea and proceed immediately to sentencing. A review of the transcript reveals that the trial court complied with the advisements set forth under Crim.R. 11 for change of pleas. Further review reveals that Alford did not articulate adequate reasons for wanting new counsel, despite having been given ample opportunity to do so.

{¶ 19} Finally, although the court advised Alford on the record about postrelease control, it did not adequately set forth the postrelease control

advisements in its judgment entry. Because Alford was sentenced before July 11, 2006, we remand for resentencing in accordance with *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958.[3]

It is ordered that appellee and appellant share the 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 resentencing.

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

CHRISTINE T. McMONAGLE, PRESIDING JUDGE

ANN DYKE, J., and
LARRY A. JONES, J., CONCUR

[3]"For criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall conduct a de novo sentencing hearing in accordance with decisions of the Supreme Court of Ohio." Id. at paragraph one of syllabus.