IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-060797 TRIAL NO. B-0602472
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
RICKY C. CANNON	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Defendant-appellant Ricky C. Cannon was indicted on one count of operating a vehicle while under the influence ("OVI") in violation of R.C. 4511.19(A)(1)(a) and one count of OVI in violation of R.C. 4511.19(A)(2). Both counts alleged that Cannon had committed his fifth OVI offense within the past 20 years. Both counts also contained a R.C. 2941.1413 specification that qualified Cannon for an additional, mandatory prison term of up to five years due to the state's allegation that he had committed his fifth OVI offense within the past 20 years.

During plea negotiations, the state offered to dismiss count two of the indictment and both specifications. Further, the state offered to treat Cannon's offense as his fourth OVI offense in six years and to amend the indictment accordingly. The four-in-six offense is also prohibited by R.C. 4511.19(A)(1)(a), and like the five-in-20 offense, the four-in-six

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

offense is a fourth-degree felony. But under the amended indictment, Cannon would not be subject to the R.C. 2941.1413 specification that would have added a mandatory prison term, up to five years, to Cannon's sentence if he were found guilty of the specification. Cannon, who was represented by counsel, waived a reading of the amended indictment and tendered a guilty plea to the remaining count.

Prior to accepting Cannon's guilty plea, the trial court personally addressed Cannon and reiterated the plea agreement. The court then informed Cannon of the effect of his plea, including that he was admitting to committing his fourth OVI offense in a six-year period. The court also advised Cannon of the maximum punishment that he was facing, specifically, a minimum of 60 days in jail and a maximum of 30 months in prison, and that he faced a mandatory fine of $800 to $10,000. Finally, the court explained to Cannon the rights that he was waiving by entering the plea. Cannon orally indicated that he understood the implication of his plea and the rights that he was waiving. Cannon also signed an entry withdrawing his pleas of not guilty and entering a plea of guilty. The plea form erroneously indicated that Cannon was facing a mandatory maximum fine of only $800.

The trial court then found that Cannon had knowingly, intelligently, and voluntarily entered his plea and accepted it. The court found Cannon guilty of the amended OVI offense and continued the case for sentencing. At the sentencing hearing, the trial court noted Cannon's prior OVI convictions and sentenced him to five years' community control, a lifetime license suspension, and a $10,000 fine. Cannon did not object to the fine and indicated that he did not have any questions about his sentence.

Cannon has appealed, and he raises three assignments of errors.

In his first assignment of error, Cannon challenges the court's acceptance of his plea on the ground that the state had breached the plea agreement. Cannon claims that,

as part of the agreement, the state had agreed to a fine of $800. Thus, Cannon argues, his plea was void or voidable because the trial court imposed a fine of $10,000. In support of his argument that the state had agreed to recommend a $800 fine, Cannon cites the plea form that erroneously listed $800 as the maximum fine for the offense.

We reject Cannon's argument that the plea form established that the state had agreed to recommend a $800 fine as part of the plea agreement. The trial court explained to Cannon the particulars of the plea agreement as follows: "You are currently charged with an offense that, if convicted, you would face a potential penitentiary sentence anywhere from one to five years in the Department of Corrections.

"The State of Ohio and your counsel are entering into a plea agreement where the State of Ohio is dismissing outright Count Two, and that you are entering into a plea of guilty to amended Count One where, instead of suggesting this would be your fifth or more conviction of a DUI offense in a 20-year period, the State is alleging this would be your fourth conviction of a DUI in a six-year period. It will then take you down to a lesser sentence anywhere from the minimum mandatory 60 days in * * * jail, up to 30 months in the Department of Corrections." The court then asked Cannon if those terms reflected his understanding of the plea agreement. Cannon replied affirmatively.

Where the terms of the plea bargain were unequivocally placed on the record by the court, and Cannon acknowledged those terms, we hold that the plea form, which erroneously stated that $800 was the statutory maximum fine for the offense, did not demonstrate that the state had agreed to recommend a fine in that amount. We conclude, therefore, that there was no evidence that the state had induced Cannon to enter the plea upon an unfulfilled promise.

Cannon argues also that his plea was not knowingly, intelligently, and voluntarily entered because the plea form indicated that the maximum fine was $800. But the record

indicates that Cannon understood the implications of his plea, as well as the rights he was waiving, and that he knowingly, intelligently and voluntarily entered a guilty plea.

Although the plea form misstated the maximum amount of the fine, and Cannon received the maximum fine, the trial court personally addressed Cannon and informed him that he was facing a potential maximum fine of $10,000 prior to accepting the plea. Under these circumstances, the trial court substantially complied with the requirements of Crim.R. 11(C)(a), which provides that the trial court must personally advise a pleading defendant of the maximum penalty involved.

In any event, Cannon has failed to show prejudice such that he would not have otherwise entered the plea had the court strictly complied with Crim.R. 11(C)(a).[2] The record belies any claim of prejudice where Cannon did not inquire into the discrepancy between the fine amounts, and where he did not object when the court imposed the $10,000 fine.

Where the record does not support Cannon's allegation that the state had made an unfulfilled promise to induce his guilty plea or that he was prejudiced by the trial court's failure to strictly comply with Crim.R. 11(C)(a), we conclude that Cannon's plea was knowing, intelligent, and voluntary, and that the trial court did not err in accepting it. Accordingly, we overrule the first assignment of error.

In his second assignment of error, Cannon attacks his guilty plea by arguing that the state could not prove that he had committed his fourth OVI in six years. At the plea hearing, Cannon expressly waived a reading of the state's amended indictment and tendered a guilty plea to committing his fourth OVI in six years.

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[2] See *State v. Nero* (1990), 56 Ohio St.3d 106, 108, 564 N.E.2d 474.

A plea of guilty is a complete admission of guilt.[3] Here, the trial court informed Cannon that, by entering the guilty plea, he was admitting to the fact that he had committed his fourth OVI in six years. By pleading guilty, Cannon waived his right to challenge the sufficiency of the state's proof.[4] Accordingly, we overrule the assignment of error.

In his final assignment of error, Cannon argues that his due-process rights were violated when he was not provided a preliminary hearing within the time limits of the Ohio Revised Code and the Ohio Rules of Criminal Procedure. But Cannon did not move to dismiss the charges on this basis until after the grand jury had found probable cause to indict him. At that point, Cannon's right to a preliminary hearing had extinguished, and the issue was moot.[5] Additionally, by entering into the counseled guilty plea, Cannon waived the right to raise nonjurisdictional defects occurring during prior stages of the proceedings.[6] Accordingly, we overrule the third assignment of error and affirm the trial court's judgment.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

HILDEBRANDT, P.J., CUNNINGHAM and **DINKELACKER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on September 12, 2007

per order of the Court _____.
Presiding Judge

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[3] Crim.R. 11(B)(1).
[4] Accord *State v. Wilson* (1979), 58 Ohio St.2d 52, 388 N.E.2d 745, paragraph one of the syllabus ("a counseled plea of guilty is an admission of factual guilt which removes issues of factual guilt from the case").
[5] See *State v. Grim* (1975), 44 Ohio App.2d 152, 154, 336 N.E.2d 458; *State v. Wood* (1976), 48 Ohio App.2d 339, 341-342, 357 N.E.2d 1106.
[6] See *State v. Kelley* (1991), 57 Ohio St.3d 127, 566 N.E.2d 658; *Ross v. Common Pleas Court of Auglaize County* (1972), 30 Ohio St.2d 323, 285 N.E.2d 25.