[Cite as *State v. Brown*, 2017-Ohio-7963.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO, CITY OF MENTOR,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2017-L-038**
- vs -	:	
JERRY L. BROWN, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Mentor Municipal Court, Case No. 2016 TRD 00058.

Judgment: Affirmed.

Lisa M. Klammer, Mentor City Prosecutor, 8500 Civic Center Boulevard, Mentor, OH 44060 (For Plaintiff-Appellee).

Jerry L. Brown, Jr., pro se, 1024 Brentwood Drive, Painesville, OH 44077 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Jerry L. Brown, Jr., appeals from judgments of the Mentor Municipal Court finding him guilty of a marked lanes violation following a no contest plea and denying his motion to vacate void judgment. Finding no error, we affirm.

{¶2} On January 7, 2016, appellant was issued a traffic citation for a marked lanes violation under Mentor Code of Ordinance 331.08 to which he ultimately pleaded

no contest. On January 27, 2016, the trial court found appellant guilty of a zero point marked lanes offense and ordered him to pay a $100 fine plus costs.

{¶3} About a year later, on January 13, 2017, appellant filed a pro se "Motion to Set Aside Void Judgment and Vacate Plea of No Contest." Appellee, the state of Ohio, city of Mentor, filed a response in opposition. Appellant filed pro se replies.

{¶4} Following a hearing, the trial court denied appellant's motion on February 1, 2017. Appellant filed a pro se appeal asserting the following three assignments of error:[1]

{¶5} "[1.] Where the trial court erred in denying Defendant-Appellant's motion to vacate void judgment due to the charges comprising the complaint in the form of a Uniform Traffic Citation does not contain any essential elements or set forth facts sufficient to constitute an offense under Crim.R. 3 and Traf.R. 3.

{¶6} "[2.] Where the trial court erred and abused its discretion when denying the Motion to vacate void judgment on the ground that the application to vacate had elapsed by time?

{¶7} "[3.] Where the plea was not knowing, intelligent or voluntarily made because the trial court erred when it failed to advise appellant of his rights and the effect of a no-contest plea."

{¶8} Preliminarily, we note that an appellate court's standard of review on the denial of a motion to vacate void judgment is de novo.

{¶9} "In general, a void judgment is one that has been imposed by a court that lacks subject-matter jurisdiction over the case or the authority to act." *State v. Bozek*,

1. Appellant appeals the January 27, 2016 judgment regarding his conviction and sentence as well as the February 1, 2017 judgment regarding his motion to vacate **void judgment**. The main issue on appeal involves the trial court's denial of his motion to vacate.

11th Dist. Portage No. 2015-P-0018, 2016-Ohio-1305, ¶20 (emphasis deleted), citing *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, ¶27.

{¶10} In his first assignment of error, appellant argues the trial court erred in denying his motion to vacate void judgment. Appellant maintains the Uniform Traffic Citation does not contain any essential elements or sufficient facts to constitute an offense under Crim.R. 3 and Traf.R. 3.

{¶11} In his second assignment of error, appellant contends the trial court erred in denying his motion to vacate void judgment as untimely.

{¶12} Because appellant's first and second assignments are interrelated, we will address them together.

{¶13} "A complaint that meets the requirements of Crim.R. 3 invokes the subject-matter jurisdiction of a trial court." *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, paragraph one of the syllabus.

{¶14} Crim.R. 3 states: "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."

{¶15} Although Crim.R. 3 requires the criminal complaint be made upon oath, Crim.R. 1(C) excludes from the application of the Criminal Rules all cases covered by the Ohio Uniform Traffic Rules. *See* Crim.R. 1(C) ("Exceptions. These rules, to the extent that specific procedure is provided by other rules of the Supreme Court or to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure * * * (3) in cases covered by the Uniform Traffic Rules[.]")

{¶16} Traf.R. 3 provides in part:

{¶17} "(C) * * * An officer who completes a ticket at the scene of an alleged offense shall not be required to rewrite or type a new complaint as a condition of filing the ticket, unless the original complaint is illegible or does not state an offense. * * *

{¶18} "* * *

{¶19} "(E)(1) A law enforcement officer who issues a ticket shall complete and sign the ticket, serve a copy of the completed ticket on the defendant, and, without unnecessary delay, file the court record with the court."

{¶20} Ohio traffic laws require, and courts in Ohio have upheld, that valid complaints/traffic citations must sufficiently inform a defendant of the alleged offense with which he or she is charged. "[A] traffic ticket 'will satisfy legal requirements, if it apprises a defendant of the nature of the charge together with a citation of the statute or ordinance involved.'" (Emphasis deleted.) *North Olmstead v. Greiner*, 9 Ohio App.3d 158, 159 (8th Dist.1983), quoting *Cleveland v. Austin*, 55 Ohio App.2d 215, 220 (8th Dist.1978).

{¶21} "The purpose of the Ohio Traffic Rules is, in large part, to ensure '*simplicity* and uniformity *in procedure* (* * *).' (Emphasis added.) Traf.R. 1(B). Simplicity in procedure does not mean unfairness in procedure, or indifference to the rights of the prosecution or the defense. It means that traffic court procedure is not controlled by the stricter, more elaborate rules that govern procedures in more serious cases. Cf. *Youngstown v. Starks* (1982), 4 Ohio App.3d 269, 271 * * *. Therefore, a complaint prepared pursuant to Traf.R. 3 simply needs to advise the defendant of the offense with which he is charged, in a manner that can be readily understood by a

person making a reasonable attempt to understand. *Cleveland v. Austin* [,*supra,* at] 219 * * *." (Parallel citations omitted). *Barberton v. O'Connor*, 17 Ohio St.3d 218, 221 (1985).

