

[Cite as *State v. Sparks*, 2010-Ohio-4925.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 09-CA-105
Plaintiff-Appellee	:	:
	:	Trial Court Case Nos. 09-CR-457B
v.	:	:
	:	09-CR-753B
	:	:
WESLEY SPARKS	:	:
	:	(Criminal Appeal from
Defendant-Appellant	:	: Common Pleas Court)

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OPINION

Rendered on the 8th day of October, 2010.

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FAIN, J.

{¶ 1} Defendant-appellant Wesley Sparks appeals from his conviction and sentence for two counts of Robbery. He claims that he was denied the effective assistance of trial counsel and that the trial court erred in sentencing him to consecutive terms of

imprisonment. Sparks also maintains that his plea was not knowingly entered. We conclude that Sparks was not denied his right to the effective assistance of trial counsel and that the trial court did not err in ordering consecutive sentences. We also conclude that Sparks's plea was knowingly entered. The judgment of the trial court is Affirmed.

I

{¶ 2} In June, 2009, Sparks was indicted under Case Number 09-CR-457B on two counts of Robbery, and one count each of Aggravated Robbery, Having Weapons Under Disability, Carrying a Concealed Weapon, and Felonious Assault. Nearly three months later, he was indicted under Case Number 09-CR-753B on one count each of Robbery and Tampering with Evidence.

{¶ 3} Pursuant to a plea agreement, Sparks pled guilty to one count of Robbery under each indictment, and all of the remaining counts were dismissed. The trial court ordered Sparks to serve consecutive sentences, totaling ten years in prison. From his convictions and sentence, Sparks appeals.

II

{¶ 4} Sparks's Second Assignment of Error is as follows:

{¶ 5} "THE TRIAL COURT ERRED WHEN IT FAILED TO CONSIDER DURESS AND OR COERCION IN THE PROSECUTION'S TACTICS TO FORCE THE ACCEPTED PLEA."

{¶ 6} In his Second Assignment of Error, Sparks maintains that the trial court erred in finding that his plea was knowingly, intelligently and voluntarily made. He insists

that he only entered the pleas because the prosecutors “used coercive tactics when they expressed their intention to seek his prosecution for the first alleged crime unless he confessed to and took ownership of the second.”

{¶ 7} In *Boykin v. Alabama* (1969), 395 U.S. 238, 242-43, 89 S.Ct. 1709, the United States Supreme Court held that in order for a reviewing court to determine whether a guilty plea was voluntary, the record must show that the defendant knowingly, intelligently, and voluntarily waived his constitutional rights. See also, *State v. Nero* (1990), 56 Ohio St.3d 106, 107, 564 N.E.2d 474. As a result, Crim.R. 11(C) was adopted to ensure an adequate record for review in order to facilitate a more accurate determination of the voluntariness of a defendant’s plea. Id.

{¶ 8} Crim.R. 11(C)(2) requires the trial court to personally inform a defendant of the constitutional guarantees that he waives by entering a guilty plea. That section also demands that the trial court ensure that the defendant understands the nature of the charges against him, the maximum penalty that he faces, and whether he is eligible for probation. A defendant who claims that his guilty plea has not been knowingly, intelligently, and voluntarily made must show a prejudicial effect. *Nero*, supra, at 108. In other words, “[t]he test is whether the plea would have otherwise been made.” Id., citations omitted.

{¶ 9} The record demonstrates that Sparks was afforded a full and proper Crim.R. 11 hearing at the time of his plea. At the hearing he acknowledged that he had discussed all of the charges and possible defenses with his attorney. Additionally, after the State’s recitation of the facts, Sparks stated that he understood and agreed with those facts. See, e.g., *State v. Patrick* (Oct. 5, 1994), Montgomery App. No. 13954 (having the

prosecutor recite the facts supporting the charges to which a defendant intends to plead guilty is an acceptable way to determine whether the defendant understands the nature of the charges).

{¶ 10} Sparks affirmatively stated that he was satisfied with his attorney's representation. Sparks acknowledged that his attorney had read the plea form to him; he understood the form; and he signed it. Counsel was satisfied that Sparks understood both the nature of the charges against him and the elements of each of those charges. And, the trial court confirmed that Sparks understood the rights that he was waiving by entering the plea.

