

[Cite as *State v. Brock*, 2009-Ohio-6182.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOSHUA BROCK

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 09 CA 33

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Licking County
Municipal Court, Case No. 08 CRB 875

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

November 12, 2009

APPEARANCES:

For Plaintiff-Appellee

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Wise, J.

{¶1} Defendant-Appellant Joshua Brock appeals a judgment of the Municipal Court of Licking County, Ohio, which convicted and sentenced him for one count of receiving stolen property, in violation of R.C. 2913.51 (B), following a bench trial.

{¶2} No brief was filed by Plaintiff-Appellee State of Ohio in this matter.

STATEMENT OF THE FACTS AND CASE

{¶3} On or about March 26, 2008, Officer Andrew Slee, a police officer with the Newark Police Department, responded to a call regarding two traffic control signs which were found on Appellant's patio. (T. at 7). The signs had been removed from a nearby intersection and were identified as being the property of the City of Newark. (T. at 11-12).

{¶4} On April 22, 2008, a complaint charging Appellant Joshua Brock with Receiving Stolen Property in violation of the Ohio Revised Code was filed with the Licking County Municipal Court.

{¶5} Appellant was issued a summons and appeared before the trial court May 20, 2008. Appellant was released on his own recognizance after the entry of a Not Guilty plea. That same day, Appellant filed with the trial court a request for a court appointed attorney.

{¶6} By Judgment Entry filed May 27, 2008, Appellant's request was denied with the entry stating Appellant was over the income limit for court appointed counsel.

{¶7} Appellant's case was initially scheduled to proceed to trial on July 1, 2008, but was rescheduled to July 18, 2008, due to the trial court being unavailable.

{¶8} On July 18, 2008, Appellant appeared for trial without counsel. At that time, Appellant was questioned about proceeding to trial without counsel and the following exchange took place:

{¶9} Court: “You're here without an attorney today. Do you wish to proceed without counsel?”

{¶10} Appellant: “Yes sir.”

{¶11} Court: “You understand you do have a right to have an attorney with you?”

{¶12} Appellant: “I applied for one and was denied, but my circumstances have changed, so I do not have a job right now. I can't really afford one.”

{¶13} Court: “Well, why didn't you reapply for an attorney?”

{¶14} Appellant: “I lost my job about a week ago.”

{¶15} Court: “Why did you lose your job?”

{¶16} Appellant: “There was a disagreement between me and a fellow co-worker and her brother happened to be the manager.” (T. at 4).

{¶17} The trial court made no further inquiry and the case proceeded to trial.

{¶18} At trial, Appellant denied taking or removing the signs from their original locations but did admit to retaining and/or possessing such signs. (T. at 24-25).

{¶19} At the conclusion of the trial, Appellant was convicted by the trial court and was sentenced to thirty (30) days incarceration, with all time being suspended with the condition that Appellant complete a term of probation supervision.

{¶20} Appellant now appeals, assigning the following errors for review:

ASSIGNMENTS OF ERROR

{¶21} “I. THE TRIAL COURT COMMITTED HARMFUL ERROR IN DENYING THE DEFENDANT-APPELLANT HIS CONSTITUTIONAL RIGHTS TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

{¶22} “THE TRIAL COURT COMMITTED HARMFUL ERROR IN SENTENCING THE DEFENDANT-APPELLANT TO A PERIOD OF INCARCERATION WHEN THE RECORD FAILS TO DEMONSTRATE THAT THE DEFENDANT-APPELLANT EITHER APPEARED WITH COUNSEL OR EXECUTED A KNOWING AND INTELLIGENT WAIVER OF HIS RIGHT TO COUNSEL.”

I. & II.

{¶23} The Sixth Amendment to the United States Constitution in Section 10, Article I of the Ohio Constitution provides a criminal defendant has a right to counsel. The right to counsel extends to misdemeanor criminal cases that could result in the imposition of a jail sentence, see *State v. Caynor* (2001), 142 Ohio App. 3d 424, 2001-Ohio-3298. A criminal defendant may waive his right to counsel, but an effective waiver requires the court to make a sufficient inquiry to determine whether the defendant fully understands and intelligently relinquishes the right to counsel. *State v. Gibson* (1976), 45 Ohio St. 2d 366, syllabus by the court, paragraph two. The defendant must make an intelligent and voluntary waiver with the knowledge he will have to represent himself, and that there are dangers inherent in self representation. *State v. Ebersole* (1995), 107 Ohio App. 3d 288, 293, 668 N.E.2d 934, citing *Faretta v. California* (1975), 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562.

{¶24} Ohio Crim.R. 11 and 44 provide a waiver of counsel shall be in open court, and in serious offenses, the waiver shall be in writing.

{¶25} In verifying that a defendant's waiver of counsel is made knowingly, voluntarily, and intelligently, a trial court should determine whether the defendant was advised of the dangers and disadvantages of self representation. See *Gibson*, 45 Ohio St.2d at 377, 345 N.E.2d 399. See, also, *Faretta*, 422 U.S. at 835; *State v. Weiss* (1993), 92 Ohio App.3d 681, 686, 637 N.E.2d 47. The trial court should also consider whether the defendant was advised of the nature of the charges and the range of allowable punishments, and, in addition, may consider whether the trial court advised the defendant of the possible defenses to the charges and applicable mitigating circumstances. See *Gibson*, 45 Ohio St.2d at 377, 345 N.E.2d 399, citing *Von Moltke v. Gillies* (1948), 332 U.S. 708, 724, 68 S.Ct. 316, 92 L.Ed. 309. A court may also consider various other factors, including the defendant's age, education, and legal experience. *State v. Doane* (1990), 69 Ohio App.3d 638, 647, 591 N.E.2d 735.

{¶26} Upon review of the record, the trial court did not inquire of Appellant as to whether he fully understood his right to counsel, nor any determination as to whether Appellant intelligently relinquished his right to counsel. *State v. Songer*, Richland App. No. 01 CA 82, 2002-Ohio-2894. The trial court did not engage in meaningful dialogue with Appellant as to whether he knew he would have to represent himself, and that there are dangers inherent in self-representation. Accordingly, the record does not demonstrate Appellant knowingly, intelligently and voluntarily waived his right to counsel. *State v. Wade*, Ashland App. No. 07-COA-040, 2008-Ohio-5107.

{¶27} Accordingly, we must conclude the record does not demonstrate Appellant knowingly, intelligently, and voluntarily waived his right to counsel.

{¶28} Both of the assignments of error are sustained.

{¶29} For the foregoing reasons, the judgment of the Municipal Court of Licking County, Ohio, is reversed, and the cause is remanded to the court for further proceedings in accord with law and consistent with this opinion.

By: Wise, J.
Hoffman, P. J., and
Delaney, J., concur.

/S/ JOHN W. WISE_____

/S/ WILLIAM B. HOFFMAN_____

/S/ PATRICIA A. DELANEY_____

JUDGES

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