[Cite as *State v. Robinson*, 2018-Ohio-4863.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 106676 and 106980

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMIE O. ROBINSON, SR.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeals from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-589090-A and CR-17-615668-A

BEFORE: Boyle, J., E.A. Gallagher, A.J., and Stewart, J.

RELEASED AND JOURNALIZED: December 6, 2018

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Jamie Robinson, Sr., appeals his three rape convictions. He raises one assignment of error for our review:

> The trial court's inaccurate advisement regarding appellant's eligibility for judicial release invalidated his trial day guilty pleas to three charges of first-degree rape.

{¶2} After review, we find no merit to his argument and affirm.

I. Procedural History and Factual Background

{¶3} On September 10, 2014, the grand jury indicted John Doe 55 in Cuyahoga C.P. No. CR-14-589090-A on one count each of rape, felonious sexual penetration, and kidnapping for events that allegedly took place on September 11, 1994, against Jane Doe.

{¶4} On March 27, 2017, the grand jury indicted Robinson in Cuyahoga C.P. No. CR-17-615668-A on seven counts for events that allegedly took place on September 9, 1998 (Counts 1 through 3 involved Jane Doe 1), and May 4, 2000 (Counts 4 through 7 involved Jane

Doe 2). The counts included three counts of rape, three counts of kidnapping, and one count of gross sexual imposition. All of the counts except for one of the kidnapping counts contained sexually violent predator specifications, and two of the three kidnapping counts also contained sexual motivation specifications.

{¶5} On March 29, 2017, the state moved to amend John Doe 55 in CR-14-589090-A to Robinson, which the trial court granted.

{¶6} The state subsequently moved to join CR-14-589090-A and CR-17-615668-A for purposes of trial, which Robinson opposed. Robinson also moved to sever the charges relating to the separate victims in CR-17-615668-A for purposes of trial, which would result in three separate trials. The trial court granted the state's motion and denied Robinson's motion.

{¶7} On the day of trial, however, the state told the court:

> At this time I am going to make a request that we sever off the 1994 case, again, which is the lower case number. I was approached by my supervisor recently, he has a concern about a statute of limitations issue on that case in light of a case he just gave me, and I think he wants to explore those legal issues; however, I don't want to delay the proceedings on all the cases, so my desire is to proceed in the 1998 case and the 2000 case at this time.

{¶8} Robinson did not object, and the trial court severed the older case from the newer case. The trial court then asked if there was "any chance of a plea bargain," which the state responded, "[t]here may be." The trial court gave the parties time to negotiate.

{¶9} After the break, the state informed the court that the parties had reached a plea agreement in both CR-14-589090-A and CR-17-615668-A. For CR-14-589090-A involving the September 11, 1994 victim, Robinson pleaded guilty to rape in violation of R.C. 2907.02(A)(2), a first-degree felony. The state moved to nolle the remaining counts in exchange for Robinson's guilty plea, which the trial court granted. With respect to the rape, the state told the

court that Robinson faced a penalty of three to ten years in prison, a fine of up to $20,000, that there was no possibility of "probation," and that the trial court would have to hold a H.B. 180 hearing to determine Robinson's sex offender classification under Megan's Law.

{¶10} With respect to CR-17-615668-A, Robinson pleaded guilty to one count of rape for the September 9, 1998 victim and one count of rape for the May 4, 2000 victim, both in violation of R.C. 2907.02(A)(2), first-degree felonies. The state requested the court to nolle the remaining counts and specifications in exchange for Robinson's guilty plea. Again, the state informed the court that "probation" was not possible for these charges. The state also amended the indictments in all three cases to add the victims' names. The state further told the court that as part of the plea, Robinson agreed to "waive all appellate rights as to these cases." In exchange for Robinson's guilty pleas, the state agreed to recommend to the trial court that it run any sentence imposed on the one count of rape, the first case, concurrent to any sentence it imposes on the two counts of rape in the second case.

{¶11} The trial court then made sure that Robinson understood the constitutional rights that he was waiving and asked him a series of questions, to which Robinson told the court that he was 38 years old, could read and write English, was a United States citizen, had not used drugs or alcohol since he had been in jail for the previous seven months, did not have any mental illnesses, was not taking any medication, was thinking clearly, was satisfied with his trial counsel, was not on probation for another case, and had never been to prison. The court also made sure that Robinson understood that by pleading guilty, he was "admitting that in fact [he] committed these three crimes" and that the court could proceed immediately to sentencing.

