

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-11-002

Appellee

Trial Court No. CRB 1001112

v.

Monmeta Z. Wilson

DECISION AND JUDGMENT

Appellant

Decided: March 23, 2012

* * * * *

P. Martin Aubry, Perrysburg Chief Prosecutor, for appellee.

Omar Shaaban, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Monmeta Z. Wilson, appeals from an order denying her post-sentencing motion to withdraw the no contest plea that led to her conviction for telephone harassment in the Perrysburg Municipal Court.

{¶ 2} On August 6, 2010, appellant was cited for telephone harassment for allegedly making unwelcome calls to a Lake Township man. One who knowingly makes calls to another who has previously told the caller not to make such calls violates R.C. 2917.21(A)(5), a first degree misdemeanor for a first offense. On August 10, the court entered a no contact order with respect to her alleged victim.

{¶ 3} On November 4, 2010, appellant appeared in court with counsel and entered a no contest plea to the charge. The court accepted the plea, found her guilty and sentenced her to 180 days in jail, all suspended on good behavior, and two years of probation.

{¶ 4} On December 2, 2010, appellant filed a pro se motion with the court, seeking to withdraw her plea. When the court found her motion to withdraw not well-taken, appellant filed a pro se notice of appeal. On appellant's motion, appellate counsel was appointed.

{¶ 5} On appeal, appellant does not assign error relating to the denied motion to withdraw, but asserts that the trial court erred in accepting her no contest plea.

{¶ 6} Pursuant to 6th Dist.Loc.App.R. 12(A), we sua sponte transfer this matter to our accelerated docket and, hereby, render our decision.

{¶ 7} Appellant's sole argument is that, during the plea colloquy, the trial court failed to comply with Crim.R. 11, rendering the plea invalid. We may not reach the merits of appellant's assertion.

{¶ 8} When appellant filed her notice of appeal, she indicated in her appellate praecipe that a transcript of the plea colloquy had been prepared and already filed to the record. This was an inaccurate statement. The omission was noted by the state, which provided notice to appellee, pursuant to App.R. 9(B), to supplement the record with the missing transcript. Indeed, when appellee failed to provide such supplementation, the state included the missing transcript and a DVD recording of the proceedings as addenda to its brief.

{¶ 9} The attachments to the state's brief are not part of the record as defined in App.R. 9(A) and may not be considered on appeal. *See State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus. "The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record." *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). App.R. 9(B)(1).

{¶ 10} When transcript portions necessary for the resolution of assigned errors are not included in the record, "* * * the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Id.*

{¶ 11} In this matter, appellant's only assigned error concerns purported inadequacies in the plea colloquy, but appellant failed to provide a transcript of the plea

colloquy. Absent a transcript of the challenged proceeding, we must presume its validity and affirm. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 12} On consideration whereof, the judgment of the Perrysburg Municipal Court is affirmed. It is ordered that appellant pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.