

**IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
UNION COUNTY**

STATE OF OHIO

CASE NO. 14-2000-18

PLAINTIFF-APPELLEE

v.

GARLAND LOGAN SMITH

OPINION

DEFENDANT-APPELLANT

**CHARACTER OF PROCEEDING: Criminal Appeal from Common Pleas
Court**

JUDGMENT: Judgment Affirmed.

DATE OF JUDGMENT ENTRY: October 31, 2000

ATTORNEYS:

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For Appellee**

Bryant, J. Appellant-defendant Garland Logan Smith (“Smith”) brings this appeal from the judgment of the Court of Common Pleas of Union County sentencing to prison for almost four years.

On February 9, 2000, Smith entered a guilty plea to one count of receiving stolen property, one count of possession of heroin, one count of illegal conveyance of drugs and one count of illegal conveyance of weapons. All of these charges were felonies. On April 25, 2000, Smith was sentenced to serve 17 months in prison on the receiving charge, 17 months in prison on the possession charge to be served concurrently with the receiving charge, 17 months in prison on the conveyance of drugs charge to be served consecutively, 11 months on the conveyance of weapons charge to be served consecutively. This equals a total of 45 months in prison. Smith now appeals this sentence and the trial court’s denial of his motion to withdraw his guilty plea.

Smith raises the following assignments of error.

Smith was deprived of his right to due process of law under the Constitution when the State of Ohio failed to honor the terms of the plea bargain.

The trial court failed to properly ascertain if Smith was under the influence of any drugs or alcohol and otherwise failed to adequately ascertain whether Smith’s guilty plea was knowingly and voluntarily entered into.

The trial court has improperly refused to rule on Smith’s motion to withdraw his plea and Smith’s motion for post-conviction relief.

In the first assignment of error, Smith argues that the State violated his due process rights when it did not honor the terms of the plea agreement. Smith claims that the State agreed to recommend a sentence of two years. Instead, the State made a recommendation of at least two years. However, the decision as to the sentencing of a defendant is within the sound discretion of the trial court and the trial court is not bound by any plea agreement. *State v. Miller* (1997), 122 Ohio App.3d 111, 701 N.E.2d 390. An appellate court will not reverse a trial court's exercise of discretion if the sentence imposed is within the statutory limit and the trial court considered the statutory criteria. *State v. Tutt* (1988), 44 Ohio App.3d 138, 541 N.E.2d 1090.

Here, the State asked the court to impose a sentence of at least two years. Smith's attorney then informed the court that the agreement called for a recommendation of two years and no more. Thus, the trial court was aware of the difference between the agreement and the recommendation. At no time during the sentencing hearing did Smith request to change his plea due to the State's recommendation. Smith does not claim that the sentence is not within the statutory limits. Additionally, the record shows that the trial court considered the criteria set forth in the statutes. Since the trial court complied with all of the statutory requirements, there is no abuse of discretion and the first assignment of error is overruled.

In the second assignment of error, Smith argues that the trial court did not comply with Crim.R. 11 before accepting his guilty plea. We note that no transcript of the change of plea hearing was provided for our review. Thus, we can only review the journal entry filed by the trial court.

(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.

Crim.R. 11(C)(2).

Here, the record contains a journal entry signed by the judge, the prosecuting attorney, defense counsel, and Smith. The entry states that Smith is not under the influence of drugs or alcohol at the time of the change of plea. The entry also states that the trial court explained the entry orally to Smith before

Case No. 14-2000-18

Smith signed the entry. Absent any evidence to the contrary, we have no reason to presume the trial court did not comply with Crim.R. 11 or that Smith was under the influence of any substance at the time the guilty plea was entered. The second assignment of error is overruled.

Smith argues in the third assignment of error that the trial court erred in denying his motion to withdraw his guilty plea. This assignment of error was raised in Case NO. 14-2000-28. This appeal was dismissed on August 30, 2000 for lack of jurisdiction.

Smith also claims that the trial court overruled his petition for post-conviction relief. However, the record in this appeal does not reflect the filing of such motion and no entry is found in the record showing such a ruling. Thus, this court has no jurisdiction and no ability to review the issue. The third assignment of error is overruled.

The judgment of the Court of Common Pleas of Union County is affirmed.

Judgment Affirmed.

HADLEY, P.J. and WALTERS, J., concur.