

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-142
		(C.P.C. No. 11CR-58)
Sylvete P. Gilbert,	:	
		(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 29, 2012

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Sylvete P. Gilbert is appealing from several convictions on robbery charges and the sentences resulting from those convictions. She assigns two errors for our consideration:

I. THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HER GUILTY OF ROBBERY AS THOSE VERDICTS WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WERE ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY IMPROPERLY SENTENCING HER TO

CONSECUTIVE TERMS OF INCARCERATION IN
CONTRAVENTION OF OHIO'S SENTENCING STATUTES.

{¶ 2} Gilbert was accused of being involved in 12 different robberies. In each robbery, an African-American woman approached a bank employee or a hotel employee and engaged the employee in conversation. Eventually the robber claimed to have a gun and demanded cash, which she received. The woman disguised herself.

{¶ 3} The last robbery occurred on December 23, 2010.

{¶ 4} Police responded promptly to a report of a bank robbery and saw a woman who matched the description of the robber. The woman fled into an office building and hid in a storage room where police found her. She was Sylvete Gilbert.

{¶ 5} Then later that day, police executed a search at Gilbert's apartment and found clothing similar to that used in other robberies.

{¶ 6} Gilbert was kept in custody until her trial. While in custody, she apparently talked to Amy Hall, a fellow inmate, and discussed her involvement in several robberies. Hall testified against Gilbert at Gilbert's trial and claimed that Gilbert not only discussed her involvement in robberies, but also explained her method of operation.

{¶ 7} The trial evidence, which also included testimony from each of the employees who were directly approached by the robber, was more than adequate to support the guilty verdicts. The verdicts were neither against the manifest weight of the evidence nor supported by less than sufficient evidence.

{¶ 8} The first assignment of error is overruled.

{¶ 9} Gilbert was sentenced to a total of 51 years of incarceration as a result of her convictions. She was convicted of involvement in 11 of the 12 robberies, 9 of them as felonies of the second degree and 2 of them as felonies of the third degree. The judge who presided over her trial sentenced her to 5 years of incarceration on each of the felonies of the second degree and 3 years of incarceration on each of the felonies of the third degree. The judge ordered the 11 sentences to be served consecutively, resulting in the 51 year total.

{¶ 10} Appellate counsel argues that in ordering the sentences to be served consecutively, the trial court judge made an error of law. Specifically, counsel argues that

the trial court judge should have given a more detailed explanation for ordering the sentences to be served consecutively.

{¶ 11} In response, the State of Ohio notes that no objection to the consecutive sentence was made at Gilbert's sentencing hearing, when any correction or additional exposition was easily possible. As a result, the State of Ohio asserts that we are governed by a "plain error" standard.

{¶ 12} To constitute plain error, the error must be obvious on the record, palpable, and fundamental such that it should have been apparent to the trial court without objection. *See State v. Tichon*, 102 Ohio App.3d 758, 767 (9th Dist.1995). Moreover, plain error does not exist unless the appellant establishes that the outcome of the trial clearly would have been different but for the trial court's allegedly improper actions. *State v. Waddell*, 75 Ohio St.3d 163, 166 (1996). Notice of plain error is to be taken with utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice. *State v. Phillips*, 74 Ohio St.3d 72, 83 (1995); *State v. Ospina*, 81 Ohio App.3d 644, 647 (10th Dist.1992).

{¶ 13} The State of Ohio also notes that the robberies were committed before a recent legislative amendment requiring a more detailed exposition by a trial judge when consecutive sentences are contemplated or given. We do not address this argument because we find that a plain error standard applies and is dispositive.

{¶ 14} The trial judge who sentenced Gilbert has many years of experience as a judge and even more years of experience as a criminal defense lawyer before that. There is simply no reason to believe the judge would have reached a different decision as to sentencing if a more detailed explanation had been requested when it could have easily been provided. The judge, by virtue of his extensive experience in criminal law, has a clear understanding of appropriate sentences.

{¶ 15} Gilbert was on community control, formerly known as probation, when she committed her robberies. She committed robbery after robbery, each with careful preparation. The sheer number of the robberies she committed called for a significant term of incarceration.

{¶ 16} Based upon our plain error review, the second assignment of error is overruled.

{¶ 17} Both assignments of error having been overruled, the judgment and sentence of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN, P.J., and BRYANT, J., concur.