{¶12} When reviewing the possible penalties with Robinson, the trial court informed Robinson that he was facing three to ten years in prison for each count of rape. The court also

made sure that Robinson understood that "probation [was] not possible." At that point, the court stated, "You are going to prison, the only question is for how long. Do you understand that?" Robinson replied that he did. The following exchange between the court and Robinson then took place.

> THE COURT: You have three charges here. It is possible you will be required to serve prison terms consecutively, meaning one after the other after the other. Because of that you face a minimum prison term of three years and a maximum prison term of 30 years. Do you understand?
>
> THE DEFENDANT: Not really. So it's possible that they can be run consecutive instead of concurrent?
>
> THE COURT: Well, you're confusing your terms, but yes, it is — what I'm describing to you is the absolute possible minimum, three years, that would be — and I'm not predicting or saying what the sentences are going to be, this is only an example — a three-year prison term would be minimum three-year terms for each of the three crimes run concurrently. Do you understand that?
>
> THE DEFENDANT: Okay.
>
> THE COURT: Concurrently means at the same time.
>
> THE DEFENDANT: Okay.
>
> THE COURT: Now, the absolute possible maximum — and I'm not predicting what the sentences will be, I'm just giving you an example — will be ten years for each crime run consecutively. In other words, 10 plus 10 plus 10 meaning 30 years maximum. Do you understand?
>
> THE DEFENDANT: Yes.
>
> THE COURT: And then really depending on concurrent or consecutive, any number in between — any whole number in between three and 10 is also possible. Could be five years, could be 18, could be six, 29. Name a number in between and there's a way to get to that sentence depending on how much is given for the particular crime and whether the sentences are ordered to be served concurrently or consecutively. Do you understand that?
>
> THE DEFENDANT: Yes.

THE COURT: Now, the prosecutor has said at the time of sentencing, whether that is today or at a later date, she will recommend that consecutive sentences not be imposed for the case numbers, meaning that she may argue that the two crimes in 615668 have consecutive sentences, but she's not going to argue that the third incident be made consecutive. So what she's really saying is she's not going to suggest anything greater than 20 years. Is it fair to phrase it that way, [prosecutor]?

[PROSECUTOR]: Yes, Your Honor.

THE COURT: And that may be the case, she may come in and say she thinks that X is a good sentence and X is going to be 20 years or less. Do you get that?

THE DEFENDANT: Yes.

THE COURT: However, despite that, it is up to me to decide the sentence. And so even if she says, hey, 20 years, that's good for the victims, they agree to that, it's good for the prosecutor, she agrees to that, I may not agree and I could still go 21 to 30, you know, depending. Do you understand that?

THE DEFENDANT: Yes.
THE COURT: Of course the opposite is true as well. She may come in with a recommendation, let's say it's 20 — and I'm not bound, I can go 19, 18, 17, or any number down to three. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And to be thorough, I should tell you your lawyer may have some ideas about what an appropriate sentence is, whatever the number might be. I'm not bound to take his recommendation either. Do you get that?

THE DEFENDANT: Yes.

THE COURT: In short, if you plead guilty as proposed, you know you can go to prison for 30 years. The minimum possible sentence is three years. And given that there are three crimes, that's not likely, but it is possible, so I have to say that. But you're exposing yourself any number from three to 30, and that is mandatory. That's the bottom line. Do you understand that?

THE DEFENDANT: When you say mandatory, I would have to do the whole time?

THE COURT: Well, the fact of prison is mandatory, meaning probation is not possible. These are crimes I imagine that like any other or most of as I should say have the possibility of judicial release. Or am I even wrong on that, [prosecutor]?

[PROSECUTOR]: I think so.

> THE COURT: Right. So you asked if mandatory meant you have to do the full sentence given. The short answer to that is you should consider that whatever sentence is imposed is going to have to be done. The longer answer is depending on the amount of time imposed, you may at some point have the opportunity to file what is known as a motion for judicial release, where you file a motion with reasons why the sentence should be shortened. But the point being, if I impose three years, you should consider you're going to do three years. If I impose 30, you should consider you're going to do 30 or any number in between. Do you get that?

THE DEFENDANT: Yes.

