[Cite as *State v. Alridge*, 2015-Ohio-4064.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio — Court of Appeals No. S-15-001

Appellee — Trial Court No. 14 CR 490

v.

Johnny J. Alridge — **DECISION AND JUDGMENT**

Appellant — Decided: September 30, 2015

* * * * *

Thomas L. Steirwalt, Sandusky County Prosecuting Attorney, and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Geoffrey L. Oglesby, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Defendant-appellant, Johnny Alridge, appeals the December 16, 2014 judgment of the Sandusky County Court of Common Pleas convicting him of sexual battery, a violation of R.C. 2907.03(A)(7), and sentencing him to a prison term of four years. For the reasons that follow, we affirm the trial court's judgment.

I. BACKGROUND

{¶ 2} Alridge was employed by the Fremont City Schools Board of Education as an assistant track and football coach at Fremont Ross High School. He also worked a part-time job as a cashier at Kroger. In February of 2014, while working at Kroger, Alridge met the victim, a 17-year-old student at Fremont Ross High School, who asked him for his phone number. He gave it to her, they began text messaging each other, and soon after, a sexual relationship began.

{¶ 3} In May of 2014, the victim's parents learned of the relationship and reported it. Alridge was indicted on two counts of sexual battery under R.C. 2907.03(A)(8) (prohibiting sexual conduct with a minor who is enrolled at an institution of higher learning at which the offender is employed as a teacher, administrator, coach, or other person in authority), later amended to correct the subsection to (A)(7) (prohibiting a teacher, administrator, coach, or other person in authority employed by or serving in a school from engaging in sexual conduct with a person who is enrolled in or attends that school). Alridge initially entered a plea of not guilty, but on October 16, 2014, he withdrew his plea and entered a plea of no contest to count one of the indictment, as amended. The state agreed to dismiss the second count. The trial court entered a finding of guilt and on December 16, 2014, after obtaining a pre-sentence investigation report, it sentenced Alridge to four years' imprisonment. He was classified as a Tier III registered sex offender.

{¶ 4} On January 13, 2015, Alridge filed a motion for withdrawal of plea, or in the alternative, resentencing. He filed his notice of appeal of the December 16, 2014 judgment on January 14, 2015, thereby divesting the trial court of jurisdiction to consider his motion to withdraw his plea. He assigns the following errors for our review:

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED BY FINDING APPELLANT GUILTY AFTER A NO CONTEST PLEA HEARING WHEN THERE WAS NO CULPABLE MENTAL STATE INCLUDED IN THE INDICTMENT[.]

ASSIGNMENT OF ERROR II

A NO CONTEST PLEA IS NOT KNOWINGLY, VOLUNTARY, AND INTELLIGENTLY ENTERED WHEN THE DEFENDANT DOESN'T FULLY UNDERSTAND THE CONSEQUENCES OF HIS PLEA AND THE COURT NEVER ASKS THE DEFENDANT TO ENTER A PLEA[.]

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED BY VIOLATING R.C. 2929.11(B) AND (C) WHEN THE COURT'S SENTENCING AN AFRICAN AMERICAN MALE TO FOUR YEARS FOR A VIOLATION OF R.C. 2907.03(A)(7) WAS NOT CONSISTENT WITH A WHITE FEMALE'S

SENTENCE OF COMMUNITY CONTROL FOR THE SAME VIOLATION OF R.C. 2907.03(A)(7)[.]

ASSIGNMENT OF ERROR IV

APPELLANT HAD INEFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL COMMITTED NUMEROUS INEFFECTIVE ACTS WHICH WERE CUMULATIVELY PREJUDICIAL TO THE APPELLANT[.]

II. LAW AND ANALYSIS

A. First Assignment of Error

{¶ 5} In his first assignment of error, Alridge claims that the indictment failed to set forth a culpable mental state, thus the trial court erred in finding him guilty of violating R.C. 2907.03(A)(7). He claims that because he entered a plea of no contest, he could not be found guilty without agreeing to a level of culpability. While he recognizes that under R.C. 2901.21(B), culpability is not required where the language defining the offense does not set forth a culpable mental state and plainly indicates a purpose to impose strict criminal liability, he maintains that in this case, recklessness was the applicable mental state. Alridge urges that if recklessness was not the applicable mens rea, the trial court should not have accepted his plea without ensuring that Alridge understood the culpable mental state.

