

[Cite as *State v. Baxter*, 2018-Ohio-2237.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106187

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GREGORY BAXTER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-602878-A

BEFORE: Laster Mays, J., Blackmon, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: June 7, 2018

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Gregory Baxter (“Baxter”) appeals the trial court’s decision to accept his guilty pleas and asks this court to void his plea and remand this case to the trial court for further proceedings. We affirm.

{¶2} On February 9, 2016, a Cuyahoga County Grand Jury indicted Baxter on five counts, including two counts of murder, one count of felonious assault, one count of voluntary manslaughter, and one count of grand theft. Baxter pleaded not guilty to all counts. On March 15, 2017, pursuant to a plea agreement, the state amended the murder count charged in Count 1 to kidnapping. Baxter pleaded guilty to one count of kidnapping, a first-degree felony, in violation of R.C. 2905.01(A)(1); one count of felonious assault, a second-degree felony, in violation of R.C. 2903.11(A)(1); and one count of voluntary manslaughter, a first-degree felony,

in violation of R.C. 2903.03(A). The remaining counts were dismissed by the state.

{¶3} As part of the plea agreement, Baxter agreed to be sentenced to a prison term between 20 and 23 years. The state and Baxter also agreed that the felonious assault and voluntary manslaughter counts would not merge for purposes of sentencing. At the sentencing hearing, Baxter was sentenced to 22 years imprisonment.

I. Facts

{¶4} On March 15, 2017, Baxter pleaded guilty to the amended charge. At the beginning of the proceedings, Baxter's attorney stated,

And for the record, my client is aware of the fact that we are amending Count 1 to reflect the kidnapping, [R.C.] 2905.01(A)(2). We waive any defects in form or service. We waive presentment to the grand jury, and will allow it to be amended for the purposes of this plea. We further understand that for the purposes of this plea, none of these sentences run concurrent nor do they merge. And finally, [y]our Honor, my client is aware of his constitutional rights, and in doing so, [y]our Honor, he's willing to waive those constitutional rights voluntarily, without any threats or promises. And as stated earlier, [y]our Honor, we were set for trial today, and this plea is going to take place instead of the trial.

(Tr. 7.)

{¶5} During the conversation between the trial court and Baxter, the trial court asked Baxter if his plea was induced by a threat or promise. Baxter indicated that it was not. The trial court also asked Baxter if he understood what was happening in the court room, to which Baxter replied, "Yes. Very much so." (Tr. 11.) The trial court fully complied with Crim.R. 11(C) and sentenced Baxter to 22 years imprisonment. Baxter filed this appeal assigning one error for our review:

- I. The trial court abused its discretion by accepting the appellant's guilty plea without ensuring that the appellant knowingly, intelligently, and voluntarily waived his right to a grand jury to determine whether a sufficient factual basis existed to charge him with kidnapping, R.C. 2905.01.

II. Grand Jury Waiver

A. Standard of Review

{¶6} “In considering whether a guilty plea was entered knowingly, intelligently, and voluntarily, an appellate court examines the totality of the circumstances through a de novo review of the record.” (Citation omitted.) *State v. Spock*, 8th Dist. Cuyahoga No. 99950, 2014-Ohio-606, ¶ 7.

B. Law and Analysis

{¶7} In Baxter’s sole assignment of error, he argues that his guilty pleas were not entered into knowingly, intelligently, and voluntarily because he did not waive his right to a grand jury. Here, Baxter essentially argues that his plea agreement was invalid because it included a new charge that was never presented to the grand jury. Baxter is correct that the kidnapping charge was never presented to the grand jury. However, Baxter’s plea agreement contained an express waiver of his right to have that amended charge presented to the grand jury. Nonetheless, Baxter contends this waiver was invalid because he did not waive his right, but rather the right was waived by his counsel. Baxter’s argument here is baseless.

The Ohio Constitution does provide that: “no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury.” Section 10, Article I, Ohio Constitution. However, pursuant to Crim.R. 7(A), and R.C. 2941.021, this right may be waived. *See also, Stacy v. Van Coren*, 18 Ohio St.2d 188, 189-90, 248 N.E.2d 603 (1969).

