**[Cite as *State v. Straley*, 2009-Ohio-6170.]**

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

| | | |
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| State of Ohio, | : | |
| | : | |
| Plaintiff-Appellee, | : | |
| | : | Case No. 09CA4 |
| v. | : | |
| | : | DECISION AND |
| Gregory Straley, | : | JUDGMENT ENTRY |
| | : | |
| Defendant-Appellant. | : | File-stamped date: 11-17-09 |

APPEARANCES:

Justin T. Gray, Rose & Dobyns Co., L.P.A., Wilmington, Ohio, for appellant.

James B. Grandey, Highland County Prosecutor, and Anneka P. Collins, Highland County Assistant Prosecutor, Hillsboro, Ohio, for appellee.

Kline, P.J.:

**{¶1}** Gregory Straley (hereinafter "Straley") appeals the sentence imposed by the Highland County Court of Common Pleas. Straley pled guilty to various crimes and, as a result, received thirty-five (35) years and ten (10) months in prison. On appeal, Straley contends that he did not actually plead guilty to one of the charges against him. We disagree. Although Straley did not enter an oral plea of guilty to one charge of Sexual Battery, he did enter a written plea of guilty as to all of the charges in his plea agreement. Therefore, after complying with Crim.R. 11(C), the trial court had the authority to accept Straley's written plea of guilty. Further, Straley contends that the trial court erred while imposing his sentence. However, pursuant to R.C. 2953.08(D)(1), we may not review

Straley's sentence because it was (1) authorized by law and (2) recommended jointly by Straley and the prosecution. Accordingly, we affirm the judgment of the trial court.

I.

**{¶2}** On September 9, 2008, a Highland County Grand Jury returned a fourteen-count indictment against Straley. The indictment included the following charges: (1) Gross Sexual Imposition, in violation of R.C. 2907.05(A)(4); (2) Gross Sexual Imposition, in violation of R.C. 2907.05(A)(4); (3) Rape, in violation of R.C. 2907.02(A)(1)(b); (4) Rape, in violation of R.C. 2907.02(A)(1)(b); (5) Sexual Battery, in violation of R.C. 2907.03(A)(5); (6) Sexual Battery, in violation of R.C. 2907.03(A)(5); (7) Sexual Battery, in violation of R.C. 2907.03(A)(5); (8) Gross Sexual Imposition, in violation of R.C. 2907.05(A)(1); (9) Gross Sexual Imposition, in violation of R.C. 2907.05(A)(1); (10) Rape, in violation of R.C. 2907.02(A)(2); (11) Rape, in violation of R.C. 2907.02(A)(2); (12) Sexual Battery, in violation of R.C. 2907.03(A)(5); (13) Sexual Battery, in violation of R.C. 2907.03(A)(5); and (14) Illegal Use of a Minor in Nudity-Oriented Material or Performance, in violation of R.C. 2907.323(A)(2).

**{¶3}** Straley pled not guilty to all of the charges. Subsequently, Straley filed several motions, including a Motion to Suppress and a Motion in Limine. Before the trial court could rule on these motions, Straley and the prosecution entered into a plea agreement. Straley agreed to plead guilty to counts one, two, five, six, seven, eight, nine, and twelve of the indictment. In return, the prosecution dismissed counts three, four, ten, eleven, thirteen, and fourteen. Further,

pursuant to the agreement, the prosecution recommended a total sentence of thirty-five (35) years and ten (10) months in prison.

**{¶4}** Both Straley and his attorney signed the document that outlined the plea agreement. This document, titled "Plea of Guilty," stated, "I withdraw my former not guilty plea and enter a plea of guilty to the following offense(s): [counts one, two, five, six, seven, eight, nine, and twelve of the indictment.]

**{¶5}** By pleading guilty, I admit committing the offense and will tell the Court the facts and circumstances of my guilt. I know the judge may either sentence me today or refer my case for a pre-sentence report. I understand my right to appeal a maximum sentence, my other limited appellate rights and that any appeal must be filed within 30 days of my sentence. I understand the consequences of a conviction upon me if I am not a U.S. citizen.

**{¶6}** I enter this plea voluntarily."

**{¶7}** Straley and his attorney signed the Plea of Guilty before the Plea and Sentence hearing on January 9, 2009. At that hearing, the trial court engaged in a colloquy pursuant to Crim.R. 11. And after the colloquy, Straley entered oral guilty pleas to counts one, two, five, six, eight, nine, and twelve of the indictment. However, Straley did not enter an oral plea of guilty as to count seven. Nevertheless, the trial court found Straley guilty of all the charges in the plea agreement – including count seven – and sentenced Straley to the agreed upon thirty-five (35) years and ten (10) months.

