

[Cite as *State v. Meredith*, 2011-Ohio-1517.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 25198

Appellee

v.

LAROND A. MEREDITH

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 08 07 2137

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 30, 2011

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Larond Meredith pleaded guilty to possession of cocaine, failure to comply with an order or signal of a police officer, and resisting arrest. The trial court accepted his pleas and sentenced him to eight years in prison. He has appealed, arguing that he did not enter his guilty pleas knowingly, intelligently, and voluntarily and that his sentence is void because the trial court failed to properly impose post-release control. This Court affirms the trial court's acceptance of Mr. Meredith's guilty pleas as they were made knowingly, intelligently, and voluntarily, but remands the matter for proceedings consistent with Section 2929.19.1 of the Ohio Revised Code because post-release control was improperly imposed in the judgment entry.

BACKGROUND

{¶2} A Summit County Grand Jury indicted Mr. Meredith on eight counts: possession of cocaine, trafficking of cocaine, tampering with evidence, failure to comply with a police

officer, resisting arrest, and three traffic violations. Plea negotiations led to Mr. Meredith pleading guilty to possession of cocaine, failure to comply with a police officer, and resisting arrest, as well as two violations of community control. The State dismissed the remaining counts of his indictment. The trial court accepted Mr. Meredith's guilty pleas and sentenced him to eight years in prison and a mandatory five-year period of post-release control.

KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY

{¶3} Mr. Meredith's first assignment of error is that the trial court incorrectly accepted his guilty pleas because they were not entered knowingly, voluntarily, and intelligently and that there is a reasonable probability that, but for ineffective assistance of counsel, he would not have pleaded guilty. He has argued that his guilty pleas were not knowing, intelligent, and voluntary because the trial court failed to tell him about his appellate rights, that he would be subject to a mandatory five-year period of post-release control, and that his sentence for failure to obey would be consecutive to his other sentences.

{¶4} Rule 11(C) of the Ohio Rules of Criminal Procedure sets forth what a trial court must do in accepting a guilty plea. Notifications required by Rule 11 are categorized as notifications of constitutional rights and non-constitutional notifications. *State v. Veney*, 120 Ohio St. 3d 176, 2008-Ohio-5200, at ¶14. Constitutional rights are "the right to a jury trial, the right to confront one's accusers, the privilege against compulsory self-incrimination, the right to compulsory process to obtain witnesses, and the right to require the state to prove guilt beyond a reasonable doubt." *Id.* at ¶19 (citing *In re Winship*, 397 U.S. 358, 364 (1970); *Boykin v. Alabama*, 395 U.S. 238, 243 (1969); *State v. Ballard*, 66 Ohio St. 2d 473, 479 (1981)). Strict compliance with Rule 11 is required regarding those rights. *Veney*, 2008-Ohio-5200 at ¶18. For all other notifications required by Rule 11, however, "substantial compliance is sufficient." *Id.* at

¶14 (citing *State v. Stewart*, 51 Ohio St. 2d 86 (1977)). Mr. Meredith has not alleged that the trial court failed to inform him of any of the constitutional rights he was waiving by pleading guilty. Accordingly, the proper standard for considering Mr. Meredith's claims is substantial compliance.

{¶5} “Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving. Furthermore, a defendant who challenges his guilty plea on the basis that it was not knowingly, intelligently, and voluntarily made must show a prejudicial effect.’ . . . To demonstrate prejudice in this context, the defendant must show that the plea would otherwise not have been entered.” *State v. Veney*, 120 Ohio St. 3d 176, 179, 2008-Ohio-5200, at ¶15 (quoting *State v. Nero*, 56 Ohio St. 3d 106, 108 (1990)).

{¶6} Mr. Meredith has argued that the trial court failed to properly inform him of his right to appeal. The trial court's duty to advise a defendant of his right to appeal, however, does not arise until sentencing and, therefore, has no effect upon whether the defendant's guilty plea was entered knowingly, voluntarily, and intelligently. *State v. Atkinson*, 9th Dist. No. 05CA0079-M, 2006-Ohio-5806 at ¶22; Crim.R. 32(B).

{¶7} Even so, Mr. Meredith has argued that the trial court, “[h]aving undertaken the task to inform Mr. Meredith as to appellate rights at the time of the plea colloquy, . . . must do so with substantial accuracy.” According to Mr. Meredith, the trial court violated this claimed new duty by not informing him of all his rights of appeal under Section 2953.08 of the Ohio Revised Code. He has failed, however, to show how such a failure under this claimed new duty would have been prejudicial. In *State v. Engle*, 74 Ohio St. 3d 525 (1996), relied upon by Mr. Meredith, the trial court, defense counsel, and the prosecutor all mistakenly told the defendant

that she was not waiving an issue for appeal by pleading guilty. Mr. Meredith, however, has not claimed that he entered his plea after being incorrectly told that an issue would be appealable. Instead, he appears to argue that he pleaded guilty believing he was waiving more rights than he actually was. It is not probable that being informed he would have more rights to appeal would have caused Mr. Meredith to alter his plea.