{¶ 11} Moreover, Sparks affirmatively stated that he was not coerced or forced to enter the plea. Nobody threatened him, and nobody made any promises to him beyond the agreement with the State to dismiss the additional charges, as described at the outset of the hearing. Sparks appears to be complaining that the State refused to dismiss the additional charges unless Sparks agreed to plead to the remaining charges. This is, of course, the essence of a plea bargain. A plea is not unfairly coerced, or tendered other than willingly, simply because the State insists upon receiving some consideration for concessions it agrees to make as part of the plea bargain.

{¶ 12} Sparks has failed to show that his plea would not have been entered had the trial court handled the plea hearing differently. To the contrary, the record supports the State's position that Sparks's plea was knowingly, voluntarily, and intelligently entered in order to avoid facing the several additional charges that were dismissed in exchange for his plea.

{¶ 13} Sparks's Second Assignment of Error is overruled.

III

{¶ 14} Sparks's First Assignment of Error is as follows:

{¶ 15} "THE TRIAL COURT ERRED WHEN IT ALLOWED THE VERDICT TO BE RENDERED UPON INEFFECTIVE ASSISTANCE OF COUNSEL."

{¶ 16} In his First Assignment of Error, Sparks contends that he was denied his right to effective assistance of trial counsel because counsel failed to fully discuss the merits of all of the charges under the first indictment, thus causing him to enter pleas in both cases without full understanding of the possibility of acquittals on the charges under the first indictment.

{¶ 17} In order to prevail on a claim of ineffective assistance of counsel, the defendant must show both deficient performance and resulting prejudice. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052. Trial counsel is entitled to a strong presumption that his conduct falls within the wide range of effective assistance, and to show deficiency the defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness. *Id.*

{¶ 18} The record does not support Sparks's claim that he was not fully informed of all of the charges against him or his potential defenses to those charges. To the contrary, as explained in Sparks's Second Assignment of Error, the record reveals that Sparks acknowledged that his attorney had discussed all of the charges and possible defenses with him. Sparks stated that he was completely satisfied with his attorney's representation at that time. And, in fact, counsel negotiated a favorable plea agreement whereby several additional charges were dismissed.

{¶ 19} Sparks's First Assignment of Error is overruled.

IV

{¶ 20} Sparks's Third Assignment of Error is as follows:

{¶ 21} "THE TRIAL COURT ERRED WHEN IT FAILED TO FULLY SUPPORT CONSECUTIVE SENTENCES FOR THE OFFENSES PLED."

{¶ 22} In his Third Assignment of Error, Sparks relies upon *State v. Comer*, 99 Ohio St.3d 463, 2004-Ohio-4165, claiming that the trial court failed to articulate its findings, as required by R.C. 2929.14(E)(4) and 2929.19(B)(2)(c), before imposing consecutive sentences. However, subsequent to *Comer*, supra, the Ohio Supreme Court held R.C. 2929.14(E)(4) and R.C. 2929.19(B)(2), among other sections, to be unconstitutional and severed those sections from Ohio's felony sentencing scheme. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. "Because *Foster* severed the provisions on which *Comer* relied, *Comer* has been, in effect, overruled, and its mandates no longer apply." *State v. Parker*, Montgomery App. No. 21599, 2007-Ohio-1512, ¶43, citing *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶26.

{¶ 23} As a result of *Foster*, judicial factfinding is no longer required before consecutive prison terms may be imposed. *Parker*, supra, at ¶43, citing *Foster*, supra, at ¶99, *Mathis*, supra, at ¶37. "Trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." *Foster*, supra, at paragraph 7 of the syllabus. Because Sparks's sentence was within the

established statutory range, it is not contrary to law.

{¶ 24} The trial court explained that it was imposing consecutive sentences for several reasons. Sparks had a previous criminal history, and he had been released from two years of intensive supervision for Burglary shortly before the first Robbery occurred. Sparks was not merely a bystander to either Robbery; he was an active participant. Both incidents involved guns. His co-defendant's statement claimed that Sparks brought the gun to the first incident. The victim's statement indicated that the trigger of the gun was pulled, although it did not fire. Moreover, the court expressed particular concern about the fact that Sparks committed the second Robbery (Case Number 09-CR-753B) while out on bond during the pendency of Case Number 09-CR-457B. Under these circumstances, we find the trial court's imposition of consecutive sentences to be neither arbitrary nor capricious.

{¶ 25} Sparks's Third Assignment of Error is overruled.

V

{¶ 26} All three of Sparks's assignments of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and GRADY, J., concur.

Copies mailed to:

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