

[Cite as *State v. King*, 2011-Ohio-29.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 23760
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CRB-11773
v.	:	
	:	
TODD A. KING	:	(Criminal Appeal from
	:	Municipal Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 5<sup>th</sup> day of January, 2011.

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FAIN, J.

{¶ 1} Defendant-appellant Todd A. King appeals from his conviction and sentence, following a guilty plea to Failure to Comply with an Order or Signal of an Officer, in violation of R.C. 2921.331(B). King contends that the trial court failed to

inform him of the consequences of his plea, as required by Crim. R. 11(E). The State confesses error in this regard.

{¶ 2} We agree. The judgment of the trial court is Reversed, King's guilty plea, as part of a plea agreement, is vacated, and this cause is Remanded for further proceedings consistent with this opinion.

I

{¶ 3} King was charged with Failure to Comply with an Order or Signal of an Officer, in violation of R.C. 2921.331(B), Obstructing Official Business, in violation of R.C. 2921.31(A), and Resisting Arrest, in violation of R.C. 2921.33(A)(1). As part of a plea bargain, King pled guilty to Failure to Comply, and the other two charges were dismissed. King was sentenced accordingly. From his conviction and sentence, King appeals.

II

{¶ 4} King's sole assignment of error is as follows:

{¶ 5} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT AND IN VIOLATION OF RIGHTS CONFERRED BY ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION AND THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION WHEN IT ACCEPTED THE APPELLANT'S GUILTY PLEA WITHOUT ADDRESSING DEFENDANT PERSONALLY TO DETERMINE THE VOLUNTARINESS OF THE PLEA AND WHETHER OR NOT APPELLANT UNDERSTOOD THE NATURE OF THE CHARGE AND THE CONSEQUENCES OF THE PLEA."

{¶ 6} We find it unnecessary to resolve the constitutional issues King raises.

{¶ 7} The offense to which King pled guilty – Failure to Comply – is a misdemeanor punishable by up to 180 days in jail. Therefore, it is a petty offense as defined in Crim. R. 2(D).

{¶ 8} Crim. R. 11(E) provides:

{¶ 9} “In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty.”

{¶ 10} “[B]efore accepting a guilty plea to a misdemeanor for a petty offense, the court [is] required to inform [the defendant] that a plea of guilty is a complete admission of guilt.” *State v. Jones*, 116 Ohio St.3d 211, 2007-Ohio-6093, ¶ 25.

{¶ 11} The State, in confessing error, acknowledges that the trial court did not comply with Crim. R. 11(E) in accepting King’s guilty plea. The entire transcript of the plea hearing is as follows:

{¶ 12} “THE STATE: Your Honor[,] this is the State v. Todd King, Case Number 09 CRB 11773. Judge[,] it’s my understanding Mr. King is going to go ahead and enter a plea to the charge of Failure to Comply. A first degree misdemeanor[,] or Fleeing and Eluding[,] a first degree misdemeanor[,] with the remaining two charges being dismissed. Judge[,] I would request a presentence investigation in this matter in jail please. The officer in this particular case was injured.

{¶ 13} “THE COURT: Guilty[,] Mr. Cox?

{¶ 14} “THE DEFENSE: Yes[,] sir.

{¶ 15} “THE COURT: We will accept that plea of guilty. We will do an in[-]jail

PSI.

{¶ 16} “THE DEFENSE: Your Honor[,] I would ask for the court to consider it to be out of jail. I think he’s (inaudible).

{¶ 17} “THE DEFENDANT: One or two weeks.

{¶ 18} “THE DEFENSE: One or two weeks.

{¶ 19} “THE COURT: Ugh[,] no. In[-]jail PSI. We will do it quickly and we’ll get him back over here.”

{¶ 20} At no time did the trial court inform King that his guilty plea would constitute a complete admission of guilt, as required by Crim. R. 11(E) and *State v. Jones*, supra. Consequently, we agree with King and the State that the trial court erred by accepting King’s guilty plea.

{¶ 21} King’s sole assignment of error is sustained.

### III

{¶ 22} For future reference, the City of Dayton Prosecutor’s office is advised that this court recently adopted Loc. R. 2.24, which requires that a prosecutor, upon conceding dispositive error in a criminal appeal, shall notify the administrator of this court of that fact, in order that this court may proceed to resolve the appeal more expeditiously.

### IV

{¶ 23} King’s sole assignment of error having been sustained, the judgment of the trial court is Reversed, and this cause is Remanded for further proceedings consistent with this opinion. Since the guilty plea was part of a plea bargain, the two charges that were dismissed as part of that plea bargain are re-instated.

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GRADY, P.J., and FROELICH, J., concur.

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Hon. Daniel G. Gehres