

[Cite as *State v. Dewberry*, 2010-Ohio-497.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
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Plaintiff-Appellee	:	C.A. CASE NO. 23214
vs.	:	T.C. CASE NO. 08CR912
	:	
GEORGE L. DEWBERRY	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 12th day of February, 2010.

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GRADY, J.:

{¶ 1} Defendant, George Dewberry, appeals from his convictions for possession of crack cocaine, R.C. 2925.11(A), and having weapons under disability, R.C. 2923.13(A)(3), and the one-year term of incarceration imposed for those offenses pursuant to law.

{¶ 2} Defendant's convictions were entered on pleas of guilty

he entered at a hearing on November 10, 2008. On appeal, Defendant argues that the trial court erred in accepting his pleas because they were not knowing, intelligent and voluntary.

{¶3} Criminal charges were also filed against Defendant in United States District Court arising from the conduct forming the basis of the state charges to which Defendant's guilty pleas were entered. It appears that federal prosecutors had agreed to dismiss those federal charges if Defendant entered guilty pleas to the state charges. The matter of promises the federal prosecutors made or may have made was raised twice at the November 10, 2008 plea hearing.

{¶4} After the terms of the plea agreement regarding the two charges to which Defendant would plead guilty were verified by Defendant's counsel, the court asked Defendant whether that was his agreement and whether he had any questions concerning it. Defendant replied: "No. I just want it on the record that the Federal people (indiscernible) dropped me . . ." Defendant's counsel advised the court that federal prosecutors "are going to dismiss the parallel charges that evolved from this same incident and those will be dismissed after our plea here today." The court then addressed Defendant, stating: "All right. And Mr. Dewberry, you understand that's their province, not ____." Defendant cut off any further explanation with the response: "Yes sir." (T. 24).

{¶ 5} The matter of promises the federal prosecutors had made was raised a second time when, after advising Defendant of the rights waived by the court's acceptance of his guilty pleas, the following colloquy ensued:

{¶ 6} "THE COURT: Okay, do you have any questions?"

{¶ 7} "MR. DEWBERRY: Yes, Sir. We had talked last week that the feds tried to string me along with not holding up to the end the bargain. My lawyer told me last week that I could take this plea back if it came to that.

{¶ 8} "THE COURT: I don't think so, Mr. Dewberry. That's in their province. We're talking about the state charges. We have no way to hold the federal government to their promise.

{¶ 9} "MR. STATON: Your Honor, I think what he's referring to is if for some reason that deal should not be honored by the federal government, which I would doubt, we would probably ask to withdraw the plea in this case. And that, of course, would be up to the judge to decide whether or not to allow us to do that.

I believe that's what he's referring to. That previously we discussed some options along those line. But now I don't believe that's necessary.

{¶ 10} "MR. DEWBERRY: (Indiscernible).

{¶ 11} "THE COURT: Do you understand I cannot promise you that. I don't want to be - they're not parties to the agreement, we can't make them parties to the agreement. Do you understand?"

And you've told me you're doing this voluntarily. The only thing - reason you're doing it - or the only consideration that you're getting for this is the prosecutor is dropping two counts of the indictment and he's dropping the firearm specs on all the drug counts.

{¶ 12} "That's the agreement here. That's the quid pro quo. What the feds do, they're not part of this. They've made representations, hopefully they can be enforced in federal court, but this is state court and I can't - I have no power over them. All right, are you sill willing to do this?"

{¶ 13} "MR. DEWBERRY: Let's go." (T. 30-31).

{¶ 14} Defendant argues on appeal that his guilty pleas were not knowing, intelligent, and voluntary because they were predicated on the promises federal prosecutors had made. The argument is meritless. The court advised Defendant that its acceptance of his pleas of guilty was in no way affected by any promises federal prosecutors had made, and Defendant acknowledged his understanding of that fact. More importantly, even if Defendant's pleas were thus conditional, the record fails to demonstrate that those promises were breached in any way by federal authorities.

{¶ 15} The assignment of error is overruled. The judgment of the trial court will be affirmed.

DONOVAN, P.J. And FAIN, J., concur.

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Hon. Timothy N. O'Connell