{¶ 6} R.C. 2907.03(A)(7) provides:

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

* * *

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

{¶ 7} The amended indictment alleged that "the defendant engaged in sexual conduct with P.L.W., a juvenile whose date of birth is 8/20/1996, and who attends the same school at which the defendant is a coach and is not enrolled and does not attend."

{¶ 8} As the Second District concluded in *State v. Clay*, 2d Dist. Miami No. 08CA33, 2009-Ohio-5608, ¶ 12, R.C. 2903.07(A)(7) is a strict liability offense. The court noted its agreement with the Eleventh District in *State v. Singleton*, 11th Dist. Lake No. 2002-L-077, 2004-Ohio-1517, which considered the same issue with respect to R.C. 2907.03(A)(5). There the court reasoned:

R.C. 2907.03(A)(1)-(4) states that liability is premised on the actor knowingly committing an act. The remaining subsections, five through eleven, do not specify any degree of culpability. A review of the latter show that they are designed to protect those under the direct control or

> supervision of another, i.e., children and their parents, hospital or institutional patients, students. It seems clear that the legislature intended to impose strict liability in these instances to protect the most vulnerable members of society. *Id.* at ¶ 56.

See also State v. Arega, 2012-Ohio-5774, 983 N.E.2d 863, ¶ 14 (10th Dist.) (recognizing that 2907.03(A)(6) is a strict liability statute); *State v. Curtis*, 12th Dist. Butler No. CA2008-01-008, 2009-Ohio-192, ¶ 26 (rejecting the appellant's claim that "recklessness" was the required culpability for a violation of R.C. 2907.03(A)(12)).

{¶ 9} Because R.C. 2907.03(A)(7) is, in fact, a strict liability offense, we find no error in the trial court's finding of guilt following Alridge's plea of no contest. Alridge's first assignment of error is not well-taken.

B. Second Assignment of Error

{¶ 10} In his second assignment of error, Alridge claims that his plea was not entered knowingly, voluntarily, and intelligently. Alridge asserts a number of reasons in support of this claim: (1) the trial court failed to ask him: "How do you plead?"; (2) the trial court asked him if he understood that he has the right to appeal if his sentence was contrary to law or based on procedural issues, but did not wait for Alridge to respond affirmatively; (3) the plea sheet stated that Alridge has the right to appeal procedural issues "reserved" for appeal, instead of "preserved" for appeal; (4) the trial court did not rule on his motion to dismiss, filed the day before he entered his plea of no contest, and Alridge did not understand that the failure to rule constituted a denial of the motion; (5)

the motion to dismiss lacked a certificate of service and was subject to be stricken; (6) the no contest plea was essentially a guilty plea because the offense did not state a mens rea, thereby reserving nothing for appeal; and (7) it was not stated during the plea hearing that Alridge was advised by his attorney and understood his rights.

{¶ 11} A defendant entering a no contest plea must do so knowingly, intelligently, and voluntarily. *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). Before accepting a no contest plea, the trial court must strictly comply with the requirements of Crim.R. 11(C)(2)(c) as to waiver of constitutional rights, and must substantially comply with the non-constitutional requirements of Crim.R. 11(C)(2)(a) and (b). *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 14, 18. Crim.R. 11(C) provides, in pertinent part, as follows:

> * * *
>
> (2) 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:
>
> (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.

(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.

(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.

* * *

{¶ 12} A review of the record demonstrates that the trial court fully advised Alridge of the constitutional rights he was waiving by entering his plea, including the right to a jury trial, to present evidence, to subpoena witnesses, to confront the witnesses against him, to require the state to prove his guilt beyond a reasonable doubt, and to remain silent and refuse to testify for or against himself. Alridge affirmatively acknowledged each one of the rights being waived.

{¶ 13} The record also reveals that the trial court advised Alridge of the nature of the charges; the maximum penalty involved; the effect of the no contest plea; and that the court, upon acceptance of the plea, could proceed with judgment and sentence. The court verified that Alridge was not under the effect of drugs, was not drug dependent or in

danger of becoming drug dependent, had not been made any promises or threats regarding entering his plea, was satisfied with his attorney's representation, and had graduated from high school.

