

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

CITY OF WILLOWICK,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-L-097
GARY SANVIDO, d.b.a. SANVIDO CONSTRUCTION CO.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Willoughby Municipal Court, Case No. 08 CRB 04894.

Judgment: Affirmed.

Donald J. Ezzone, Prosecuting Attorney for the City of Willowick, 35353 Curtis Boulevard, #441, Eastlake, OH 44095 (For Plaintiff-Appellee).

Gary Sanvido, pro se, 29518 Woodway Drive, Wickliffe, OH 44092 (Defendant-Appellant).

MARY JANE TRAPP, P.J.

{¶1} Mr. Gary Sanvido appeals the judgment of the Willoughby Municipal Court, which found him guilty of failing to register his business with the city of Willowick.

{¶2} **Substantive and Procedural Facts**

{¶3} On December 15, 2008, Willowick Building Inspector Sean Brennan filed a complaint against Mr. Sanvido for failing to register his contracting business in violation of Willowick Ord. 751.02. The complaint and summons were mailed via certified mail, but returned by the post office marked “attempted not known” on January 5, 2009. At

the request of the prosecutor, service was again attempted and perfected by regular mail on January 16, 2009.

{¶4} On January 28, 2009, Mr. Sanvido appeared for his arraignment and the court accepted his not guilty plea.

{¶5} On February 9, 2009, Mr. Sanvido filed a motion to dismiss the complaint alleging improper service. He then failed to appear at two scheduled pretrials, and on April 24, 2009, the court issued a complaint of contempt and a warrant for Mr. Sanvido's arrest.

{¶6} On June 3, 2009, Mr. Sanvido appeared before the court and signed a waiver of counsel. The court also granted a continuance to permit the city to amend the complaint to reflect the proper party in the caption of the case. The city did so one week later. The court then issued a judgment entry granting the city's request for personal service of the amended complaint and summons for Mr. Sanvido to appear on June 17, 2009, for the arraignment and pretrial.

{¶7} Service was perfected by Willowick Detective LaForge on June 12, 2009, as evidenced by the return of summons, which was signed by the detective and time-stamped by the court on June 15, 2009.

{¶8} On June 17, 2009, Mr. Sanvido duly appeared at the arraignment. As noted on the docket and the court's judgment entry, the court explained Mr. Sanvido's constitutional rights and various pleas, after which the court accepted Mr. Sanvido's not guilty plea. The court then denied Mr. Sanvido's motion to dismiss the complaint because the issues of improper service were moot in light of the amended complaint, Mr. Sanvido's entry of appearance, and his not guilty plea.

{¶9} Two days later, Mr. Sanvido filed a second motion to dismiss, this time on the amended complaint, arguing the court lacked personal jurisdiction because he did not receive a summons when he was personally served. Mr. Sanvido then filed a request for a pretrial evidentiary hearing several days later, on June 22, 2009.

{¶10} Prior to proceeding with the bench trial on June 24, 2009, the court overruled Mr. Sanvido's motions, finding that Mr. Sanvido waived any irregularities in the complaint or summons since he appeared for the arraignment and pled not guilty to the charge. Furthermore, by doing so, personal jurisdiction was at that time granted to the court.

{¶11} After a bench trial, the court found Mr. Sanvido guilty, fined him \$500, and sentenced him to 30 days in jail, suspended. His sentence was then stayed pending this appeal.

{¶12} Mr. Sanvido now raises three assignments of error for our review:

{¶13} "[1.] The trial court erred and abused its discretion when it allowed a summons to be prepared and issued upon a complaint that was deficient and which lacked probable cause.

{¶14} "[2.] The trial court erred, abused its discretion, and committed plain error when it determined it had jurisdiction over defendant who had never been served a summons to appear and when it overruled defendant's motion to dismiss amended complaint and request for pre-trial evidentiary hearing to establish defendant had never been served a summons.

{¶15} "[3.] The trial court violated Criminal Rule(s) 5 and 10 at defendant/appellant's initial appearance and failed to inform the defendant/appellant of his rights

and inquire to determine that he understood them and failed to provide the defendant and appellate court with the entire record.”

{¶16} Deficient Complaint

{¶17} In his first assignment of error, Mr. Sanvido contends that the complainant, Willowick Building Inspector Sean Brennan, did not have personal knowledge of the facts underlying the complaint. Thus, he argues that the complaint failed to establish probable cause and is deficient. We disagree.

{¶18} Pursuant to Crim.R. 3, the complaint is “a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths.”

{¶19} “There are three requirements, therefore, for a complaint to be valid under Crim.R. 3. First, the complaint must set forth a written statement of the facts that constitute the essential elements of the offense charged. The essential elements of a given offense are those facts which must be proven to obtain a conviction of the accused. The complainant does not need to have personal knowledge of the facts stated in the complaint, but rather must only have reasonable grounds to believe that the defendant committed the crime charged. The second requirement is that the complaint must state the numerical designation of the Revised Code section or municipal ordinance which the defendant allegedly violated. Finally, the third requirement is that the complaint must be made under oath before any person authorized by law to administer oaths.” *State v. Patterson* (May 22, 1998), 11th Dist. No. 96-T-5439, 1998 Ohio App. LEXIS 2289, 7-8; Crim.R. 3.

