

[Cite as *State v. Crosby*, 2009-Ohio-4581.]

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

STATE OF OHIO	:	:	Appellate Case No. 08-CA-1741
	:	:	
Plaintiff-Appellee	:	:	Trial Court No. 95-CRB-002-3520
	:	:	
v.	:	:	
	:	:	
AMOS CROSBY, JR.	:	:	(Criminal Appeal from Darke County Municipal Court)
	:	:	
Defendant-Appellant	:	:	
	:	:	

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OPINION

Rendered on the 4th day of September, 2009.

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RICHARD M. HOWELL, Atty. Reg. #0002550, by PHILLIP D. HOOVER, Atty. Reg. #0034386, Darke County Prosecutor's Office, Courthouse, Greenville, Ohio 45331

Attorney for Plaintiff-Appellee

MARK J. BAMBERGER, Atty. Reg. #0082053, The Mark Bamberger Co., LLC, 8 South Third Street, Tipp City, Ohio 45371

Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} Amos Crosby appeals from his conviction and sentence on a charge of first-degree misdemeanor domestic violence.

{¶ 2} In his sole assignment of error, Crosby contends the trial court erred in allowing his sentence “to be rendered upon ineffective assistance of counsel.”

{¶ 3} The record reflects that Crosby was charged with domestic violence in December 1995. He entered a no-contest plea and was found guilty. He failed to appear for sentencing, however, and was not located until June 2008, when he voluntarily turned himself in to police. Crosby appeared for sentencing without counsel on June 11, 2008. At that time, he waived his right to counsel orally and in writing. The trial court sentenced him to ninety days in jail with eighty days suspended and ordered him to pay a fine and court costs totaling \$1,121.60. Crosby sought a stay in the trial court. The record does not indicate whether the trial court granted it. The State implicitly concedes, however, that Crosby obtained a stay of his jail sentence. The State urges us to overrule the assignment of error so he may begin serving it.

{¶ 4} Having reviewed Crosby’s assignment of error, we find it somewhat confusing. He contends the trial court erred in allowing his sentence “to be rendered upon ineffective assistance of counsel.” The record reveals, however, that Crosby was sentenced without *any* counsel. His real argument appears to be that his waiver of counsel was involuntary. On this issue, Crosby suggests that he was “confused and challenged by memory loss after 13 years from the time of

his original plea hearing to [the] sentencing hearing.” He also contends that he was coerced into waiving counsel by a threat of further legal action against him. Finally, Crosby claims he was coerced into waiving counsel and proceeding with sentencing by his personal need to resolve the charge quickly so he could pursue employment as a truck driver.

{¶ 5} We find no merit in the foregoing arguments. Crosby orally waived his right to counsel for sentencing and signed a written waiver in open court indicating that he had been advised of his right to hire counsel or to apply for appointed counsel. The written waiver further indicated that Crosby was knowingly, intelligently, and voluntarily waiving his right to counsel. Given the passage of time, the trial court took care during the hearing to be sure Crosby understood what was happening. On appeal, Crosby makes no argument that the waiver procedure failed to comply with Crim.R. 44(C), which required it to take place in open court and to be recorded.

{¶ 6} As for the arguments Crosby does make, we are unpersuaded that any confusion or memory loss on his part rendered his waiver invalid. The hearing transcript fails to support such a claim. We also see no unlawful coercion. Contrary to the implication of his argument, the prosecutor did not threaten further legal action if he insisted on obtaining counsel. The issue of a possible additional charge did not even arise until after Crosby had waived his right to counsel. As part of his sentencing recommendation, the prosecutor indicated that he could bring a new charge against Crosby for failing to appear for sentencing in 1995. The prosecutor advised the trial court, however, that he

would not do so. Therefore, Crosby's claim about the coercive impact of a potential new charge is a non-issue. Finally, his professed desire to proceed quickly so he could pursue a truck-driving career did not constitute governmental coercion. This personal reason for electing to proceed with sentencing rather than to obtain counsel did not render Crosby's waiver invalid. Accordingly, we overrule his assignment of error and affirm the judgment of the Darke County Municipal Court.

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GRADY and DINKELACKER, JJ., concur.

(Hon. Patrick T. Dinkelacker, from the First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Richard M. Howell
Phillip D. Hoover
Mark J. Bamberger
Hon. Julie L. Monnin