

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

STATE OF OHIO,	:	APPEAL NO. C-180301
Plaintiff-Appellee,	:	TRIAL NO. B-1705408-B
vs.	:	<i>OPINION.</i>
JAMIE CARVER,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 4, 2019

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Paula E. Adams*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Timothy J. McKenna, for Defendant-Appellant.

ZAYAS, Presiding Judge.

{¶1} Jamie Carver appeals her convictions upon guilty pleas to two counts of endangering children, both third-degree felonies. Raising two assignments of error, Carver contends that her guilty pleas were not knowing or voluntary, and that the record does not support her sentence of 36 months' incarceration. For the following reasons, we find no merit to the assignments of error and affirm the judgment of the trial court.

Factual and Procedural Background

{¶2} On September 18, 2017, Jamie Carver and her codefendant James Howell were indicted for eight counts of kidnapping and eight counts of child endangering. The charges stemmed from torturing or cruelly abusing Howell's two children. Howell and Carver lived together with Howell's four-year-old twin sons. While Howell was at the store, Carver disciplined the children by tying them up, taping them to a wall, and taping their mouths shut.

{¶3} Carver's counsel requested a competency evaluation, and the trial court held a competency hearing on January 11, 2018. Dr. Gail Hellmann, of the court clinic, evaluated Carver and concluded that she was competent to stand trial. Dr. Hellman noted that Carver had longstanding mild intellectual disability but could understand complex legal concepts if the concepts were broken down into simple terms and repeated. The trial court determined that Carver was competent to stand trial.

{¶4} Carver agreed to plead guilty to two counts of child endangering, and the state agreed to dismiss all other charges. At the plea hearing, the prosecutor read the following facts into the record: Carver recklessly tortured or cruelly abused two children when she punished them by tying them up, taping them to the wall, and

taping their mouths shut. Carver confirmed to the court that she understood the facts and twice confirmed that the facts were true.

{¶5} Before accepting the guilty pleas, the trial court informed Carver that her guilty pleas were a complete admission of guilt, and that if the court accepted the pleas, she could be sentenced directly to prison. After confirming to the court that she understood, Carver expressed some reservations to her counsel. Counsel requested a moment to confer with her. After a brief discussion, counsel explained to the court that when Carver heard the word “prison,” she had some concerns. He expressed Carver’s desire to be sentenced to probation and further explained that she understood that the court would decide the sentence.

{¶6} The court addressed Carver using very simple terms and explained that she was entering pleas and foregoing a trial, and that she was pleading to serious offenses of violence. The court further explained that no sentences would be imposed that day, and that the sole purpose of the hearing was to decide whether she wanted to admit her guilt or proceed to a jury trial. The court informed her that a prison term is usually imposed in child-endangerment cases, and that her attorney and she would have an opportunity to explain why prison was not warranted at the sentencing hearing. Carver again expressed her understanding and stated that she wished to plead guilty.

{¶7} Carver’s counsel assured the court that he had read each paragraph of the plea form to Carver verbatim and had explained the meaning of everything that he read to her. At the conclusion of each paragraph, he asked if she understood, and she responded that she did. Counsel confirmed that because Carver’s intellectual level of functioning was extremely low, he wanted to ensure that she understood the plea, and that based on his observations, Carver’s plea was knowing, intelligent, and voluntary.

{¶8} The trial court continued to question Carver to ensure that she understood the potential penalties and all the rights she was giving up by pleading guilty. Carver acknowledged that she understood the plea form and had signed it of her own free will, and that she was satisfied with her attorney. Finally, the court asked her if she had any questions or wished to speak with her counsel before entering her pleas, and she responded, “No.” She explained that she had had enough time to consider this important decision, that she wished to plead guilty, and that she understood her rights and was voluntarily entering her pleas. After a very lengthy colloquy, the court accepted her pleas and found her guilty.

