

[Cite as *State v. Horton*, 2009-Ohio-5117.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	Nos. 09AP-245
Plaintiff-Appellee,	:	(C.P.C. No. 08CR-02-1150)
	:	09AP-246
v.	:	(C.P.C. No. 08CR-02-1151) and
	:	09AP-247
Michael Horton,	:	(C.P.C. No. 07CR-12-8965)
	:	
Defendant-Appellant.	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on September 29, 2009

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*Ron O'Brien*, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

*Yeura R. Venters*, Public Defender, and *David L. Strait*, for appellant.

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APPEALS from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Defendant-appellant, Michael Horton ("appellant"), appeals from judgments of the Franklin County Court of Common Pleas finding him guilty of one count of aggravated murder, one count of murder, one count of rape with specification, one count of kidnapping with specification, one count of felonious assault with specification, one count of aggravated robbery with specification, two counts of robbery with specification, and two counts of robbery. Because the trial court properly accepted appellant's guilty pleas, we affirm.

{¶2} On December 17, 2007, a Franklin County Grand Jury indicted appellant in case No. 07CR-12-8965 with one count of aggravated murder in violation of R.C. 2903.01 and one count of murder in violation of R.C. 2903.02. Two months later, on February 20, 2008, a Franklin County Grand Jury indicted appellant in case No. 08CR-02-1150 with one count of rape with specification in violation of R.C. 2907.02, two counts of kidnapping with specification in violation of R.C. 2905.01, one count of felonious assault with specification in violation of R.C. 2903.11, one count of aggravated robbery with specification in violation of R.C. 2911.01, one count of robbery with specification in violation of R.C. 2911.02, and one count of robbery in violation of R.C. 2911.02. That same day, he was also indicted in case No. 08CR-02-1151 with two counts of robbery in violation of R.C. 2911.02.

{¶3} Appellant entered not guilty pleas to all counts in each case, but subsequently withdrew his not guilty pleas and entered guilty pleas in all three cases. The trial court accepted appellant's guilty pleas, found him guilty, and imposed: a jointly-recommended sentence of 20 years to life in case No. 07CR-12-8965; an aggregate sentence of 18 years in case No. 08CR-02-1150, to be served consecutively with the sentences in case Nos. 07CR-12-8965 and 08CR-02-1151; and five years for each count in case No. 08CR-02-1151, to be served concurrently with each other but consecutively to the sentences in case Nos. 07CR-12-8965 and 08CR-02-1150.

{¶4} Appellant appeals and assigns the following error:

THE TRIAL COURT ERRED BY ENTERING JUDGMENT  
OF CONVICTION BASED UPON GUILTY PLEAS THAT  
WERE NOT KNOWING, INTELLIGENT AND VOLUNTARY.

{¶5} Crim.R. 11 governs the acceptance of guilty pleas. Crim.R. 11(C)(2) provides:

In felony cases the court may refuse to accept a plea of guilty \* \* \* and shall not accept a plea of guilty \* \* \* 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[.]

(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.

{¶6} Substantial compliance with the provisions of Crim.R. 11(C)(2)(a) and (b) is sufficient to establish a valid plea. *State v. Mulhollen* (1997), 119 Ohio App.3d 560, 563. Substantial compliance means that, under the totality of the circumstances, appellant subjectively understood the implications of his plea and the rights he waived. *State v. Carter* (1979), 60 Ohio St.2d 34, 38. Strict compliance with the rule is required, however, regarding appellant's critical constitutional rights referenced in Crim.R.11 (C)(2)(c). *State v. Colbert* (1991), 71 Ohio App.3d 734, 737, paragraph one of the syllabus. Appellant need not be advised of those rights in the exact language of Crim.R. 11(C), but he must be informed of them in a reasonably intelligible manner. *Id.* at paragraph two of the syllabus; *State v. Ingram*, 10th Dist. No. 01AP-854, 2002-Ohio-883.

{¶7} A determination of whether a plea was knowing, intelligent, and voluntary is based upon a review of the record. *State v. Spates*, 64 Ohio St.3d 269, 272, 1992-Ohio-130. Appellant does not point to anything in the record that would indicate his guilty plea was anything less than a knowing, intelligent, and voluntary choice. A review of the plea colloquy indicates that the trial court complied with Crim.R. 11.

{¶8} At his plea hearing, the trial court did not discuss with appellant the elements of the charges, nor did the trial court specifically ask appellant if he understood the nature of the charges. This court has held, however, that it is not always necessary for a trial court to advise the defendant of the elements of the charge or to ask him if he understands the charge, so long as the totality of the circumstances demonstrate that the defendant understood the charge. *State v. Rainey* (1982), 3 Ohio App.3d 441, paragraph one of the syllabus; *State v. Thomas*, 10th Dist. No. 04AP-866, 2005-Ohio-2389; *State v. Staten*, 10th Dist. No. 05AP-201, 2005-Ohio-6753.

{¶9} The totality of the circumstances reflected in the record indicates that appellant understood the nature of the charges to which he pled guilty. The entry of guilty plea forms that appellant signed identified the charges and stated that he reviewed the facts and law of his cases with his counsel. *Id.* at ¶8, citing *State v. Jordan* (Mar. 2, 1999), 10th Dist. No. 97APA11-1517. Appellant was present at his plea hearing when the prosecuting attorney recited to the trial court the facts of the cases, and appellant did not voice any objection to those facts. Appellant's attorney did not object to the prosecutor's recitation of facts or express any concern regarding his client's understanding of the nature of the charges. See *State v. Eakin*, 5th Dist. No. 01-CA-00087, 2002-Ohio-4713, ¶25. The totality of the circumstances indicate that

appellant understood the nature of the charges when the trial court accepted his guilty pleas. See also *Thomas* at ¶11.

{¶10} Additionally, the trial court informed appellant of the maximum sentences that he could receive and strictly complied with the requirement that appellant understand all of the constitutional rights he was waiving by entering his guilty pleas. The trial court clearly informed appellant of the constitutional rights he was waiving by pleading guilty. Appellant stated that he understood the maximum sentences and the constitutional rights he was waiving. When asked if he understood everything in the plea documents that he signed, appellant indicated that he did. Moreover, defense counsel represented to the trial court, after discussing the pleas with appellant, that appellant's decision to enter the guilty pleas was knowing, intelligent, and voluntary. *State v. Carter*, 10th Dist. No. 02AP-294, 2002-Ohio-6967, ¶13.

{¶11} At the sentencing hearing held on February 12, 2009, appellant reaffirmed his acquiescence to the guilty pleas he entered on January 21, 2009. Appellant made admissions regarding the crimes to which he pled guilty and apologized to his victims and their families.

{¶12} The record clearly indicates that the trial court complied with Crim.R. 11 before it accepted appellant's guilty pleas and that appellant's pleas were entered knowingly, intelligently, and voluntarily. Accordingly, we overrule appellant's assignment of error and affirm the judgments of the Franklin County Court of Common Pleas.

*Judgments affirmed.*

FRENCH, P.J., and KLATT, J., concur.

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