

[Cite as *State v. Chappell*, 2010-Ohio-112.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 2009-CA-20
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2008-CR-523
v.	:	
	:	
WILLIE A. CHAPPELL	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 15th day of January, 2010.

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BROGAN, J.

{¶ 1} Willie A. Chappell appeals from his conviction and sentence following a guilty plea to one count of receiving stolen property.

{¶ 2} In his sole assignment of error, Chappell contends the trial court denied his right to “meaningful allocution” by sentencing him while he was groggy from

medication.

{¶ 3} The record reflects that Chappell appeared for sentencing on November 14, 2008. At the outset of the hearing, defense counsel advised the trial court that Chappell was taking three medications. Chappell identified the medications as Seroquel, Depakote, and Diazepam. Chappell explained to the trial court that he previously had taken the medications but had run out before getting more two days earlier. Defense counsel advised the trial court that the medications made Chappell “groggy at times,” adding, “He’s groggy this morning. I’m not too sure we can proceed.” Without pausing or requesting a continuance, however, defense counsel proceeded to argue for community control. Counsel acknowledged that Chappell had a “pretty horrendous record” but argued that he was in the process of getting his life together. Following defense counsel’s argument, the trial court allowed Chappell to speak. He advised the court that he had “come a long ways” and indicated that he “would like to keep on the right track[.]” When asked whether he wanted to say anything else, Chappell responded, “No.” The trial court then made findings and imposed an eighteen-month prison sentence.

{¶ 4} Chappell’s assignment of error alleges that “[t]he trial court denied [his] right to have meaningful allocution in proceeding to sentencing while [he] was ‘groggy’ and unable to meaningfully present his plea for community control supervision.” In his brief, he argues that the right to allocution implicitly includes a right to speak “consciously and competently.” He asserts that he might have made a better argument for community control if he were not under the influence of medications. Chappell also points out the trial court’s prior knowledge that he could

not read or write very well.

{¶ 5} In response, the State maintains that the trial court was in the best position to observe Chappell's condition. The State further points out that all of Chappell's comments and responses to questions were appropriate. Finally, the State asserts that defense counsel did not object to continuing with the sentencing hearing, thereby waiving all but plain error. In reply, Chappell insists that the trial court either should have postponed the hearing or made a "comprehensive inquiry" into his condition.

{¶ 6} Upon review, we find Chappell's assignment of error to be without merit. As set forth above, his assigned error is that the trial court erred in proceeding to sentencing while he was groggy and could not speak meaningfully. Although defense counsel did mention Chappell's grogginess, he never moved for a continuance. Therefore, we review Chappell's complaint about the trial court proceeding with sentencing for plain error. "An error qualifies as plain error only if the error is obvious and but for the error the outcome of the proceeding clearly would have been otherwise." *State v. Molen*, Montgomery App. No. 21941, 2008-Ohio-6237, ¶9.

{¶ 7} We find no plain error here. "While it has not been established in Ohio what level of competency is required at the time of sentencing, clearly the right to allocution and the requirements of Crim. Rs. 32(A) and 43(A) would be meaningless if a defendant did not have an awareness of the nature and meaning of the proceedings." *State v. Collins* (March 7, 1979), Hamilton App. No. C-77614. In the present case, however, grogginess does not appear to have prevented Chappell

from meaningfully exercising his right to allocution. When addressing his medications, Chappell told the trial court: “* * * I’m on Seroquel, Depakote and Diazepam. And I was off of it. I went to Crisis Care and, well, I wanted to go back to Eastway where I was back in July but they said I had to go back to Eastway to get referred again, and then they gave me enough medication until I got a Doctor’s appointment on the 12th of this month. And just the 12th of this month I got all of my medication for a month supply and I’m back on that. And they got me, in Eastway they got me on intensive dual diagnosis groups.” Chappell also spoke in mitigation of his sentence, telling the trial court: “* * * I’ve come a long ways away, sir, and I would like to keep on the right track that I have been on, sir.”

{¶ 8} As the State points out, Chappell’s remarks indicate that he was oriented to time and place, he understood the nature of the proceeding, and he made a relevant statement in mitigation of punishment. Although the better practice might have been for the trial court to inquire more fully about Chappell’s condition, defense counsel never requested additional questioning. Moreover, the trial court did interact with Chappell and, after hearing him speak, was well positioned to assess his condition. Based on the record before us, we cannot say the trial court committed plain error by proceeding to sentencing where Chappell’s grogginess did not appear to affect his ability to speak on his own behalf. Finally, we note that Chappell’s limited ability to read or write was immaterial to the allocution issue, which involved only speaking.

{¶ 9} Based on the reasoning set forth above, we overrule Chappell’s assignment of error and affirm the judgment of the Greene County Common Pleas

Court.

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GRADY and FROELICH, JJ., concur.

Copies mailed to:

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