{¶ 14} As Alridge points out, the court did not specifically inquire of Alridge "how do you plead?" Instead, the entry of the plea began with Alridge's attorney indicating as follows:

> Your Honor, I have had an opportunity to have a lengthy discussion with my client and his family and on behalf of that offer [by the state to dismiss count two in exchange for a no contest plea to count one,] we would withdraw any formal plea and enter a no contest plea to the amended single indictment.

{¶ 15} The court asked Aldridge if he understood what they were doing and he replied "yes, sir." The court then informed him that he was going to take him through the plea on the record to ensure that it was being made knowingly, voluntarily, and intelligently. In the colloquy, there were numerous references to the fact that Alridge was entering a no contest plea. At one point, the trial court inquired: "You understand that a plea of no contest is a complete admission of the facts contained in the indictment but not of your guilt." Again, Alridge responded "yes, sir." We are satisfied that Alridge knowingly, intelligently, and voluntarily entered a plea of no contest despite the court's failure to specifically ask "How do you plead?"

{¶ 16} With respect to Alridge's appeal rights, the transcript is clear that Alridge was informed of his rights. He takes issue, however, with the fact that they were presented to him in the form of a compound question, the court did not wait for him to respond that he understood his appeal rights before proceeding to ask whether his signature appeared on the plea form, and the plea form makes reference to issues "reserved" for appeal, instead of "preserved" for appeal. The court asked:

> You understand that you have a right to appeal this sentence if it is contrary to law and you have the right to appeal procedural issues to a plea of no contest.
>
> As a convicted felon you cannot possess a firearm in the future. Under federal law a person convicted of a felony can never lawfully possess a firearm. Therefore, you need to understand that if you are ever found with a firearm, even one belonging to someone else, you could be prosecuted by federal authorities and can be subject to imprisonment for several years, and as a convicted felon, you will be required to submit to a DNA specimen collection procedure. So this is your signature on the plea?

{¶ 17} Regardless of whether the word "reserved" or "preserved" was printed on the plea form, the fact remains that Alridge was advised both orally and in writing that he could appeal his sentence if contrary to law and could appeal procedural issues. In any event, "Crim.R. 11 * * * does not contain any requirement that the trial court inform an accused of his or her right to appeal before the court accepts a guilty plea," thus we find

no error in the trial court's failure to pause and wait for a response from Alridge while informing him of his appeal rights. *State v. Steele*, 8th Dist. Cuyahoga No. 85901, 2005-Ohio-5541, ¶ 16. Moreover, given that Alridge timely filed this appeal, we find any purported error to be harmless. *Id.*

{¶ 18} As to Alridge's claim that he was not asked whether his attorney had advised him of his rights and that he understood them, Alridge has cited to nothing requiring that this specific question be asked. However, the court did ask him if he was satisfied with his counsel, and as to each right that the trial court was required to explain, it inquired whether Alridge understood. Also, in the plea form Alridge signed, he specifically acknowledged that his attorney had advised him and that he understood the implications of entering his plea.

{¶ 19} Finally, Alridge argues that he did not understand that the court's failure to rule on his motion to dismiss constituted a denial of the motion and that he entered his plea believing that he could challenge the constitutionality of R.C. 2907.03(A)(7) on appeal. There is nothing in the record to suggest that Alridge entered his plea with the expectation that he could pursue an appeal based on the unconstitutionality of the statute.

{¶ 20} We find Alridge's second assignment of error not well-taken.

C. Third Assignment of Error

{¶ 21} In his third assignment of error, Alridge, an African-American male, claims that the trial court violated R.C. 2929.11(B) and (C) by sentencing him to a prison term

of four years when it had sentenced a white female to community control for the same violation. Alridge acknowledges that he failed to raise this argument in the trial court and has, therefore, waived all but plain error.

{¶ 22} Our review of felony sentencing cases is governed by R.C. 2953.08(G)(2) which provides:

> The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.
>
> The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:
>
> (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revision Code, whichever, if any, is relevant;
>
> (b) That the sentence is otherwise contrary to law.

{¶ 23} We initially note that appellant's 48-month sentence is within the statutory range for a felony of the third degree that is a violation of R.C. 2907.03. R.C.

2929.14(A)(3)(a). As to our analysis under R.C. 2953.08(G)(2)(b), R.C. 2929.11(B) provides that "a sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A), commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders." R.C. 2929.11(C) prohibits sentencing an offender based upon race, ethnic background, gender, or religion. Appellant asserts that the trial court violated R.C. 2929.11(B) and (C) because it imposed only community control upon a white female teacher convicted of the same offense.