{¶13} The trial court then informed Robinson that when he got out of prison, he would have to serve a mandatory five years of postrelease control. It further explained the consequences Robinson could face if he violated the terms of his postrelease control. The trial court also explained to Robinson that he could face a fine of $20,000 per case plus court costs. Finally, the court notified Robinson that it would hold a separate hearing to determine what sex offender classification he should be labeled under H.B. 180, a sexually oriented offender, a habitual sexual offender, or a sexual predator, as well as the registration requirements that would entail for each classification.

{¶14} The trial court later asked Robinson if he still wished to enter into the plea. Robinson replied, "I mean, the plea bargain's only because everything is being tried together." The court explained to Robinson that he was mistaken because it would only try the two charges in the second case together, but that the first case would be a separate trial. Robinson stated that he still wished to enter into the plea. Robinson then pleaded guilty to each charge of rape, and the trial court accepted his guilty pleas.

{¶15} At a later date, the trial court found that Robinson was a habitual sexual offender. In CR-14-589090-A, the trial court sentenced Robinson to eight years in prison and ordered that

it be served concurrent to the sentence imposed in CR-17-615668-A. In CR-17-615668-A, the trial court sentenced him to five years for the first rape and three years for the second rape and ordered that they be served concurrent to each other but consecutive to the rape in CR-14-589090-A. Thus, the trial court sentenced Robinson to a total of eight years in prison for all three rapes. The trial court also notified Robinson that he would be subject to five years of postrelease control upon his release from prison. It is from these judgments that Robinson now appeals.

II. Crim.R. 11(C)(2)(a) and Judicial Release

{¶16} In his sole assignment of error, Robinson argues that his plea was not voluntarily, knowingly, and intelligently entered into because the trial court mistakenly led him to believe that he was entitled to judicial release when he is not. He therefore claims that his plea "is void" and should be vacated.

{¶17} The standard for reviewing whether the trial court accepted a plea in compliance with Crim.R. 11(C) is de novo. It requires an appellate court to review the totality of the circumstances and determine whether the plea hearing was in compliance with Crim.R. 11(C). *State v. Cardwell*, 8th Dist. Cuyahoga No. 92796, 2009-Ohio-6827, ¶ 26, citing *State v. Stewart*, 51 Ohio St.2d 86, 364 N.E.2d 1163 (1977).

{¶18} Crim.R. 11(C)(2)(a) provides in pertinent part that the trial court

> shall not accept a plea of guilty or no contest without first addressing the defendant personally and * * * [d]etermining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved[.]

{¶19} The requirements of Crim.R. 11(C)(2)(a) involving the maximum penalty are nonconstitutional, and thus, this court reviews "to ensure substantial compliance" with this rule. *State v. Esner*, 8th Dist. Cuyahoga No. 90740, 2008-Ohio-6654, ¶ 4. "Under this standard, a

slight deviation from the text of the rule is permissible; so long as the totality of the circumstances indicates that 'the defendant subjectively understands the implications of his plea and the rights he is waiving.'" *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 31, quoting *State v. Nero*, 56 Ohio St.3d 106, 564 N.E.2d 474 (1990).

{¶20} When the trial court does not "*substantially* comply" with Crim.R. 11(C)(2)(a), a reviewing court must then "determine whether the trial court *partially* complied or *failed* to comply with this rule." (Emphasis sic.) *Clark* at ¶ 32. "If the trial judge partially complied, e.g., by mentioning mandatory postrelease control without explaining it, the plea may be vacated only if the defendant demonstrates a prejudicial effect." *Id.*, citing *Nero*. As repeatedly recognized by the Ohio Supreme Court, "a defendant must show prejudice before a plea will be vacated for a trial court's error involving Crim.R. 11(C) procedure when nonconstitutional aspects of the colloquy are at issue." *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 17; *see also State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 12; *Nero* at 108.

{¶21} "The test for prejudicial effect is 'whether the plea would have otherwise been made.'" *Clark* at ¶ 32, quoting *Nero*. "If the trial judge completely failed to comply with the rule * * *, the plea must be vacated." *Id.*, citing *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, 881 N.E.2d 1224. A complete failure to comply with the rule, however, does not implicate an analysis of prejudice. *Sarkozy* at ¶ 22.