{¶9} At the sentencing hearing, Carver’s counsel explained Carver’s intellectual and emotional disabilities. Her symptoms were the result of cocaine and alcohol exposure in utero. From the ages of 8-13, she was physically abused by her stepmother and placed in foster care and then a group home. Counsel stated that Carver was intellectually and emotionally unqualified to be around children, and he requested probation to address her intellectual and emotional needs.

{¶10} Carver expressed her remorse for what had happened to the children, but then blamed codefendant Howell for abusing the children. Carver claimed that the children had been on the bed when the police arrived, and that she should not have been arrested. The trial court informed her that the arresting officers had seen one of the children being removed from the closet with duct tape on his mouth. Carver denied that the children had had tape on their mouth, and stated, “Now I’m lost. I don’t - I’m confused on this.”

{¶11} When Carver again denied abusing the children, the court asked her why she had agreed to plead guilty. She responded, “I’m just - I’m not all there. I’m like my mental state - how can I say this - I’m like lost in words right now.”

{¶12} After a brief recess to consult with Carver, her counsel informed the court that Carver was having difficulties articulating her thoughts. Counsel explained that he had watched the police body camera of the arrest, and that the officer had not seen the child with tape on his mouth, but instead had heard what sounded like tape being removed. Counsel confirmed that one child had been found in a dark closet and not on the bed, as Carver claimed.

{¶13} Then, Mary Barber, the twins' maternal grandmother, addressed the court. She informed the court that the twins had had developmental and health issues since their birth, because they had been born two months premature. After Barber's daughter passed away, Howell and Carver tried to steal her daughter's identity, moved to another house, put all the utilities in her daughter's name, and did not pay the bills. Eventually, Barber had all of the utilities taken out of her daughter's name. Barber recommended that Carver get help rather than go to prison.

{¶14} Prior to imposing sentence, the court acknowledged that Carver suffered from cognitive impairments and had repeatedly been diagnosed with mental inadequacies and personality disorders. The court reviewed the substantial number of risk factors in the dangerousness evaluation that indicated a significant likelihood that Carver would pose a danger to others in the future. The court considered the PSI, the record, the testing and evaluations, the victim-impact statement, the grandmother's statement, and the mitigation presented by counsel.

{¶15} The court explained that the sentences were based on the overriding purposes of felony sentencing, to protect the public from future crime and to punish the defendant using the minimum sanctions to accomplish these purposes. Carver had prior misdemeanor convictions for attempted domestic violence in 2008, false alarm in 2007, and phone harassment in 2006.

{¶16} The court found that Carver had failed to respond favorably to sanctions and probation imposed in the prior misdemeanors and had shown no remorse for her offenses. The court found a significant probability, as expressed by the Court Clinic evaluators, that Carver would not comply with therapy or probation plans. The court further found that Carver was not amenable to an available community control sanction. The court sentenced Carver to 36 months for each offense, to be served concurrently, and imposed court costs and waived collection.

Law and Analysis

{¶17} On appeal, Carver argues that her pleas were not knowing or voluntary because her cognitive limitations had prevented her from understanding the plea process, as evidenced by her inability to understand that the court would determine the sentence and the confusion that she expressed at the sentencing hearing.

{¶18} We first note that Carver was found competent to stand trial, and that the competency standard for standing trial is the same as the standard for pleading guilty. *See Godinez v. Moran*, 509 U.S. 389, 397-398, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993); *State v. Mink*, 101 Ohio St.3d 350, 2004-Ohio-1580, 805 N.E.2d 1064, ¶ 57. A trial court may not find a defendant incompetent to plead guilty solely due to his or her intellectual abilities. *See State v. McMillan*, 2017-Ohio-8872, 100 N.E.3d 1222, ¶ 29 (8th Dist.). Carver's cognitive deficiencies alone cannot form the basis for arguing that her pleas were not knowing or voluntary. *See id.* Rather, we review the plea procedure to determine whether Carver's pleas were knowing and voluntary. *See State v. Brown*, 2d Dist. Montgomery Nos. 24520 and 24705, 2012-Ohio-199, ¶ 13.