{¶22} In this case, the complaint was completed by an officer at the scene, is legible, states an offense, was signed by the officer, served on appellant, and filed with the court. Traf.R. 3(C) and (E)(1). The complaint prepared pursuant to Traf.R. 3 apprised appellant of the nature of the charge together with a citation of the ordinance involved. *Greiner, supra,* at 159. The complaint advised appellant of the offense in a manner that could be readily understood by a person making a reasonable attempt to understand. *O'Connor, supra,* at 221.

{¶23} Specifically, the traffic citation indicates the following: the case number (16 TRD 58); the ticket number (M118793); the jurisdiction (city of Mentor and Mentor Municipal Court); the date of the incident (January 7, 2016); the time of the incident (2:20 a.m.); appellant's full name, address, birth date, sex, height, weight, eye color, hair color, race, license information, vehicle information, and where the violation occurred (State Route 2 near Heisley Road); the offense was listed as "Marked Lanes" in violation of Mentor Code of Ordinance 331.08; the conditions were listed as "Dry" pavement, "Night" visibility, "No Adverse" weather, "Moderate" traffic, "Business" area, and "No" crash; accompanying criminal charge was marked "No"; total number of offenses was marked "1"; it was stated that appellant was summoned and ordered to appear on January 13, 2016 at 8:00 a.m. at Mentor Municipal Court; it was stated that if appellant failed to appear he could be arrested or his license canceled; it was stated that the summons was personally served on appellant on January 7, 2016; the charging

and issuing officer were the same (Officer Kupchik); the officer signed the traffic complaint; the officer included his badge number (436) and unit number (32); and the complaint was time stamped, filed, and journalized (January 8, 2016, Mentor Municipal Court).

{¶24} The traffic citation clearly reveals appellant committed a marked lanes violation under Mentor Code of Ordinance 331.08. The offense occurred in the city of Mentor, Lake County Ohio, within the jurisdiction of the Mentor Municipal Court. Thus, the trial court properly exercised jurisdiction over this matter. *See* R.C. 1901.20(A)(1) ("The municipal court has jurisdiction to hear misdemeanor cases committed within its territory and has jurisdiction over the violation of any ordinance of any municipal corporation within its territory[.]")

{¶25} We find no issue with the trial court's jurisdiction or with the traffic citation. Although the trial court mentioned "timeliness," we find no issue with the time frame in which the motion to vacate void judgment was filed. *See e.g. State v. Davies*, 11th Dist. Ashtabula No. 2012-A-0034, 2013-Ohio-436, ¶13 (since the appellant's motion to vacate void judgment raised an issue of subject matter jurisdiction it could be asserted at any time.) Accordingly, the trial court committed no error in denying appellant's motion to vacate void judgment, filed approximately one year after judgment.

{¶26} Appellant's first and second assignments of error are without merit.

{¶27} In his third assignment of error, appellant alleges his plea was not knowing, intelligent or voluntary. Appellant asserts the trial court erred in failing to advise him of his rights and the effect of his no contest plea.

{¶28} Crim.R. 32.1 states: "A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but 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." (Emphasis added.)

{¶29} "In *State v. Derricoatte,* 11th Dist. Ashtabula No. 2012-A-0038, 2013-Ohio-3774, ¶18, we stated:

{¶30} "'This court has defined the term "manifest injustice" as a "clear or openly unjust act." *State v. Wilfong,* 11th Dist. Lake No. 2010-L-074, 2011-Ohio-6512, ¶12. Pursuant to this standard, extraordinary circumstances must exist before the granting of a post-sentencing motion to withdraw can be justified. *Id.* "The rationale for this high standard is 'to discourage a defendant from pleading guilty [or no contest] to test the weight of potential reprisal, and later withdraw the plea if the sentence is unexpectedly severe.' "(*State v.*) *Robinson,* (11th Dist. Lake No.2011-L-145,) 2012-Ohio-5824, at ¶14, quoting *State v. Caraballo,* 17 Ohio St.3d 66, 67, (* * *) (1985).' (Parallel citations omitted.)" *State v. Banks*, 11th Dist. Lake No. 2015-L-128, 2016-Ohio-4925, ¶8-9.

{¶31} The record reveals appellant's no contest plea was knowingly, intelligently, and voluntarily made. Appellant was afforded a full hearing and the trial court advised appellant of his rights at that time. The transcript establishes appellant wished to plead no contest, consented to a finding of guilt, and waived the reading of the facts upon which the matter was brought. Appellant had no questions regarding the resolution of the case, i.e., a zero point $100 fine plus costs for the marked lanes offense. In support of his argument here, appellant mentions dash cam video footage. However, there is no dash cam DVD in the record before us. Appellant fails to demonstrate any prejudice

or manifest injustice due to the trial court's denial of his motion to vacate regarding his no contest plea.

{¶32} Appellant's third assignment of error is without merit.

{¶33} For the foregoing reasons, appellant's assignments of error are not well-taken. The judgments of the Mentor Municipal Court are affirmed.

TIMOTHY P. CANNON, J.,

THOMAS R. WRIGHT, J.,

concur.