{¶22} Robinson pleaded guilty to three counts of first-degree felony rape in violation of R.C. 2907.02(A). Under R.C. 2929.13(F)(2), the rape convictions require mandatory prison terms. Specifically, the statute provides:

> (F) Notwithstanding divisions (A) to (E) of this section, the court *shall impose a prison term* or terms under sections 2929.02 to 2929.06, section 2929.14, section

> 2929.142, or section 2971.03 of the Revised Code *and except as specifically provided in section 2929.20*, divisions (C) to (I) of section 2967.19, or section 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code *shall not reduce the term or terms pursuant to section 2929.20*, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code for any of the following offenses:
>
> * * *
>
> (2) *Any rape*, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been guilty of a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and would be sentenced under section 2971.03 of the Revised Code[.]

(Emphasis added.)

{¶23} A mandatory sentence for rape renders a defendant ineligible for judicial release. R.C. 2929.20(A). Therefore, pursuant to R.C. 2929.13(F)(2) and 2929.20(A), Robinson's sentence was mandatory, and he was therefore not eligible for judicial release.

{¶24} While a trial court must inform a defendant of the "maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control," it does not have to tell the defendant that he or she is not eligible for judicial release. *State v. Williams*, 8th Dist. Cuyahoga Nos. 104078 and 104849, 2017-Ohio-2650, ¶ 14, citing *State v. Simmons*, 1st Dist. Hamilton No. C-050817, 2006-Ohio-5760. It is well settled, however, that where a trial court gives a defendant "*misinformation* regarding judicial release," it may invalidate the plea. (Emphasis sic.) *Id*. at ¶ 15, citing *State v. Ealom*, 8th Dist. Cuyahoga No. 91455, 2009-Ohio-1365; *see also State v. Bush*, 3d Dist. Union No. 14-2000-44, 2002-Ohio-6146 (guilty plea not voluntary because defendant was informed that she would be eligible for judicial release after 180 days when she was not eligible until after serving four years); *State v. Horch*, 154 Ohio App.3d 537,

2003-Ohio-5135, 797 N.E.2d 1051 (3d Dist.) (guilty plea was not knowingly and intelligently made because defendant was erroneously informed that she would be eligible for judicial release after 180 days, but she was actually not eligible until after serving four years of her sentence); *State v. Hendrix*, 12th Dist. Butler No. CA2012-12-265, 2013-Ohio-4978 (guilty plea was invalid where the defendant was informed that he could potentially obtain judicial release, but he was ineligible for it); *State v. Sherman*, 5th Dist. Richland No. 2009-CA-132, 2010-Ohio-3959 (guilty plea was invalid where the trial court erroneously informed the defendant that he was eligible for judicial release when he was not).

{¶25} Under our substantial compliance review, however, misinformation regarding judicial release does not always invalidate the plea. In *State v. Cvijetinovic*, 8th Dist. Cuyahoga No. 81534, 2003-Ohio-563, the trial court told the defendant at the plea hearing "do you understand that judicial release may not be, you may not be eligible for that until after serving five years of the sentence." *Id*. at ¶ 3. On appeal, the defendant argued that his pleas were not voluntary because of the trial court's erroneous statements. This court, however, did not believe that defendant "would not have pleaded guilty but for the court's statement about judicial release." *Id*. at ¶ 7. We reasoned that the trial court's use of the word "may" and the fact that "the court engaged in a colloquy with both [the defendant] and a codefendant[,]" meant that "[t]he court's statement concerning judicial release may well have applied to the codefendant." *Id*. We further noted that the defendant may have had a more "compelling argument had [the defendant] asked for clarification or had he asked the court for permission to withdraw his guilty plea." *Id*. at ¶ 7.

{¶26} We reached the opposite conclusion in *Ealom*, where the trial court erroneously informed the defendant at his plea hearing that he would be eligible for judicial release after 3

and one-half years of an 11-year sentence. Ealom, however, was not eligible for judicial release at all. *Id*. at ¶ 25. This court held that Ealom's guilty plea was not voluntarily, intelligently, and knowingly made because it was clear from the record that Ealom had asked the court for clarification about judicial release, and after the court led him to believe that he would be eligible after 3 and one-half years, he pleaded guilty. We further concluded, "and perhaps most importantly, [that] the record demonstrate[d] that Ealom had some mental health issues and a low IQ." *Id*. at ¶ 25.

{¶27} In *Williams*, 8th Dist. Cuyahoga Nos. 104078 and 104849, 2017-Ohio-2650, this court found that the case was "more in line" with *Ealom* than *Cvijetinovic* because the

> record demonstrate[d] that Williams seemed quite concerned about the possibility of obtaining judicial release. He stopped the plea proceedings in order to ask the court about judicial release. The court and the attorneys responded to those inquiries by informing Williams that the motion could be considered after seven or eight years, but under R.C. 2929.20(C)(4), Williams is not eligible for judicial release until five years after he has served all of his mandatory sentence, which was 12 years. Clearly, Williams was misinformed as to when he would be eligible for judicial release. The record also indicates that after filing his notice of appeal, Williams filed a motion to withdraw his guilty pleas in all four cases.
>
> Consequently, we are unable to conclude that the trial court substantially complied with its duty to inform Williams of "the maximum penalty involved" because Williams received inaccurate information that erroneously led him to believe that he was eligible for judicial release after seven or eight years, when in fact he would not have been eligible until 12 years. Moreover, the record clearly demonstrates that but for this erroneous information, Williams would not have entered the guilty plea because his trial was already underway when the plea discussion occurred. Williams's guilty plea was not knowingly, intelligently, and voluntarily made, and he suffered prejudice from the erroneous information regarding judicial release.

Id. at ¶ 21-22.

{¶28} Here, the trial court properly told Robinson that prison was mandatory and that he was not eligible for community control sanctions. The court then extensively explained the maximum possible prison sentence that Robinson could receive, anywhere from 3 to 30 years in

prison. When the defendant asked, "When you say mandatory, I would have to do the whole time[,]" the court responded: "Well, the fact of prison is mandatory, meaning probation is not possible. These are crimes I imagine that like any other or most of as I should say have the possibility of judicial release. Or am I even wrong on that, [prosecutor]?" The prosecutor replied, "I think so."

{¶29} The court then told Robinson the following:

> So you asked if mandatory meant you have to do the full sentence given. The short answer to that is you should consider that whatever sentence is imposed is going to have to be done. The longer answer is depending on the amount of time imposed, you may at some point have the opportunity to file what is known as a motion for judicial release, where you file a motion with reasons why the sentence should be shortened. But the point being, if I impose three years, you should consider you're going to do three years. If I impose 30, you should consider you're going to do 30 or any number in between. Do you get that?
> THE DEFENDANT: Yes.

{¶30} In this case, the trial court did erroneously tell Robinson that he "may" be able to file a motion for judicial release at some point. But it did not unequivocally tell him that he would be able to get out of prison on judicial release after a fixed amount of time like the courts did in *Ealom*, 8th Dist. Cuyahoga No. 91455, 2009-Ohio-1365; *Bush*, 3d Dist. Union No. 14-2000-44, 2002-Ohio-6146; *Horch*, 154 Ohio App.3d 537, 2003-Ohio-5135, 797 N.E.2d 1051 (3d Dist.); and *Williams*, 8th Dist. Cuyahoga Nos. 104078 and 104849, 2017-Ohio-2650. In fact, the court did not even tell Robinson that he could definitely file a motion for judicial release because it said that he "may" be able to file such a motion. Most significantly, however, the court told Robinson that if it imposed three years, he should consider the fact that he will serve three years, and if it imposed 30 years, he should consider the fact that he was "going to do" 30 years, or if it imposed "any number" in between that time, that is what he would serve.

{¶31} Moreover, although Robinson maintains that he would not have entered into his plea if he had known that he was not eligible for judicial release, the record belies his claim. By pleading guilty to three charges of rape, the state dismissed seven charges as well as the sexually violent predator specifications attached to the two rapes in CR-17-615668-A. Six of the dismissed charges were first-degree felonies and several of them also had sexual motivation and sexually violent predator specifications. With the sexually violent predator specifications, Robinson was facing six consecutive life terms of prison. Even without the sexually violent predator specifications, Robinson was facing six first-degree felonies. The trial court also advised Robinson that he could receive a maximum of 30 years for the three rape convictions, which is significantly less than he could have received had he gone to trial. Finally, Robinson did not receive the maximum of 30 years or the maximum the state was requesting, which was 20 years. Rather, the trial court sentenced Robinson to an aggregate sentence of eight years in prison for raping three separate victims. As we recently stated in *State v. Cruz*, 8th Dist. Cuyahoga No. 106098, 2018-Ohio-2052, "[t]he reduction in prison time was the incentive for pleading guilty, not the vague possibility of judicial release." *Id*. at ¶ 17.

{¶32} Accordingly, we find that although the trial court misinformed Robinson about judicial release, it substantially complied with the requirements of Crim.R. 11(C)(2)(a) because Robinson "subjectively [understood] the implications of his plea and the rights he [was] waiving." *Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, at ¶ 31, quoting *Nero*, 56 Ohio St.3d 106, 564 N.E.2d 474. Robinson's sole assignment of error is overruled.

{¶33} We do note, however, that at the plea hearing, the trial court also misinformed Robinson about the maximum penalty that he could receive for the 1994 rape. The trial court advised Robinson that he could receive 3 to 10 years for the 1994 rape, when he could actually

receive 3 to 11 years pursuant to H.B. 86. *See State v. Thomas*, 148 Ohio St.3d 248, 2016-Ohio-5567, 70 N.E.3d 496 (when a defendant commits a rape offense before the effective date of S.B. 2, which was July 1, 1996, but was sentenced after the effective date of H.B. 86, which was September 30, 2011, H.B. 86 controls and the defendant is entitled to the benefit of a reduced sentence under H.B. 86). The trial court's misinformation by one year, however, does not invalidate Robinson's plea. First, Robinson does not raise this issue, and thus, he has waived all but plain error. This court may notice plain errors or defects that affect a defendant's substantial rights. Crim.R. 52(B).

{¶34} More significantly, however, Robinson was not prejudiced by the trial court's misinformation. In *State v. Richmond*, 8th Dist. Cuyahoga No. 104713, 2017-Ohio-2656, this court was faced with the exact same issue and set of facts (except that the defendant actually raised the issue in *Richmond*). We held in *Richmond* that a one-year misstatement at a defendant's plea hearing regarding the maximum penalty the defendant could receive for rape did not prejudice the defendant when the defendant received a sentence that was less than the prescribed maximum prison sentence for rape. *Id.* at ¶ 22 (trial court misinformed the defendant that the maximum penalty for a rape committed on September 3, 1995, was 3 to 10 years when, in fact, it was 3 to 11 years, and the trial court only sentenced the defendant to 10 years in prison). We noted in *Richmond* that if the defendant had been sentenced to 11 years, then prejudice "would be obvious and manifest." *Id.* at ¶ 22. Just as in *Richmond*, there is no prejudice to Robinson in this case when he only received an 8-year prison sentence for the 1994 rape, which was well below the statutory maximum of 11 years. We therefore find no plain error because Robinson's substantial rights were not affected by the trial court's inaccurate information regarding the maximum penalty that he could receive for the 1994 rape.

{¶35} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

EILEEN A. GALLAGHER, A.J., CONCURS;
MELODY J. STEWART, J., DISSENTS WITH SEPARATE OPINION

MELODY J. STEWART, J., DISSENTING:

{¶36} The sentencing transcript shows that Robinson was concerned with the length of time he would serve and asked whether he "would have to do the whole time?" Although the court stressed that Robinson's sentences were "mandatory, meaning probation is not possible[,]" it appeared to understand Robinson's question to encompass judicial release. It told Robinson that "[t]hese are crimes I imagine that like any other or most of as I should say have the possibility of judicial release." Even when told by the assistant prosecuting attorney that it was wrong in thinking that Robinson would be eligible for judicial release, the court went on to tell Robinson that "you may at some point have the opportunity to file what is known as a motion for judicial release * * *."

{¶37} There is no question that, despite the court's representations, Robinson was ineligible for judicial release. The court had no obligation under Crim.R. 11 to advise Robinson about the availability of judicial release, but once it did, it had to get it right. *State v. Ealom*, 8th Dist. Cuyahoga No. 91455, 2009-Ohio-1365; *State v. Williams*, 8th Dist. Cuyahoga Nos. 104078 and 104849, 2017-Ohio-2650, ¶ 15. By failing to get it right, the court did not substantially, or even partially, comply with the Crim.R. 11 requirement to ensure that a defendant enters a knowing and intelligent plea. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 32. There is thus no need in this case to consider whether Robinson was prejudiced; that is, whether he would not have pleaded guilty but for the court's error. *Id*. ("If the trial judge completely failed to comply with the rule * * * the plea must be vacated."). I therefore disagree with the majority's conclusion that the court substantially complied with Crim.R. 11 with respect to Robinson's eligibility for judicial release. I would vacate Robinson's guilty plea.