

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

STATE OF OHIO,	:	APPEAL NO. C-090019
	:	TRIAL NO. B-00804731-A
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
MARCUS BREWSTER,	:	
	:	
Defendant-Appellant.	:	

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

Defendant-appellant Marcus Brewster pleaded guilty to four counts of robbery. In exchange for his guilty plea, the state dismissed the remaining charges. Prior to the plea hearing, Brewster's counsel had submitted a suggestion of incompetency and a written plea of not guilty by reason of insanity (NGRI). The trial court requested a report from the court clinic. Sherry Baker, Ph.D., performed the examination and found that Brewster was competent to stand trial and did not meet the criteria for an insanity defense. Brewster's counsel and the state stipulated to the competency report. The trial court, accepting the report as the only evidence on the competency issue, found Brewster competent to stand trial. Brewster's counsel then withdrew the NGRI plea. At the plea hearing, the trial court conducted the required voluntariness colloquy, accepted the plea, and found Brewster guilty. The trial court then sentenced him to 12 years in prison and advised him of the terms of postrelease control.

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

Brewster now appeals, raising two assignments of error for our review. In his first assignment of error, Brewster argues that the trial court's refusal to appoint new counsel at the plea hearing deprived him of his Sixth Amendment right to counsel.

During his plea colloquy, Brewster informed the trial court that he was dissatisfied with his appointed counsel and that he wanted a new attorney appointed to represent him. When the trial court inquired into the reasons for Brewster's displeasure, Brewster stated that he did not feel comfortable with counsel. The trial court then asked Brewster what was uncomfortable. Brewster replied, "He ain't being real with me. He ain't being completely honest to me."

When the trial court inquired further, Brewster complained that defense counsel had not met with him as much as he would have wanted. The trial court stated that defense counsel "had done a good deal of work" for Brewster and noted that Brewster had thus far agreed with the plea. The assistant prosecutor then stated that defense counsel had filed a notice of alibi and had met with him several times to review the evidence in the case. Brewster then asked that his competency be reevaluated so that he could "figure out what [wa]s going on."

The trial court told Brewster that he had already been evaluated and had been deemed competent. The court then suggested that a recess be taken so that Brewster could meet with defense counsel to see if they could work things out. Following the recess, Brewster apologized to the court. The trial court told Brewster, "That's all right. You don't need to apologize. We need to be sure everything is straight before we go through with something like this." The court then asked Brewster if he wanted to proceed with defense counsel. Brewster told the court that he did. The trial court then asked Brewster whether he had any other questions. Brewster replied that he did not. The prosecutor then read the facts relating to the four robberies into the record. The trial court found Brewster guilty, ordered a presentence investigation, and continued the case for sentencing.

Brewster argues that the trial court violated his Sixth Amendment right to counsel by failing to sufficiently inquire into his relationship with defense counsel. He argues that the trial court should have further inquired into his relationship and level of satisfaction with defense counsel following the court-ordered recess and should have asked him why he had changed his mind and now wanted to proceed with defense counsel. We disagree.

When a defendant raises specific concerns about the effectiveness of his assigned counsel, the trial court must inquire into his complaint on the record.² A defendant, however, is entitled to new counsel “only upon a showing of good cause, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict which leads to an apparently unjust result.”³ “Hostility, tension or personal conflicts between an attorney and a client that do not interfere with the preparation or presentation of a competent defense are insufficient to justify a change in counsel.”⁴ A trial court’s decision regarding a defendant’s request for new counsel is governed by an abuse-of-discretion standard.⁵

In this case, the trial court sufficiently inquired into Brewster’s complaint, asking him why he wanted new counsel. Brewster’s response, however, did not rise to the level of good cause required under the case law for a substitution of counsel. Nonetheless, the trial court recessed the proceedings to give Brewster the opportunity to talk with defense counsel about his concerns. Following that recess, Brewster told the trial court that he wanted to proceed with defense counsel as his attorney. At that point, there was no need for the trial court to inquire any further into Brewster’s relationship with defense counsel. As a result, we find Brewster’s first assignment of error meritless.

² *State v. Washington* (Aug. 17, 2001), 1st Dist. No. C-000754.