{¶19} Crim.R. 11(C)(2) governs the acceptance of guilty pleas in felony cases and provides:

In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea

of guilty or no contest 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 or for the imposition of community control sanctions at the sentencing hearing.

(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.

{¶20} In determining whether to accept a defendant's guilty plea, the trial court must determine whether the defendant knowingly, intelligently, and voluntarily entered the plea. *State v. Johnson*, 40 Ohio St.3d 130, 532 N.E.2d 1295 (1988), syllabus. "If a defendant's guilty plea is not knowing and voluntary, it has been obtained in violation of due process and is void." *Brown* at ¶ 13. Crim.R. 11(C)(2)(a) requires the court to determine that the defendant is making the plea voluntarily, with an understanding of the nature of the charges and the maximum

penalty. *See State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 27.

{¶21} In this case, Carver is arguing that her pleas were not knowing or voluntary due to her limited cognitive ability as evidenced by her hesitation when the court discussed the maximum prison sentence, her request for probation, and the confusion she experienced at the sentencing hearing.

{¶22} After Carver expressed some reservation to continuing with the pleas because she did not want to go to prison, she consulted with her attorney. Afterwards, the trial court meticulously addressed Carver, using simple language to ensure that she understood that she was entering guilty pleas, foregoing a trial, and pleading to serious offenses of violence. The court further explained that it would ultimately determine her sentences, that no sentences would be imposed that day, and that the sole purpose of the hearing was to decide whether she wanted to admit her guilt or proceed to a jury trial.

{¶23} After she repeatedly expressed her understanding, the trial court informed her that the court usually imposed a prison term for child endangerment. Again, the court asked her if she understood that, and she responded, “Yes.” The court then informed her that she and her counsel would have the opportunity to address the court at the sentencing hearing and tell the court why they believe that prison was not warranted. Carver stated that she understood and still wished to enter a guilty plea.

{¶24} Moreover, Carver’s counsel assured the court that he had read and explained in detail the meaning of each paragraph of the plea form. He ensured that she understood each paragraph before reading the next one, because he was aware of her intellectual disability. Counsel confirmed to the court that Carver was knowingly, intelligently, and voluntarily entering her pleas.

{¶25} At the sentencing hearing, Carver became momentarily confused, in large part because the court had stated that the children had been found with duct tape over their mouth. That was a misstatement of the facts, which the state conceded. The police officer heard what he thought sounded like tape being removed, and Carver had had a roll of duct tape in her hand when the police arrived.

{¶26} After a careful review of the record, the trial court complied with its Crim.R. 11(C) obligations by fully informing Carver and explaining to her the consequences of her pleas. The court used simple language and repeatedly confirmed that she understood the consequences of the pleas.

{¶27} This record reveals no basis to conclude that those pleas were not knowing, intelligent, and voluntary. Accordingly, we overrule the first assignment of error.

{¶28} In her second assignment of error, Carver contends that the record does not support the sentences. This court reviews sentences under the standard of review set forth in R.C. 2953.08(G)(2). Under that standard, an appellate court “may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law.” *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

{¶29} The trial court reviewed the PSI, the facts of the case, Carver’s testing and evaluations, the victim-impact statement, the grandmother’s statement, and the mitigation presented by counsel, and the court engaged in a clear analysis of the evidence presented at the sentencing hearing. The court considered the sentencing factors, Carver’s criminal history, her failure to respond favorably to sanctions and probation previously imposed, and her lack of remorse. In imposing the sentences,

the court found that Carver was not amenable to an available community control sanction.

{¶30} Upon careful review of the record, we conclude that the sentences were neither contrary to law nor unsupported by the record. Accordingly, we overrule the second assignment of error.

Conclusion

{¶31} Having considered and overruled Carver's two assignments of error, we affirm the judgment of the trial court.

Judgment affirmed.

BERGERON and WINKLER, JJ., concur.

Please note:

The court has recorded its own entry this date.