{¶ 24} "The goal of felony sentencing pursuant to R.C. 2929.11(B) is to achieve 'consistency' not 'uniformity.'" *State v. Palicka,* 8th Dist. Cuyahoga No. 93766, 2010-Ohio-3726, *2, citing *State v. Klepatzki*, 8th Dist. Cuyahoga No. 81676, 2003-Ohio-1529. A consistent sentence is derived not from a case-by-case comparison, but by the trial court's proper application of the statutory sentencing guidelines. *State v. Swiderski,* 11th Dist. Lake No. 2004-L-112, 2005-Ohio-6705, ¶ 58. "Although offenses may be similar, distinguishing factors may justify dissimilar sentences." (Citations omitted.) *State v. Hall,* 179 Ohio App.3d 727, 2008-Ohio-6228, 903 N.E.2d 676, ¶ 10 (10th Dist.).

{¶ 25} As we held in *State v. Hofmann,* 6th Dist. Erie No. E-03-057, 2004-Ohio-6655, ¶ 27, a defendant cannot establish inconsistency by presenting only one case. Alridge has identified only one case where the court purportedly imposed a more lenient sentence upon a similarly-situated offender. Moreover, Alridge has provided no evidence

to suggest that race or gender played any role in the trial court's sentence. To the contrary, the record reveals that the court arrived at Alridge's sentence after considering the R.C. 2929.11 and R.C. 2929.12 factors, reviewing Alridge's pre-sentence investigation, and listening to what it described as a "powerful" statement from the victim and her mother about the effect of Alridge's conduct.

{¶ 26} We find Alridge's third assignment of error not well-taken.

D. Fourth Assignment of Error

{¶ 27} In his fourth assignment of error, Aldridge claims that his trial counsel was ineffective and that cumulative "ineffective acts" of trial counsel resulted in prejudice to him. He criticizes counsel for filing a "deficient" motion to dismiss premised on case law that was factually distinguishable. He also claims that counsel should not have advised him to plead no contest because (1) he was employed by the Board of Education--not by the school; and (2) he did not "serve in" the school.

{¶ 28} Properly licensed Ohio lawyers are presumed competent. *State v. Banks*, 9th Dist. Lorain No. 01CA007958, 2002-Ohio-4858, ¶ 16. To establish ineffective assistance of counsel, the defendant must show that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defendant so as to deprive him of a fair trial. *Strickland v. Washington*, 466 U.S. 668, 688-692, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Where a defendant claims that his decision to enter a plea was based on his lawyer's deficient performance, the defendant must prove that the lawyer was not reasonably competent and the advice was not "within

the range of competence demanded of attorneys in criminal cases." *Id.* at 687. He must also show that the ineffective assistance prevented him from entering the plea knowingly and voluntarily. *State v. Ybarra*, 5th Dist. Licking No. 14-CA-8, 2014-Ohio-3485, ¶ 14. In evaluating a claim of ineffective assistance, there is a strong presumption that the attorney's performance was reasonable. *Strickland* at 688-689.

{¶ 29} "[A] plea of guilty or no contest waives any prejudice a defendant suffers arising out of his counsel's alleged ineffective assistance, except with respect to a claim that the particular failure alleged impaired the defendant's knowing and intelligent waiver of his right to a trial." (Citations omitted.) *State v. Bregitzer*, 11th Dist. Portage No. 2012-P-0033, 2012-Ohio-5586, ¶ 17. Thus, to the extent that Alridge's ineffective assistance claim is premised on the inadequacy of the motion to dismiss filed by his trial counsel, his claim was waived. As for his claim that he was not "employed by" and did not "serve in" the school, Alridge cites no authority to suggest that he would be absolved from liability based on the fact that his contract was with the school board and not with the school itself. To warrant reversal on a claim of ineffective assistance of counsel, "'[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373, 380 (1989), citing *Strickland* at 694. Alridge has failed to make this showing.

{¶ 30} We find Alridge's fourth assignment of error not well-taken.

III. CONCLUSION

{¶ 31} For the foregoing reasons, we affirm the December 16, 2014 judgment of the Sandusky County Court of Common Pleas. The costs of this appeal are assessed to Alridge under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE