

[Cite as *State v. McDonall*, 2018-Ohio-4865.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 106694**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**RAYNARD McDONALL**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-16-609754-A

**BEFORE:** Jones, J., Boyle, P.J., and Blackmon, J.

**RELEASED AND JOURNALIZED:** December 6, 2018

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LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant Raynard McDonall (“McDonall”) appeals his two rape convictions, which were entered after a guilty plea. He contends that his plea was not knowingly, intelligently, and voluntarily made. For the reasons discussed below, we affirm.

{¶2} In September 2016, McDonall was charged in a 15-count indictment with charges stemming from the rape of two victims: his daughter and step-granddaughter. The charges contained notices of prior conviction, repeat violent offender, sexual motivation, and sexually violent predator specifications.

{¶3} McDonall was also charged with a sexual assault in another case, Cuyahoga C.P. No. CR-16-606531-A. *State v. McDonall*, 8th Dist. Cuyahoga No. 105787, 2018-Ohio-2065, ¶ 3. The case proceeded to a jury trial, at which the jury found McDonall guilty of one count each of rape and kidnapping, with a sexual motivation specification. *Id.* at ¶ 24. The trial court

sentenced McDonall to an aggregate 20-year sentence, consisting of consecutive ten-year terms for each count. *Id.* This court affirmed the convictions and sentence, but remanded the case to the trial court for a nunc pro tunc correction of the sentencing entry. *Id.* at ¶ 87.

{¶4} Meanwhile in this case, in June 2017, McDonall pleaded guilty to Counts 1 and 11, both rape charges, with the deletion of the notices and specifications. The remaining charges, notices, and specifications were dismissed. The trial court sentenced McDonall to ten years on each count of rape, to be served consecutive to each other, but concurrent to the 20-year sentence on the other sexual assault case. McDonall now appeals, raising a sole assignment of error for our review: “McDonall’s guilty plea to the amended charges was not made knowingly, voluntarily, and intelligently, and, as a result, the court’s acceptance of that plea was in violation of McDonall’s constitutional rights and Criminal Rule 11.”

{¶5} When a defendant enters a plea in a criminal case, “the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution.” *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). To ensure that a defendant enters a plea knowingly, voluntarily, and intelligently, a trial court must engage in an oral dialogue with the defendant in accordance with Crim.R. 11(C). *Id.* The underlying purpose of Crim.R. 11(C) is to convey certain information to a defendant so that he or she can make a voluntary and intelligent decision regarding whether to plead guilty. *State v. Schmick*, 8th Dist. Cuyahoga No. 95210, 2011-Ohio-2263, ¶ 5.

{¶6} The reviewing court conducts a de novo review to determine whether the trial court accepted a plea in compliance with Crim.R. 11(C). *State v. Cardwell*, 8th Dist. Cuyahoga No. 92796, 2009-Ohio-6827, ¶ 26. A trial court must strictly comply with the Crim.R. 11(C)(2) requirements regarding the waiver of constitutional rights, which means that the court must

inform the defendant of the constitutional rights he or she is waiving and make sure the defendant understands them. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 18. Where the issue concerns a nonconstitutional requirement, such as whether the defendant understood the nature of the charges or the maximum penalties for the offenses, we review for substantial compliance. *State v. Jordan*, 8th Dist. Cuyahoga No. 103813, 2016-Ohio-5709, ¶ 46, citing *Veney* at ¶ 14-17.

{¶7} “Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.” *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990), citing *State v. Stewart*, 51 Ohio St.2d 86, 92, 364 N.E.2d 1163 (1977). “[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 *Nero* at 108.

{¶8} McDonall contends that he did not understand the nature of the charges and that he was pleading guilty to two separate counts. Further, he challenges the trial court’s use of the word “mandatory” when sentencing him. These challenges implicate nonconstitutional concerns and, thus, we review for substantial compliance.

{¶9} The record here demonstrates that at the plea hearing the assistant prosecuting attorney described the two charges that McDonall pleaded to, as well as the possible penalties. *See* tr. 3-5. In its colloquy with McDonall, the trial court also stated the charges and possible penalties. McDonall indicated that he understood. Tr. 9. He further indicated that he had the opportunity to discuss the terms of the plea with his attorney. Tr. 6, 10. Further, regarding the possible penalties, the trial court told McDonall, and he indicated that he understood, that it intended to impose consecutive sentences:

Now, I've talked with your lawyer and the prosecutor about my intentions to sentence you on each count \* \* \* — Counts 1 and 11 to a sentence of ten years that will be run consecutive to each other but that will be concurrent to the case for which you are currently serving a sentence.

{¶10} McDonall now contends that the trial court erroneously advised him that serving the sentences consecutive was mandatory. But a review of what the trial court actually said was that the prison sentence for each of the two counts was mandatory — a correct statement<sup>1</sup> — not that serving them consecutively was mandatory. Specifically, the court stated: “Now, these sentences are mandatory prison sentences, and again, I've explained that it's my intention to sentence them consecutive, which means you would serve one sentence after another but concurrent with the other sentence.”

{¶11} Moreover, although it was not mandatory that the sentences be served consecutively, it is widely recognized that when a crime is committed against separate victims, as was the case here, consecutive sentences properly account for each victim. *See State v. Thome*, 8th Dist. Cuyahoga No. 104445, 2017-Ohio-963, ¶ 16, citing *State v. Sexton*, 10th Dist. Franklin No. 01AP-398, 2002-Ohio-3617, ¶ 67.

{¶12} In light of the above, we find no merit to McDonall's sole assignment of error and overrule it.

{¶13} Judgment affirmed.

It is ordered that appellee recover of appellant 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 convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of

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<sup>1</sup>See R.C. 2929.13(F)(2).

sentence.

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

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LARRY A. JONES, SR., JUDGE

MARY J. BOYLE, P.J., and  
PATRICIA ANN BLACKMON, J., CONCUR

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