[Cite as *State v. Shavers*, 2015-Ohio-1485.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-05-119
	:	O P I N I O N
- vs -		4/20/2015
	:	
LEON SHAVERS III,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2013-10-1659

Michael T. Gmoser, Butler County Prosecuting Attorney, Michael A. Oster, Jr., Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Charles M. Conliff, P.O. Box 18424, Fairfield, Ohio 45018-0424, for defendant-appellant

HENDRICKSON, J.

{¶ 1} Defendant-appellant, Leon Shavers, appeals his convictions in the Butler County Court of Common Pleas after entering guilty pleas to trafficking in heroin. For the reasons detailed below, we affirm the decision of the trial court.

{¶ 2} Appellant was indicted in November 2013 on 15 counts involving possession and trafficking in heroin and cocaine. On April 3, 2014, pursuant to a plea agreement, appellant pled guilty to three counts in trafficking heroin: (1) Count 5, trafficking in heroin, in

violation of R.C. 2925.03(A)(1), a third-degree felony, (2) Count 7, trafficking in heroin, in violation of R.C. 2925.03 (A)(1), a second-degree felony, and (3) Count 9, trafficking in heroin, in violation of R.C. 2925.03(A)(2), a second-degree felony. Following a Crim.R. 11(C) colloquy, the trial court accepted appellant's guilty plea. The trial court subsequently sentenced appellant to 30 months in prison on Count 5 and a mandatory prison term of six years each for Counts 7 and 9. The sentences were ordered to be served concurrently. Appellant now appeals, raising two assignments of error for review.

{¶ 3} Assignment of Error No. 1:

{¶ 4} THE TRIAL COURT ERRED TO APPELLANT'S PREJUDICE BY ACCEPTING A GUILTY PLEA ON THE PREMISE THAT HE WOULD RECEIVE A SINGLE MANDATORY PRISON SENTENCE WHEN APPELLANT'S UNDERSTANDING WAS THAT HE WOULD BE CONSIDERED FOR A BLENDED SENTENCE CONSISTING OF MANDATORY AND NON-MANDATORY TIME.

{¶ 5} In his first assignment of error, appellant argues that his plea was not constitutionally sound because the trial court failed to advise him that he was going to receive a mandatory prison sentence. Appellant alleges that he believed he was going to receive a "blended" sentence consisting of some "non-mandatory" prison time combined with a lesser amount of "mandatory" prison time. We find appellant's argument has no merit.

{¶ 6} A defendant's plea in a criminal case is invalid if not made knowingly, intelligently, and voluntarily. *State v. Ackley*, 12th Dist. Madison No. CA2013-04-010, 2014-Ohio-876, ¶ 8. Crim.R. 11(C)(2) governs the process a trial court must follow to ensure that a guilty plea to a felony charge is knowing, intelligent, and voluntary. *State v. Brune*, 12th Dist. Butler No. CA2014-02-058, 2014-Ohio-5742, ¶ 8.

{¶ 7} Pursuant to Crim.R. 11(C)(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.

{¶ 8} "In conducting this colloquy, the trial judge must convey accurate information to the defendant so that the defendant can understand the consequences of his decision and enter a valid plea." *State v. Givens*, 12th Dist. Butler No. CA2014-02-047, 2015-Ohio-361, ¶ 11.

{¶ 9} A guilty plea is invalid if the trial court does not strictly comply with Crim.R. 11(C)(2)(c), which requires the court to verify the defendant understands the constitutional rights that he is waiving. *Ackley*, 2014-Ohio-876 at ¶ 9. But a court need only substantially comply with the nonconstitutional notifications required by Crim.R. 11(C)(2)(a) and (b). *Id*. Under the substantial compliance standard, the appellate court must review the totality of the circumstances surrounding the defendant's plea and determine whether he subjectively understood the effects of his plea. *Givens* at ¶ 12.

{¶ 10} Even if we find the trial court did not substantially comply with Crim.R. 11(C)(2)(a) and (b), we must make a further determination as to whether the trial court at

least partially complied. *Id.* at ¶ 13. If the trial court wholly failed to comply, the plea must be vacated. *Id*. If the trial court partially complied, the plea may be vacated only if the defendant demonstrates prejudicial effect. *State v. Hendrix*, 12th Dist. Butler No. CA2012-12-265, 2013-Ohio-4978, ¶ 11.

{¶ 11} In the present case, it is undisputed that the trial court strictly complied with the constitutional requirements of Crim.R. 11(C)(2)(c). In addition, the record reflects that the trial court complied with the nonconstitutional notification required by Crim.R.11 (C)(2)(b). However, on appeal, appellant argues that he did not understand the mandatory nature of his prison term as required by Crim.R. 11 (C)(2)(a).

{¶ 12} During the plea colloquy, the trial court initially stated that appellant was subjected to a "presumption" of prison time on all counts. However, because Counts 7 and 9 included mandatory prison time, the trial court corrected itself and instructed appellant of the maximum penalties and mandatory nature for the offenses. Specifically, the court stated:

> THE COURT: * * * I've been saying that prison is presumed in your case and it is with regards to Count 5 which is a felony in the third degree, but with regards to Counts 7 and 9, it's actually mandatory in your case so the Court has no option to place you on community control for those Counts. The Court must sentence you to prison for Counts 7 and 9 for a period between two and eight years on each of those Counts.
>
> THE COURT: So the Court apologizes for any confusion that it might have caused, but again Count 5 is a presumption of prison and Counts 7 and 9 are required mandatory prison term[s]. Do you understand that?
>
> APPELLANT: Yes ma'am.
>
> THE COURT: So the Court will be sending you to prison if it accepts your plea in this case and it will be for a period up to 36 months on Count 5 and for a period of up to eight years on each of Counts 7 and 9. Do you understand that?
>
> APPELLANT: Yes ma'am.

{¶ 13} After a thorough review of the record, we find the totality of circumstances

indicate that appellant subjectively understood the consequences of his plea. At the plea hearing, the trial court conducted a full plea colloquy that strictly complied with Crim.R. 11(C)(2)(c) and substantially complied with Crim.R. 11(C)(2)(a) and (b). Although the trial court initially misspoke, the court appropriately corrected the record and explained that appellant was receiving a mandatory prison term. Appellant answered in the affirmative when asked if he understood that he was subject to a mandatory prison term on Counts 7 and 9. *State v. Rivera*, 12th Dist. Butler No. CA2013-05-072, 2014-Ohio-3378, ¶ 28 ("[t]here is no requirement that a court enter into a discussion with a defendant or defendant's counsel to ensure there is an understanding where no uncertainty is otherwise indicated"). In addition, appellant also signed a written plea form and jury waiver, which included the correct prison sentences for each offense and correctly indicated that prison is presumed necessary for Count 5 and is mandatory for Counts 7 and 9. Accordingly, the record shows that appellant was advised that he was subject to mandatory eight-year prison terms by pleading guilty to Counts 7 and 9 and appellant provided all indications that he understood that fact prior to making his plea. In light of the foregoing, appellant's first assignment of error is overruled.

{¶ 14} Assignment of Error No. 2:

{¶ 15} THE TRIAL COURT ERRED TO APPELLANT'S PREJUDICE BY IMPOSING A MANDATORY PRISON SENTENCE RATHER THAN A BLENDED SENTENCE INCLUDING BOTH MANDATORY TIME AND COMMUNITY CONTROL SANCTIONS.

{¶ 16} In his second assignment of error, appellant argues the trial court erred by imposing a six-year mandatory sentence on Counts 7 and 9. Appellant again argues the trial court should have imposed a "blended" sentence consisting of less mandatory prison time.

{¶ 17} We review the imposed sentence under the standard of review set forth in R.C. 2953.08(G)(2), which governs all felony sentences. *State v. Crawford*, 12th Dist. Clermont

No. CA2012-12-088, 2013-Ohio-3315, ¶ 6. Pursuant to R.C. 2953.08(G)(2), when hearing an appeal of a trial court's felony sentencing decision, "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." However, an appellate court's review of an imposed sentence is not whether the sentencing court abused its discretion. *State v. Moore*, 12th Dist. Clermont No. CA2014-02-016, 2014-Ohio-5191, ¶ 6.

{¶ 18} Instead, an appellate court may take any action authorized under R.C. 2953.08(G)(2) only if the court "clearly and convincingly finds" either (1) "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 Revised Code, whichever, if any, is relevant," or (2) "[t]hat the sentence is otherwise contrary to law." *Crawford* at ¶ 7. A sentence is not clearly and convincingly contrary to law where the trial court considers the purposes and principles of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly applies postrelease control, and sentences appellant within the permissible statutory range. *State v. Brown*, 12th Dist. Warren No. CA2013-12-115, 2015-Ohio-365, ¶ 19.

{¶ 19} As previously noted, appellant was convicted of trafficking in heroin in violation of R.C. 2925.03(A)(1), a third-degree felony under R.C. 2925.03(C)(6)(c). The possible prison term for that offense is nine, 12, 18, 24, 30, or 36 months. R.C. 2929.14(A)(3)(b). In addition, appellant was also convicted of two counts of trafficking in heroin in violation of R.C. 2925.03 (A)(1) and R.C. 2925.03(A)(2), both second-degree felonies under R.C. 2925.03(C)(6)(e). The prison terms for those offenses were mandatory and each subjected appellant to a prison term of two, three, four, five, six, seven, or eight years. R.C. 2929.14(A)(2).

{¶ 20} Based on our review of the record, we find no error in the trial court's

sentencing decision. The trial court properly considered all relevant sentencing factors including the purposes and principles of R.C. 2929.11, as well as the factors listed in R.C. 2929.12 and the trial court's sentence was clearly within the permissible statutory range for the offense. Accordingly, we find appellant's sentence is supported by the record and not contrary to law. Appellant's arguments to the contrary are without merit. Therefore, appellant's second assignment of error is overruled.

{¶ 21} Judgment affirmed.

M. POWELL, P.J., and S. POWELL, J., concur.