State v. Owens, 181 Ohio App.3d 725, 2009-Ohio-1508, 910 N.E.2d 1059, ¶ 64 (7th Dist.).

{¶8} R.C. 2941.021, prosecution by information, states:

Any criminal offense which is not punishable by death or life imprisonment may be prosecuted by information filed in the common pleas court by the prosecuting attorney if the defendant, after he has been advised by the court of the nature of the charge against him and of his rights under the constitution, is represented by counsel or has affirmatively waived counsel by waiver in writing and in open court, waives in writing and in open court prosecution by indictment.

{¶9} Crim.R. 7(A), use of indictment or information, states in pertinent part:

A felony that may be punished by death or life imprisonment shall be prosecuted by indictment. All other felonies shall be prosecuted by indictment, except that after a defendant has been advised by the court of the nature of the charge against the defendant and of the defendant's right to indictment, the defendant may waive that right in writing and in open court.

{¶10} "[T]he defendant's waiver of indictment was valid where he was represented by counsel." *State v. Owens*, 181 Ohio App.3d 725, 2009-Ohio-1508, 910 N.E.2d 1059, ¶ 69 (7th Dist.). When Baxter's attorney waived presentment to the grand jury, Baxter was in the courtroom, did not object, and indicated to the trial court that he understood the proceedings. The record reflects the following at the beginning of the proceedings:

COUNSEL: Your Honor, before we start taking the pleas, I just want to put on the record — and Mr. Baxter wanted me to also express this *
* *.

(Tr. 3.)

{¶11} Baxter's counsel went on to thank the court, defense counsel, and the court reporter for their time. The state then made the following statement:

STATE: So for that reason, I'm going to ask you, Your Honor, to amend Count 1, which originally indicted murder — charged murder to [f]elony 1 kidnapping, and that is violation of Ohio Revised Code 2905.01(A)(2). And it is my understanding that Mr. Baxter would waive his right to have that count presented to the grand jury in an effort to resolve the case. If that amendment is made, it's my understanding he would plead guilty to [f]elony 1 kidnapping in Count 1.

(Tr. 5-6.)

{¶12} Baxter's counsel, speaking on his behalf, waived any defects in form or service and presentment to the grand jury. The court gave Baxter several opportunities to ask questions, object, or indicate that Baxter did not agree with the proceedings.

COURT: So, Mr. Baxter, let's talk about one of the things Mr. Martin said to begin with, is this range of 20 to 23 years basically, and that's something that I would choose in that range. Is that what your understanding is at this point in time?

BAXTER: Yes, sir.

COURT: I want to talk about that at the beginning because one of my obligations during this plea process is to make sure that you understand what your rights are and that you understand that you'll be waiving them, you understand what it is that you'll be pleading to, and you'll understand what your maximum possible penalty could be. And I emphasize the words "could be" because as we go through this process, one of my requirements is to advise you what your maximum sentence could be if I chose not to honor this, what is a recommendation between your side and the State of Ohio. I'm telling you that I will honor that recommendation, which is to say no less than 20 years, no more than 23 years. I will accept that recommendation. I don't have to. And so the law requires that I still advise you of what your worst-case scenario could be. And I want you to hear that upfront so that when you hear me talk about a number of I think 33 years, you're not going, "Hey, Hilow, what the heck's going on? What's that judge talking about?" So, follow so far what I'm suggesting to you?

BAXTER: Yes, sir.

COURT: Then as we continue through this, if you had any other questions of me about anything else that I ask of you or something that I say that you don't quite understand, let me know and I'll clear it up for you. Likewise, if you would like to have the opportunity to speak with Mr. Hilow about something in private, let me know, and I'll make sure that happens as well. Does that sound like a plan?

BAXTER: Yes, sir.

(Tr. 8-10.)

{¶13} The record demonstrates that Baxter waived the presentment to the grand jury, was fully advised of his constitutional rights, and knowingly, intelligently, and voluntarily entered the guilty plea.

{¶14} Baxter's assignment of error is overruled.

{¶15} Judgment is affirmed.

It is ordered that the 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.

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

ANITA LASTER MAYS, JUDGE

PATRICIA ANN BLACKMON, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR