

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

STATE OF OHIO,	:	APPEAL NO. C-070384
	:	TRIAL NO. B-0608903
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
MARIO LUNGELOW,	:	
	:	
Defendant-Appellant.	:	

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

After being indicted for one count of violating a protection order,² defendant-appellant Mario Lungelow entered a plea of no contest to that charge. After a plea hearing, he was found guilty and sentenced to ten months in prison. On appeal, he argues that the trial court failed to comply with Crim.R. 11 before accepting the plea and that the trial court improperly found him guilty of the offense.

In his first assignment of error, Lungelow argues that the trial court failed to comply with Crim.R. 11 when it (1) made a reference to “good time” credit during the plea hearing and (2) failed to inform him that his no-contest plea could not be used against him in subsequent civil proceedings. We disagree with both propositions.

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

² R.C. 2919.27(A).

First, we cannot conclude that the singular reference to “good time” during the plea hearing rendered the plea invalid. According to the transcript of the plea hearing, the trial court said that “if you are sent to prison, any prison term imposed will be time that you serve with good-time reduction.” With the possibility of a transcription error left aside, the plea form signed by Lungelow properly indicated that “any prison term stated will be the term served without good time credit.” During the plea hearing, Lungelow stated that he had reviewed the plea form with counsel and that he understood it. Further, the trial court properly informed Lungelow during the sentencing hearing that “the time imposed will be time sufficient served without good-time reduction.”

In a similar case, the Twelfth Appellate District rejected the argument that inadvertently misinforming a defendant about eligibility for shock probation during a plea hearing did not render the plea invalid.³ In that case, the court stated that “we must determine whether the trial court substantially complied with the nonconstitutional requirements of Crim.R. 11 or if appellant was prejudicially affected by the trial court's misstatement * * *.”⁴ The court found no prejudice, noting that “no part of the plea bargain concerning the penalty to be imposed held out probation to appellant as encouragement for him to plead guilty. The record is clear that, after consulting with counsel, appellant entered a plea of guilty before the trial court made the misstatement concerning his eligibility for shock probation.”⁵

³ *State v. Shipman* (Aug. 3, 1998), 12th Dist. No. CA97-11-113.

⁴ *Id.*

⁵ *Id.*

In this case, the plea form indicated that there would be no “good time” credit. Lungelow acknowledged that he had read and understood the plea form. He entered his plea of no contest prior to the trial court’s misstatement regarding “good time” credit. If there had been an issue regarding whether Lungelow subjectively believed that he would receive “good time” credit or that “good time” credit was a reason for his plea, he did not raise it either at the plea hearing, when the trial court reviewed the form with him, or during the sentencing hearing, when the trial court properly informed him that “good time” credit was not available. Based upon this record, we conclude that Lungelow was not prejudicially affected by the trial court’s apparent misstatement.⁶

Alternatively, Lungelow’s claims that the failure of the trial court to warn him that his no-contest plea could not be used against him in a subsequent civil proceeding rendered the plea invalid. He argues that “he simply did not have the complete information provided to allow him to intelligently and knowingly analyze the consequences of entering his no-contest plea * * *.” In *State v. Anderson*,⁷ this court rejected the same argument, noting that “such information, rather than dissuading a defendant from pleading, is an incentive to enter a no-contest plea.”⁸ Therefore, Lungelow cannot establish that he was prejudicially affected by the trial court’s failure to inform him of the benefits of entering a no-contest plea.

Lungelow’s first assignment of error is overruled.

⁶ See, also, *State v. Tackett*, 3rd Dist. No. 17-01-06, 2001-Ohio-2244 (inadvertent misstatement by the trial court regarding the maximum possible sentence facing defendant did not prejudice defendant, nor did it affect his decision to enter a guilty plea).

⁷ 1st Dist. No. C-070098, 2007-Ohio-6218.

⁸ Id. at ¶12.

In his second assignment of error, Lungelow argues that the trial court improperly found him guilty of violating the protection order after he had entered his no-contest plea. The premise of his argument is that the contact was isolated and non-threatening, and he cites an unreported judgment entry from this court. In essence, he claims that the trial court improperly found that he had acted recklessly.

Lungelow's argument presents two problems. First, judgment entries have no precedential value. The judgment entry cited by Lungelow is not an opinion of this court, and we will not consider it for any purpose in an unrelated case.⁹

Second, that case involved an appeal following a trial on the merits. In contrast to a trial, where the defendant contests the allegations in the indictment, a plea of no contest is "an admission of the truth of the facts alleged in the indictment."¹⁰ The Ohio Supreme Court has held that, upon receipt of a no-contest plea, a trial court must find a defendant guilty of the charged offense if the indictment alleges sufficient facts to state a felony offense.¹¹ This court has also held that "where * * * an indictment contains sufficient allegations to state a felony offense and a court accepts an intelligent and voluntary plea of no contest, it *must* find the defendant guilty of the offense charged."¹²

The indictment in this case mirrored the language of R.C. 2919.27(A). Lungelow pleaded no contest to the offense as alleged in the indictment. We have established that his plea was knowing, voluntary, and intelligent. Therefore, Lungelow admitted to the trial court that he had "recklessly violated the terms of a protection order," and that

⁹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

¹⁰ *State v. Render*, 1st Dist No. C-060382, 2007-Ohio-1606, at ¶22, quoting *State v. Bird*, 81 Ohio St.3d 582, 584, 1998-Ohio-606, 692 N.E.2d 1013.

¹¹ *Id.*

¹² *Id.*, citing *State v. Horton* (May 25, 2001), 1st Dist. No. C-000434 (emphasis added).

OHIO FIRST DISTRICT COURT OF APPEALS

“[he] previously had been convicted of or pleaded guilty to a violation of a protection order * * *.” Upon the authority of *Bird* and *Horton*, the trial court properly found Lungelow guilty based on those admissions. If Lungelow had wished to contest whether he had acted recklessly, he should have proceeded to trial. Lungelow’s second assignment of error is overruled.

The judgment of the trial court is affirmed.

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

PAINTER, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 30, 2008

per order of the Court _____.
Presiding Judge