{¶20} A plain reading of the complaint reveals it is not deficient in any respect:

{¶21} “Defendant, Gary Sanvido, is the owner of a company doing business in the City of Willowick, Ohio. Mr. Sanvido has received notice from the City of Willowick’s Building Inspector on or about September 24, 2008 that it must register with the City of Willowick in order to do business in that city. After more than thirty (30) days, the Defendant has failed to comply and is in violation of Willowick Codified Ordinance Section 751.02. Pursuant to Willowick Codified Ordinance, the penalty for such violation is not more than Five Hundred Dollars (\$500.00) nor more than thirty days imprisonment, or both. A separate offense shall be deemed to be committed each day during or on which a violation occurs.

{¶22} *The complaint is based on facts and circumstances known to the complainant and/or the Willowick Building Inspector.”* (Emphasis added.)

{¶23} Thus, we fail to see how the complaint does not allege it is based on the personal knowledge of Inspector Brennan when it is so explicitly stated.

{¶24} Mr. Sanvido’s first assignment of error is without merit.

{¶25} **Personal Jurisdiction**

{¶26} In his second assignment of error, Mr. Sanvido contends the trial court erred in dismissing his motion to dismiss due to improper service of the summons. Mr. Sanvido argues that there is no evidence he was served with the summons, and thus, the court lacked personal jurisdiction over him to proceed. We disagree.

{¶27} First, “it is a well-established rule in Ohio that when a defendant appears in the trial court and enters a plea of not guilty to charges, he waives any objection to the court’s exercise of personal jurisdiction over him.” *City of Cleveland v. Fitos*, 8th

Dist. No. 81404, 2003-Ohio-33, ¶11, citing *State v. Savage* (1977), 60 Ohio App.2d 394, 397. See, also, *State v. Smith Jr.*, 7th Dist. No. 05 MA 219, 2007-Ohio-3182, ¶22.

{¶28} Second, even if Mr. Sanvido had objected prior to entering his not guilty plea, the record reflects that Mr. Sanvido was properly served. Mr. Sanvido does not dispute that he was personally served with the amended complaint by Detective LaForge. The caption of the complaint reads “amended complaint and summons.” A copy of the complaint and the summons to appear, along with the signed return of summons by Detective LaForge is included in the record. Accordingly, as requested, on June 17, 2009, Mr. Sanvido duly appeared and entered a plea of not guilty.

{¶29} We recognize that Mr. Sanvido is proceeding without the benefits of counsel, however, “pro se litigants are bound by the same rules and procedures as those litigants who retain counsel and they are not to be accorded greater rights and must accept the results of their own mistakes and errors.” *Fitos* at ¶15, citing *Meyers v. First Nat’l. Bank* (1981), 3 Ohio App.3d 209.

{¶30} As no claimed error exists, Mr. Sanvido’s second assignment of error is without merit.

{¶31} **Waiver of Constitutional Rights**

{¶32} Lastly, Mr. Sanvido contends the trial court failed to advise him of his constitutional rights and that the court further erred by failing to file a transcript of his arraignment. As Mr. Sanvido’s signed waiver of rights is in the record and the burden is on the complaining party to provide a complete record upon appeal, Mr. Sanvido’s contentions are without merit.

{¶33} Unless Mr. Sanvido made a request for a transcript of the arraignment hearing to be transmitted upon appeal, it is not the trial court's duty to provide one. Rather, "[u]pon appeal of an adverse judgment, it is the duty of the appellant to ensure that the record, or whatever portions thereof are necessary for the determination of the appeal, are filed with the court in which he seeks review. App.R. 9(B) and 10(A); Section (1) of Rule IV of the Supreme Court Rules of Practice. It follows that where a transcript of any proceeding is necessary for disposition of any question on appeal, the appellant bears the burden of taking the steps required to have the transcript prepared for inclusion in the record." *Wood v. Wood*, 11th Dist. No. 2009-T-0082, 2010-Ohio-1154, ¶20, citing *Knapp v. Edward Laboratories* (1980), 61 Ohio St.2d 197, 199. "Any lack of diligence on the part of an appellant to secure a portion of the record necessary to his appeal should inure to appellant's disadvantage rather than to the disadvantage of appellee." *Id.*, citing *Rose Chevrolet, Inc. v. Adams* (1998), 36 Ohio St.3d 17, 19. "Unless the record transmitted on appeal includes an App.R. 9(C) statement that affirmatively demonstrates error, we must presume the trial court committed no error despite the fact the record is not complete." *Id.*, citing *State v. Hill* (Dec. 30, 1996), 4th Dist. No. 96 CA 4, 1996 Ohio App. LEXIS 6097, 14. "[W]ithout a transcript or a substitute statement of the evidence, an appellate court must presume the regularity of the trial court's proceedings and accept the validity of its judgment." *Id.*, citing *Rudinsky v. Eagle Reddie Mix Concrete* (June 28, 1996), 11th Dist. No. 96-T-5401, 1996 Ohio App. LEXIS 2730, 5.

{¶34} Not only did Mr. Sanvido fail to present us with a transcript or an App.R. 9(C) statement, he also filed a motion with this court stating that although he ordered a

transcript at the time the notice of appeal was filed, he now “has decided” it is not necessary.

{¶35} Moreover, the record reflects that on June 3, 2009, Mr. Sanvido signed a valid waiver of his rights, which states that he was advised by the court as to the nature of the charges and his right to an attorney; and that he knowingly, intelligently and voluntarily waived his rights. In addition, in the judgment entry recording Mr. Sanvido’s arraignment where he entered a not guilty plea on June 17, 2009, the entry clearly states “Defendant appeared. Constitutional rights and pleas explained.”

{¶36} Mr. Sanvido’s third assignment of error is without merit.

{¶37} The judgment of the Willoughby Municipal Court is affirmed.

DIANE V. GRENDALL, J.,

TIMOTHY P. CANNON, J.,

concur.