{¶8} We note that Mr. Meredith has also argued that the trial court's failure to notify him during his sentencing hearing of his right to appeal "compound[s]" the error. While, as discussed above, there was no error with regard to the plea colloquy, the trial court did err in failing to tell Mr. Meredith about his appellate rights at his sentencing hearing. This error during sentencing, however, would not affect whether he made his guilty pleas knowingly, voluntarily, and intelligently. Additionally, this Court granted his motion for delayed appeal, rendering the error harmless.

{¶9} Mr. Meredith has also argued that the trial court failed to properly inform him of the possibility of post-release control at the time of his plea. He has pointed to *State v. Gillespie*, 9th Dist. No. 24248, 2009-Ohio-2785, and *State v. Souris*, 9th Dist. No. 24550, 2009-Ohio-3562, in support of his argument. In both cases, this Court vacated a defendant's plea because the trial court failed to mention post-release control at all during the plea colloquies. *Gillespie*, 2009-Ohio-2785, at ¶8; *Souris*, 2009-Ohio-3562, at ¶8. The trial court in this case, however, told Mr. Meredith that he would be subject to a "mandatory five-year post-release control period." When asked if he understood that, Mr. Meredith responded affirmatively.

{¶10} He has argued, however, that the language on the written plea, which he read and signed after the trial court's statements to him, conflicted with the trial court's statements. Mr. Meredith has claimed that, as a result, his plea was not made knowingly. The written plea

contained the following sentence: “I have been informed that if I am imprisoned, after my release from prison I [May __ or Will__] be supervised under post release control, R.C. 2967.28 which could last up to 5 years.” Mr. Meredith has argued that, because he failed to check “May” or “Will,” he did not properly fill out the form, thus his plea is invalid. Further, he has argued that, even if the form had been properly filled out, it incorrectly informed him of the consequences of the plea as the post-release control period was a mandatory five years.

{¶11} Mr. Meredith’s arguments that the failure of someone to check “May” or “Will” and that the language on the plea form invalidates his guilty plea are without merit. Mr. Meredith’s pleas were made orally as allowed by Rule 11(A) of the Ohio Rules of Criminal Procedure. Prior to his pleas, the trial court correctly informed him of the mandatory five-year post-release control period, and he acknowledged that he understood. Nothing in the written plea contradicts the trial court’s correct explanation of post-release control. Accordingly, Mr. Meredith was properly notified of post-release control during the plea colloquy.

{¶12} Mr. Meredith has also argued that the trial court failed to inform him that he faced a mandatory consecutive sentence for the failure to obey charge. During the plea colloquy, however, the trial court told Mr. Meredith that “[c]onsecutive to [possession of cocaine] and to . . . the remaining sentence on the probation violations, for failure to comply with police order . . . you could be sentenced to a further . . . five years[.]” The trial court asked Mr. Meredith if he understood, and he responded affirmatively.

{¶13} Mr. Meredith has argued that the trial court’s statement that his sentence for failure to comply would be “consecutive to” his other sentences did not inform him the sentence had to be served consecutively. He has also claimed that a table on his written plea agreement, which he signed after the trial court’s colloquy, was unclear. In particular, he has pointed to a

column labeled “Prison Term is Mandatory Consecutive.” The preparer had filled in “Y(Mand.)” for the charge of possession of cocaine, “Y(Consec.)” for the charge of failure to obey, and “No” for the charge of resisting arrest. He has argued that “Y(Consec.)” failed to inform him that he faced a mandatory-consecutive sentence because, beneath the table, the plea agreement said, “Prison terms for multiple charges, even if consecutive sentences are not mandatory, may be imposed consecutively by the Court.” According to Mr. Meredith, this sentence confused him about what “Y(Consec.)” in a column labeled “Prison Term is Mandatory Consecutive” meant.

{¶14} When the trial court accepts guilty pleas, it is best if the trial court strictly complies with the requirements of Rule 11 of the Ohio Rules of Criminal Procedure. The trial court, however, need only substantially comply with Rule 11(C) when nonconstitutional rights are implicated. The trial court should have expressly stated that the sentence for failure to comply would be served consecutively to other sentences, but it was not required to do so. Additionally, the written plea agreement could have been written in a way that removed any possible doubt about whether the sentence for failure to comply was required to be served consecutively. Mr. Meredith, however, repeatedly said he understood the plea agreement and the statements made by the trial court. He has made no claim as to what he thought “Y(Consec.)” on the written plea agreement meant. If he was confused by the subsequent sentence that sentences may be ordered to be served consecutively, he had the opportunity to tell the trial court he did not understand. Instead, he told the court that he understood the form, and there is nothing in the record that indicates he did not understand the implications of his pleas or the maximum length of his sentence.