³ *State v. Edsall* (1996), 113 Ohio App.3d 337, 339, 680 N.E.2d 1256.

⁴ *State v. Gordon*, 149 Ohio App.3d 237, 2002-Ohio-2761, 776 N.E.2d 1135, at ¶12.

⁵ *State v. Murphy*, 91 Ohio St.3d 516, 523, 2001-Ohio-112, 747 N.E.2d 765.

In his second assignment of error, Brewster contends that his guilty plea was not knowing, intelligent, or voluntary because he lacked the competence necessary to enter a valid plea. Brewster argues that he was not competent to enter a plea because he had exhibited repeated confusion throughout the plea hearing; he had been taking Seroquel, a psychotropic drug; and he had requested a second competency examination. We disagree.

In determining whether to accept a guilty plea, the trial court must determine that a defendant is knowingly, voluntarily, and intelligently entering the plea.⁶ For this reason, the trial court should engage in a dialogue with the defendant as described in Crim.R.11(C). While a trial court accepting a plea must strictly comply with Crim.R. 11 by informing the defendant about the constitutional rights set forth in Crim.R.11(C),⁷ the trial court need only substantially comply with the rule with respect to the nonconstitutional rights set forth in Crim.R.11(C).⁸ The term “substantial compliance” means that the defendant subjectively understands the implications of his plea and the rights he is waiving.⁹

When a defendant challenges his guilty plea on the basis that it was not knowingly, intelligently, or voluntarily made, he must show a prejudicial effect.¹⁰ “The test is whether the plea would have been otherwise made.”¹¹ Furthermore, when reviewing a defendant’s competence to enter a valid guilty plea, this court must employ the same standard used to determine a defendant’s competency to stand trial.¹² That standard is whether the defendant had “sufficient present ability to consult with his lawyer with a

⁶ Crim.R. 11(C).

⁷ *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621.

⁸ *State v. Stewart* (1977), 51 Ohio St.2d 86, 364 N.E.2d 1163.

⁹ *State v. Nero* (1999), 56 Ohio St.3d 106, 108, 564 N.E.2d 474.

¹⁰ *Stewart*, supra, at 93.

¹¹ *Nero*, supra, at 108.

¹² *State v. Mink*, 101 Ohio St.3d 350, 2004-Ohio-1580, 805 N.E.2d 1064, at ¶57.

reasonable degree of rational understanding—and whether he ha[d] a rational as well as factual understanding of the proceedings against him.”¹³

Brewster first claims that he exhibited “repeated confusion” throughout the plea hearing. But his claim is belied by the record. The trial court asked Brewster whether he understood the nature of the charges against him, the maximum penalties, and all the Crim.R. 11 rights he would be waiving by pleading guilty. Brewster responded, “Yes sir,” on each occasion except when the trial court described his right to trial and the state’s burden of proof. But once the trial court explained those concepts more thoroughly, Brewster indicated that he understood. The only question Brewster asked the trial court before it accepted the plea was whether he could fire his attorney.

Moreover, the fact that Brewster was taking Seroquel did not automatically negate his competence or invalidate his plea.¹⁴ The trial court explicitly asked Brewster if the medication affected his reasoning and thinking, and Brewster replied that it did not. Finally, Brewster’s request for a second competency evaluation did not necessarily show that he could not understand the proceedings. As the trial court pointed out, Brewster’s competency had already been evaluated, and he had already been deemed competent to stand trial. Neither Brewster’s counsel nor the assistant prosecutor raised any issue about Brewster’s competency during the plea hearing. The record further demonstrates that Brewster was able to communicate with his counsel during the proceedings and that he was able to understand the nature of the plea proceedings, the implications of his plea, and the rights he was waiving. Because Brewster has failed to demonstrate that his guilty plea was made unknowingly, involuntarily or unintelligently, we overrule the second assignment of error and affirm the judgment of the trial court.

¹³ *Dusky v. United States* (1960), 362 U.S. 402, 80 S.Ct.788.

¹⁴ R.C. 2945.37(F); *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48, at ¶71.

OHIO FIRST DISTRICT COURT OF APPEALS

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J, SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 9, 2009

per order of the Court _____.

Presiding Judge

