

[Cite as *State v. Shuri*, 2010-Ohio-1616.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 2009-CA-39
Plaintiff-Appellee	:	Trial Court Case No. 08-CR-184
v.	:	
	:	(Criminal Appeal from
ANTHONY SHURI	:	Common
	:	Pleas Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 9th day of April, 2010.

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BROGAN, J.

{¶ 1} Anthony Shuri appeals from his conviction and sentence following guilty pleas to two counts of reckless homicide.

{¶ 2} Shuri entered his guilty pleas in exchange for the dismissal of other

charges and the State's agreement to a ten-year prison sentence. The trial court accepted the plea agreement and imposed the agreed-upon sentence. This appeal followed.

{¶ 3} In his sole assignment of error, Shuri contends the trial court violated Crim.R. 32(A)(1) at the sentencing hearing. In particular, he claims the trial court erred by failing to "address [him] personally and ask if he * * * wishe[d] to make a statement in his * * * own behalf or present any information in mitigation of punishment," as required by the rule.

{¶ 4} Upon review, we find Shuri's assignment of error to be without merit. Prior to sentencing Shuri, the trial court advised him as follows: "Mr. Shuri, you have the right to make a statement if you wish at this point in time. You're not required to say anything, but if you want to say anything, I'm certainly willing to listen." (Sentencing transcript at 13). Shuri responded that he had nothing to say.

{¶ 5} Although a trial court must comply with Crim.R. 32(A)(1), Shuri provides no authority for the proposition that it must use the precise language of the rule when addressing a defendant. To the contrary, a trial court need not use the same words as Crim.R. 32(A)(1) to convey its message. In *State v. Crable*, Belmont App. No. 04 BE 17, 2004-Ohio-6812, the Seventh District Court of Appeals held that a sentencing judge satisfied Crim.R. 32(A)(1) by asking a defendant: "Mr. Crable, anything that you wish to say before I impose a sentence here?" *Id.* at ¶20. Likewise, in *State v. Massey*, Stark App. No. 2006-CA-00370, 2007-Ohio-3637, the Fifth District Court of Appeals recognized that a judge need not use the "exact words" of Crim.R. 32(A)(1). In that case, the Fifth District found sufficient the sentencing judge's question: "Mr. Massey,

anything further you wish to say on your behalf relative to sentencing, sir?" *Id.* at ¶30-31. In an earlier case, *State v. Hunter* (July 23, 1993), Montgomery App. No. 13614, we found no violation of Crim.R. 32(A)(1) where the sentencing judge asked the defendant: "Is there anything you wish to call to the attention of the Court?"

{¶ 6} We are persuaded that the trial court's similar statement to Shuri satisfied Crim.R. 32(A)(1). Read in context, the trial court's offer for Shuri to "make a statement" or "say anything" only can be interpreted as an opportunity to make a statement or say something in mitigation of punishment. The fact that Shuri declined the opportunity is not surprising given that the trial court already had expressed its willingness to accept the parties' agreed-upon sentence.

{¶ 7} In reaching the foregoing conclusion, we note that the present case is distinguishable from *State v. Green*, 90 Ohio St.3d 352, 2000-Ohio-182. In that case, the sentencing judge first indicated that he would sentence the defendant on various capital and non-capital charges at the same time. The judge then addressed defense counsel and the defendant jointly. The following exchange occurred:

{¶ 8} "The Court: Is there anything with regard to those offenses, Counsel or Mr. Green, prior to the Court passing sentence on both those counts as well as on Counts 7, 8 and 10?"

{¶ 9} "Mr. Cameron [defense counsel]: Anything we wish to say?"

{¶ 10} "The Court: Yes."

{¶ 11} Counsel then made certain remarks, and the defendant said nothing. *Id.* at 359. Upon review, the Ohio Supreme Court found a violation of Crim.R. 32(A)(1). The problem, however, was not the sentencing judge's failure to use the language of

the rule. Instead, the judge erred in failing to address the defendant individually and in failing to make clear that he was soliciting comments about the capital offenses and the non-capital offenses. The context suggested that the judge may have been soliciting comments only on the non-capital offenses. *Id.*

{¶ 12} The shortcomings at issue in *Green* do not exist in Shuri's case. The trial court addressed him individually, and it is clear that the counts at issue were the reckless homicide charges to which he pled guilty. Because the trial court adequately gave Shuri an opportunity to speak in mitigation of punishment, we find no violation of Crim.R. 32(A)(1). The assignment of error is overruled, and the judgment of the Greene County Common Pleas Court is affirmed.

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DONOVAN, P.J., and FROELICH, J., concur.

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