

[Cite as *State v. Kinebrew*, 2008-Ohio-812.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-060769
	:	TRIAL NO. B-0411298
Plaintiff-Appellee,	:	
	:	<i>OPINION.</i>
vs.	:	
JEROME KINEBREW,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: February 29, 2008

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Philip R. Cummings*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Chris McEvilley, for Defendant-Appellant.

Note: We have removed this case from the accelerated calendar.

CUNNINGHAM, Judge.

{¶1} Defendant-appellant Jerome Kinebrew appeals his conviction for involuntary manslaughter, in violation of R.C. 2903.04(A). Originally indicted for murder, Kinebrew entered a plea of guilty to the lesser offense of involuntary manslaughter. Pursuant to Crim.R. 11(C), the trial court conducted a thorough colloquy with Kinebrew to ensure that his plea had been made knowingly, intelligently, and voluntarily. The trial court accepted the plea, found Kinebrew guilty, and imposed a nine-year term of imprisonment.

{¶2} In his sole assignment of error, Kinebrew contends that the trial court erred in accepting his guilty plea in violation of his right to a jury trial guaranteed by the federal and Ohio constitutions.¹ Relying upon dicta in *State v. McCann*,² Kinebrew alleges that because he did not sign a jury waiver, as required by R.C. 2945.05, his plea was not effective.

{¶3} This argument was rejected two years after *McCann*, in *State v. West*, where this court held that a plea of guilty by an accused constitutes a waiver of his right to a jury trial.³ The mandates of R.C. 2945.05, requiring the filing of a written waiver of a trial by jury, are not applicable when an accused enters a plea of guilty.⁴ Thus, a written jury waiver is not required before a guilty plea may be accepted.

{¶4} Moreover, the record demonstrates that Kinebrew was aware that, by entering a guilty plea, he was waiving his right to a jury trial, as evidenced by the guilty-

¹ See Sixth Amendment to the United States Constitution; Section 5, Article I, Ohio Constitution.

² (1997), 120 Ohio App.3d 505, 508, 698 N.E.2d 470 (“We note that the absence of a written jury waiver would require reversal *even if* the trial judge had complied with Crim.R. 11, * * *”).

³ See (1999), 134 Ohio App.3d 45, 51, 730 N.E.2d 388; see, also, *State v. Abney*, 8th Dist. No. 84190, 2006-Ohio-273, at ¶13-15; *State v. Schofield* (Dec. 10, 1999), 4th Dist. No. 99 CA 10.

⁴ See *Martin v. Maxwell* (1963), 175 Ohio St. 147, 191 N.E.2d 838.

OHIO FIRST DISTRICT COURT OF APPEALS

plea form he had signed and by the colloquy conducted by the trial court. The assignment of error is without merit.

{¶} Therefore, the trial court's judgment is affirmed.

Judgment affirmed.

SUNDERMANN, P.J., and HILDEBRANDT, J., concur.

Please Note:

The court has recorded its own entry on the date of the release of this opinion.