{¶15} Even if he could demonstrate that he failed to understand the implications of his guilty pleas, Mr. Meredith has not articulated how, but for this misunderstanding, the guilty pleas would not have been entered. Presumably, his argument would be that the mandatory-consecutive sentence raises the minimum number of years he could serve in prison. We note, however, that the plea agreement resulted in a first-degree felony, a third-degree felony, and multiple traffic violations being dismissed. Further, Mr. Meredith pleaded guilty knowing that he faced up to seventeen years in prison. The effect of the mandatory-consecutive sentence on the prison time he could receive was only to increase the minimum amount of time from three to four years. When weighed against the maximum sentence, this difference in the minimum sentence is hardly persuasive, especially when the guilty pleas resulted in the dismissal of the first and third-degree felonies. Mr. Meredith has not established that, but for his possible misunderstanding concerning the mandatory consecutive sentence, he would not have entered his guilty plea.

{¶16} Examining the totality of the circumstances, this Court concludes that Mr. Meredith knowingly, intelligently, and voluntarily entered his plea and the trial court substantially complied with its duties under Rule 11(C) of the Ohio Rules of Criminal Procedure. Further, as he entered his plea knowingly, intelligently, and voluntarily, his counsel was not deficient. His first assignment of error is overruled.

POST-RELEASE CONTROL

{¶17} Mr. Meredith's second assignment of error is that the trial court incorrectly advised him regarding post-release control and incorrectly imposed five years mandatory post-release control "to the extent the parole board may determine[.]" According to Mr. Meredith,

because of sentencing errors, he is entitled to a new sentencing hearing as if he had never been sentenced.

{¶18} Mr. Meredith has argued that the trial court’s judgment entries for his community control violations fail to reflect the trial court’s statements made at sentencing that all post-release control would be served concurrently. Section 2967.28(F)(4)(c) of the Ohio Revised Code requires that, “[i]f an offender is subject to more than one period of post-release control, the period of post-release control for all of the sentences shall be the period of post-release control that expires last, as determined by the parole board or court. Periods of post-release control shall be served concurrently and shall not be imposed consecutively to each other.” There is no indication in the trial court’s judgment entries that it sought to impose Mr. Meredith’s post-release control sanctions consecutively. Mr. Meredith’s post-release control periods will run concurrently.

{¶19} Mr. Meredith has contended that the phrase “to the extent the parole board may determine as provided by law” renders the trial court’s imposition of post-release control invalid. We disagree as the trial court, in its judgment entry, correctly sentenced Mr. Meredith to “5 years of mandatory post-release control” In light of the trial court correctly imposing a mandatory five-year period of post-release control, the disputed phrase should be construed to refer not to the duration of the post-release control, but to the parole board’s authority under Section 2967.28(D) of the Ohio Revised Code to set the conditions of his post-release control.

{¶20} Although not argued by Mr. Meredith in his brief, the State has conceded that the trial court’s judgment entries are deficient because they do not inform Mr. Meredith that the parole board may impose a prison term of up to one-half of his original prison term if he violates post-release control. See *State v. Singleton*, 124 Ohio St. 3d 173, 2009-Ohio-6434, at ¶11. It has

argued that, because Mr. Meredith was sentenced after July 11, 2006, the remedy is for the trial court to hold a hearing in accordance with Section 2929.19.1 of the Ohio Revised Code.

{¶21} In his reply brief, Mr. Meredith has argued that he is entitled to be resentenced as if he had “not been sentenced.” The Ohio Supreme Court recently held that, “[a]lthough the doctrine of res judicata does not preclude review of a void sentence, res judicata still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence.” *State v. Fischer*, 128 Ohio St. 3d 92, 2010-Ohio-6238, at paragraph three of the syllabus. “[W]hen a judge fails to impose statutorily mandated post-release control as part of a defendant’s sentence, that part of the sentence . . . is void and must be set aside.” *Id.* at ¶26. Since Mr. Meredith was sentenced after the effective date of Section 2929.19.1 of the Ohio Revised Code, Section 2929.19.1 provides the method for correcting his sentence. *State v. Singleton*, 124 Ohio St. 3d 173, 2009-Ohio-6434, at ¶35. Accordingly, we conclude that Mr. Meredith is not entitled to a completely new sentencing hearing, but only to have his sentence corrected under Section 2929.19.1.

{¶22} The trial court failed to properly inform Mr. Meredith of the penalty he can face for violation of his post-release control. His second assignment of error is sustained in part.

CONCLUSION

{¶23} Mr. Meredith’s guilty pleas were made knowingly, voluntarily, and intelligently. The trial court’s judgment entries, however, did not inform him of the potential penalty for a violation of post-release control. Accordingly, we affirm the judgment of the Summit County Common Pleas Court in part, vacate it in part, and remand for proceedings consistent with Section 2929.19.1 of the Ohio Revised Code.

Judgment affirmed in part,
vacated in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to both parties equally.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
MOORE, J.
CONCUR

APPEARANCES:

MARK H. LUDWIG, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.