

[Cite as *State v. Finroy*, 2010-Ohio-2067.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 09AP-795
v.	:	(C.P.C. No. 08CR-08-5799)
	:	
Mario Finroy,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on May 11, 2010

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*Ron O'Brien*, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

*Yavitch & Palmer Co., LPA*, and *Shawn T. Hannon*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Mario Finroy ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted him, pursuant to a guilty plea, on offenses related to a home invasion. For the following reasons, we affirm.

{¶2} The Franklin County Grand Jury indicted appellant for aggravated burglary, aggravated robbery, and kidnapping, and these counts contained firearm

specifications. He was also indicted on two counts of robbery without specifications. He pleaded not guilty, and the case was scheduled for trial. On the day of trial, the court asked the prosecution if it made any plea offers, and the prosecution indicated that it proposed two alternatives. The court explained the offers to appellant after he said that he did not understand them. Under one option, he could plead guilty to aggravated robbery and a three-year firearm specification with a potential sentence of 6 to 13 years in prison. Alternatively, he could plead guilty to two first-degree felonies and a merged one-year firearm specification with a potential sentence of 4 to 21 years imprisonment. The court also said "let me just tell you what my policy is \* \* \* [a] jury comes back, they find you guilty, I think nothing of giving you the maximum." (Tr. 6-7.) The court reiterated, "you have the potential to be out by the time you're 20" by taking a plea offer, but "if you go to trial and a jury comes back and finds you guilty \* \* \* you're looking at getting out when you're 50." (Tr. 7.) And, the court repeated, "just so you know, I don't think twice about the maximum consec[utive]. \* \* \* I just like to be up front and honest about it." (Tr. 7-8.)

{¶3} After talking with his attorney, appellant agreed to a revised plea bargain that allowed an *Alford* guilty plea to aggravated robbery, aggravated burglary, and kidnapping, with each offense carrying a one-year firearm specification. The prosecution agreed to a dismissal on the robbery charges and concurrent sentences for the kidnapping and aggravated robbery. The court accepted the plea bargain and sentenced appellant to 14 years imprisonment.

{¶4} He appeals, raising the following assignment of error:

The trial court erred by participating in the plea bargaining process where the trial judge's participation improperly coerced Defendant's plea of guilty by promising the Defendant a lighter sentence for pleading guilty and threatened him with the maximum sentence if he exercised his fundamental right to a trial by jury and was convicted. The judge's involvement violated Defendant's rights as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and similar provisions of the Ohio Constitution.

{¶5} In his single assignment of error, appellant argues that the trial court's participation in the plea bargaining process rendered his guilty plea involuntary. We disagree.

{¶6} Although the trial court participated in plea negotiations by talking to appellant about the different sentences he could receive for either accepting a plea offer or opting for a trial, this does not automatically render his guilty plea invalid. See *State v. Byrd* (1980), 63 Ohio St.2d 288, 293. Rather, we determine whether the trial court's intervention affected the voluntariness of the plea. *Id.* See also *State v. Engle*, 74 Ohio St.3d 525, 527, 1996-Ohio-179 (recognizing that an involuntary guilty plea is unenforceable).

{¶7} Appellant complains that the trial court coerced him into pleading guilty by threatening him with maximum, consecutive sentences if he exercised his right to a trial instead of accepting a plea offer. To be sure, the trial court's comment—that it would not hesitate to impose maximum consecutive sentences if he were found guilty at trial—makes our review more difficult. Nevertheless, we do not determine this issue by "surgically excerpting small snippets" from the plea hearing. *State v. Turner*, 10th Dist.

No. 08AP-978, 2009-Ohio-2403, ¶6. Instead, we consider the record in its entirety to determine the voluntariness of the guilty plea. *Id.*

{¶8} Appellant argues that his guilty plea was involuntary even considering the record as a whole. In particular, he claims that he was coerced by the trial court's comments because he was only 17 years old with no previous experience in the adult criminal justice system. But the record demonstrates that the trial court addressed him during plea negotiations for purposes of ensuring that he understood the consequences of accepting a plea offer or going to trial. For instance, when the court started its conversation with appellant, it said, "I need to hear from you that you understand what the [prosecution] is offering and what is at risk if you go forward with trial." (Tr. 4.) At another point, the court noted that it wanted no "misunderstanding" about the consequences of a trial. (Tr. 6.) And, when the court ended its conversation, it indicated that it warned appellant about the maximum consecutive sentences in order "to be up front and honest." (Tr. 8.) We now turn to whether the trial court rendered appellant's guilty plea involuntary given this context.

{¶9} In *State v. Carmicle* (Nov. 4, 1999), 8th Dist. No. 75001, the appellate court upheld a guilty plea where the trial court informed a defendant during plea negotiations that he would receive a less severe sentence if he accepted a plea offer than if he went to trial and was found guilty. According to the appellate court, "[t]he judge made sure that [the defendant] made an informed decision." *Id.* It also said, "when the trial court labors to make sure that a defendant understands the charges against him and the possible penalties, this assurance does not amount to an infringement on the constitutional right to a voluntary plea." *Id.*, citing *State v. Rogers*

(Mar. 23, 1994), 4th Dist. No. 548. Likewise, in *Caudill v. State* (Nov. 24, 1982), 12th Dist. No. 761, the appellate court concluded that a trial court did not render a guilty plea involuntary when it informed the defendant during plea negotiations in a capital prosecution that it "would have no hesitation or reservation in imposing the death penalty" if a jury's verdict supported it. The appellate court recognized that the defendant was being notified on "what the results could be if he were found guilty" at trial. *Id.* We agree with the rationale in *Carmicle* and *Caudill*, given that it is consistent with the responsibilities that Crim.R. 11 places on a trial court to determine that a defendant entering a guilty plea understands the nature of the charges, the maximum penalty involved, and the effect of a guilty plea. *Caudill* also considered that the defendant was represented by counsel, and here, defense counsel was present during appellant's conversation with the trial court, and the court allowed him to talk with counsel before making a final decision on whether to accept a plea offer or go to trial.

{¶10} Conversely, appellant relies on factually distinguishable cases where trial courts coerced plea agreements with improper remarks about the right to a trial. See *State v. Gaston*, 8th Dist. No. 82628, 2003-Ohio-5825, and *In re Steinmetz*, 2d Dist. No. 19254, 2002-Ohio-4685. In *Gaston*, a trial court implied that pleading guilty, instead of going to trial, can signify remorse, and it noted that remorse is a mitigating factor for sentencing. *Id.* at ¶12-19. In *Steinmetz*, the trial court threatened an individual with a harsh sentence if he was going to "wast[e] the court's time" by going to trial." *Id.* at ¶15-27, 30. We are not presented with these circumstances, and we decline to apply these cases. Instead, we conclude that the trial court did not render appellant's guilty

plea involuntary when it participated in plea negotiations by discussing the consequences of accepting a plea offer or going to trial.

{¶11} Having concluded that the trial court did not render appellant's guilty plea involuntary through its comments during plea negotiations, we overrule his single assignment of error. Consequently, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

TYACK, P.J., and BROWN, J., concur.

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