**{¶8}** Straley appeals, asserting the following assignments of error: I. "THE TRIAL COURT ERRED BY SENTENCING THE DEFENDANT-APPELLANT TO

CONSECUTIVE PRISON TERMS WITHOUT MAKING THE REQUIRED FINDINGS PURSUANT TO R.C. 2929.14(E)(4)." II. "THE TRIAL COURT ERRED BY IMPOSING A MANDATORY SENTENCE WITHOUT ADVISING THE APPELLANT THAT THE SENTENCE WAS MANDATORY." And, III. "THE TRIAL COURT ERRED BY FINDING THE APPELLANT GUILTY OF COUNT SEVEN OF THE INDICTMENT WHEN THE APPELLANT HAD NOT, IN FACT, PLEAD [sic] GUILTY TO THAT CHARGE."

II.

**{¶9}** Generally, we address an appellant's assignments of error in order. However, because our resolution of Straley's third assignment of error affects the rest of his appeal, we will address it first. In his third assignment of error, Straley contends that he did not actually plead guilty to count seven of the indictment.

**{¶10}** At the plea and sentencing hearing, Straley entered oral guilty pleas to counts one, two, five, six, eight, nine, and twelve of the indictment. However, when accepting Straley's oral pleas, the trial court inadvertently skipped from count six to count eight, thereby omitting count seven. Thus, Straley did not enter an oral plea of guilty to count seven of the indictment; i.e., a count of Sexual Battery in violation of R.C. 2907.03(A)(5).

**{¶11}** First, we note that Crim.R. 11(A) does not require a defendant to enter an oral plea of guilty. In relevant part, Crim.R. 11(A) provides: "A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas *may*

be made orally." (Emphasis added.) Here, the criminal rule uses the word "may" as opposed to "shall." And even though Straley did not enter an oral guilty plea to count seven of the indictment, he did enter a written plea of guilty as to counts one, two, five, six, *seven*, eight, nine, and twelve. Straley signed the Plea of Guilty, which outlined the plea agreement and stated, "I withdraw my former not guilty plea and enter a plea of guilty to [these counts.]" Therefore, as long as the trial court complied with Crim.R. 11(C), the trial court had the authority to accept Straley's written guilty plea.

**{¶12}** "Substantial compliance with the provisions of Crim.R. 11(C)(2)(a) and (b) is sufficient to establish a valid plea." *State v. Vinson*, Franklin App. No. 08AP-903, 2009-Ohio-3240, at ¶6, citing *State v. Mulhollen* (1997), 119 Ohio App.3d 560, 563; see, also, *State v. Nutt*, Ross App. No. 06CA2927, 2007-Ohio-3032, at ¶12. "Substantial compliance means that, under the totality of the circumstances, appellant subjectively understood the implications of his plea and the rights he waived." *Vinson* at ¶6, citing *State v. Carter* (1979), 60 Ohio St.2d 34, 38; see, also, *State v. Morrison*, Adams App. No. 07CA854, 2008-Ohio-4913, at ¶9. However, "[a] trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant *before* accepting a felony plea that the plea waives (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination. When a trial court fails to strictly comply with this duty, the defendant's plea is invalid." *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-

5200, syllabus (emphasis added). See, also, *State v. Ballard* (1981), 66 Ohio St.2d 473, at paragraph one of the syllabus. "Appellant need not be advised of those rights in the exact language of Crim.R. 11(C), but he must be informed of them in a reasonably intelligible manner." *Vinson* at ¶6, citing *Ballard*, at paragraph two of the syllabus.

**{¶13}** Crim.R. 11(C)(2) provides: "In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

**{¶14}** (a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

**{¶15}** (b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

**{¶16}** (c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself."

**{¶17}** Straley signed the Plea of Guilty before the Plea and Sentence hearing. Thus, the question is: Did the trial court comply with Crim.R. 11(C) before accepting Straley's written plea of guilty as to count seven of the indictment?

**{¶18}** Here, we find that the trial court substantially complied with Crim.R. 11(C)(2)(a) and (b) and strictly complied with Crim.R. 11(C)(2)(c). In discussing Straley's plea agreement, the trial court (1) determined that Straley was entering his plea voluntarily, (2) explained the charges against Straley (including count seven), (3) described the maximum penalty for each of those charges, and (4) reviewed the applicability of community control. Further, in its colloquy, the trial court discussed all of the rights that Straley would be waiving by pleading guilty to the charges in the plea agreement. See Crim.R. 11(C)(2)(c). Finally, after its colloquy, the trial court asked the following question: "Do you understand the consequences of your guilty plea, that you're waiving all of those rights with the exception of your right to an attorney, subjecting yourself to immediate sentencing by the Court?" Transcript of Plea and Sentence at 34. Straley replied, "Yes, Your Honor." Id. The foregoing establishes substantial compliance with Crim.R. 11(C)(2)(a) and (b) and strict compliance with Crim.R. 11(C)(2)(c).

**{¶19}** Further, we conclude that the trial court complied with Crim.R. 11(C) *before* accepting Straley's written plea of guilty as to count seven of the indictment. At the end of its colloquy, and before accepting Straley's oral pleas, the trial court and Straley had the following exchange: "THE COURT: Okay. Are

you ready then and satisfied with your plea agreement to the point that you're willing to go forward and comply with the plea agreement that has been outlined?

**{¶20}** MR. STRALEY: Yes, sir." Transcript of Plea and Sentence at 35.

**{¶21}** At this point, Straley had expressed that he was willing to comply with the written plea agreement. As such, Straley acknowledged his written guilty pleas *after* the trial court had complied with Crim.R. 11(C). Therefore, we believe that the trial court had the authority to then (1) accept Straley's written guilty pleas and (2) convict Straley of all the counts in the plea agreement, including count seven.

**{¶22}** Accordingly, we overrule Straley's third assignment of error.

III.

**{¶23}** In his first and second assignments of error, Straley argues that we should remand this case for resentencing because the trial court committed multiple errors while imposing Straley's prison sentence. However, we do not have the authority to review these assignments of error.

**{¶24}** R.C. 2953.08(D)(1) provides: "A sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge."

**{¶25}** We find that R.C. 2953.08(D)(1) applies to the present case. First, Straley's sentence is clearly authorized by law. "A sentence is authorized by law if it is within the statutory range of available sentences." *State v. Baird*, Columbiana App. No. 06-CO-4, 2007-Ohio-3400, at ¶13, citing *State v. Gray*,

Belmont App. No. 02 BA 26, 2003-Ohio-805, at ¶10. Here, Straley pled guilty to three second-degree felonies, three third-degree felonies, and two fourth-degree felonies. As a result, the trial court could have sentenced Straley to forty-two (42) years in prison. See R.C. 2929.14(A)(2), (3), and (4). Thus, the actual sentence of thirty-five (35) years and ten (10) months was well within the statutory range. Furthermore, it is undisputed that Straley's sentence was (1) recommended jointly by the defendant and the prosecution and (2) imposed by the trial court judge. Straley's own brief makes this fact clear. "Appellant's trial counsel and the prosecuting attorney jointly recommended that the trial Court's sentence be Thirty Five Years and Ten Months, all to be served consecutive. * * * The trial Court adopted the joint recommendation of the Parties and sentenced the Appellant to Thirty Five Years and Ten Months." Brief of Defendant-Appellant, Gregory S. Straley at 6. Therefore, because of R.C. 2953.08(D)(1), this court may not review Straley's sentence or consider his first and second assignments of error. See, e.g., *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, at ¶25 ("The General Assembly intended a jointly agreed-upon sentence to be protected from review precisely because the parties agreed that the sentence is appropriate."); *State v. Tomlinson*, Pickaway App. No. 07CA3, 2007-Ohio-4618, at ¶6; *State v. Ahmad*, Adams App. No. 06CA828, 2007-Ohio-4567, at ¶22-24; *State v. Knisely*, Hancock App. No. 5-07-37, 2008-Ohio-2255, at ¶12; *Baird* at ¶11-17.

**{¶26}** Accordingly, we overrule Straley's first and second assignments of error. Having overruled all of Straley's assignments of error, we affirm the judgment of the trial court.

**JUDGMENT AFFIRMED.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT BE AFFIRMED and Appellant pay 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 Highland County Court of Common Pleas to carry this judgment into execution.

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

Harsha, J.: Concurs in Judgment Only.
Abele, J.: Concurs in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**