

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 107643
	:	
v.	:	
	:	
JOHN PRUITT,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED AND REMANDED
RELEASED AND JOURNALIZED: June 6, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-17-619929-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jennifer King and Frank R. Zeleznikar, Assistant Prosecuting Attorneys, *for appellee*.

Edward M. Heindel, *for appellant*.

SEAN C. GALLAGHER, J.:

{¶ 1} John Pruitt appeals his convictions for three counts of aggravated robbery and a single count each of aggravated vehicular assault and unauthorized use of a vehicle. Pruitt pleaded guilty to those crimes, which resulted in ten-year terms being imposed on each of the aggravated robbery counts, and 18- and 6-

month sentences imposed for the remaining two counts. Those sentences are concurrent with each other. The aggregate term of imprisonment was within the parties' jointly recommended sentencing range of 6-10 years.

{¶ 2} The state claims that Pruitt's convictions arose from separate incidents that occurred within a short period of time, in which Pruitt threatened victims with deadly weapons, including a firearm in one instance, and hit a victim with a car while fleeing the scene of the crime. During one robbery attempt, Pruitt threatened to "cut the victim up." One of the thefts involved \$3.47 in cash and a Speedway card, upon which Pruitt charged \$180 to the victim's account, and another involved the theft of \$20, both of which occurred at knife point. In the third occurrence, Pruitt stole the victim's credit and social security cards at gun point. Pruitt fraudulently charged \$280 to the third victim's credit card after forcing the victim into a van and driving him around for a brief period of time. And in the fourth incident, Pruitt stole the victim's purse and in the process of fleeing, Pruitt ran over the victim with his van, fracturing the victim's knee.

{¶ 3} In the first assignment of error, Pruitt claims that his plea was not knowingly, voluntarily, or intelligently entered because the recitation of the counts to which Pruitt pleaded guilty, as stated in the final entry of conviction, differs from the crimes to which Pruitt pleaded guilty at the change-of-plea hearing. There is no purported issue with the aggravated robbery convictions. Pruitt's claim pertains to the conviction for aggravated vehicular assault and unauthorized use of a vehicle.

{¶ 4} During the change-of-plea hearing, the state represented that Pruitt agreed to plead guilty to aggravated vehicular assault under R.C. 2903.08(A)(2), a felony of the fourth degree, and unauthorized use of a vehicle under R.C. 2913.03(A), a misdemeanor of the first degree. Pruitt agreed with the state's recitation. At the sentencing hearing, the trial court sentenced Pruitt to "the ten years [Pruitt] negotiated in the plea agreement and [the court is] going to run it concurrent on each count, 18 months on the felony of the 4th degree, misdemeanor of the 1st degree, six months." Tr. 45:23-46:6. In the final entry of conviction, it was noted that Pruitt pleaded guilty to, as is relevant to the claimed error, a fourth-degree felony felonious assault and a first-degree misdemeanor grand theft, although the names of the crimes and the relevant statutory sections were incorrect. The sentences on the lower-level offenses, even though the references to the names of the crimes and relevant statutory sections were incorrect, were consistent with the sentences imposed at the sentencing hearing.

{¶ 5} The error Pruitt complains of did not occur during the plea colloquy but in the journalization of the final conviction. Thus, he cannot demonstrate that he would not have entered the plea but for the error. A trial court retains continuing jurisdiction to correct clerical errors in a judgment by nunc pro tunc entry to reflect that which actually was decided. *State ex rel. Womack v. Marsh*, 128 Ohio St.3d 303, 2011-Ohio-229, 943 N.E.2d 1010, ¶ 13, citing *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19, and Crim.R. 36 ("[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in

the record arising from oversight or omission, may be corrected by the court at any time”). The crimes and relevant statutory sections associated with Counts 8 and 11 to which Pruitt pleaded guilty were mistakenly transposed in the final entry of conviction. That clerical mistake can be corrected through the nunc pro tunc mechanism. We remand for the limited purpose of issuing a nunc pro tunc sentencing entry to correct the sentencing entry to reflect the crimes to which Pruitt pleaded guilty at the sentencing hearing. *See State v. McGee*, 8th Dist. Cuyahoga No. 104566, 2017-Ohio-1363, ¶ 10. The first assignment of error is otherwise overruled.

{¶ 6} In the second assignment of error, Pruitt claims the trial court “misstated the purposes and principles of felony sentencing.” According to Pruitt, this renders his sentence to be contrary to law.

{¶ 7} R.C. 2953.08(D)(1) constrains appellate review of jointly recommended sentences that are imposed by the trial court. A defendant’s right to appeal a sentence is derived from R.C. 2953.08. *State v. Sergeant*, 148 Ohio St.3d 94, 2016-Ohio-2696, 69 N.E.3d 627, ¶ 15. “[I]f a jointly recommended sentence imposed by a court is ‘authorized by law,’ then the sentence ‘is not subject to review.’” *Id.*, quoting R.C. 2953.08(D)(1). An appellate court lacks jurisdiction to review jointly recommended sentences. *State v. Noling*, 136 Ohio St.3d 163, 2013-Ohio-1764, 992 N.E.2d 1095, ¶ 22. There is no dispute from the record that the trial court imposed the sentence that was jointly recommended. Thus, the only question in this case is whether the sentences imposed are authorized by law.

{¶ 8} The Ohio Supreme Court has held that a sentence is “authorized by law,” and is therefore not appealable within the meaning of R.C. 2953.08(D)(1), “if it comports with all mandatory sentencing provisions.” *Sergent* at ¶ 26, quoting *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, paragraph two of the syllabus. Although the trial court must consider the purposes and principles of sentencing, as well as the factors in R.C. 2929.12, the court is not required to use particular language or make specific findings on the record regarding its consideration of those factors. *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31. Further, “[an] appellant’s sentence is not contrary to law simply because he disagrees with the way in which the trial court weighed the factors under R.C. 2929.11 and 2929.12 and applied these factors in crafting an appropriate sentence.” *State v. Frazier*, 2017-Ohio-8307, 98 N.E.3d 1291, ¶ 28 (8th Dist.).

{¶ 9} In this case, Pruitt claims that the trial court failed to expressly reference R.C. 2929.11 or 2929.12 at the sentencing hearing. Instead, the trial court discussed the sentencing factors in terms of the specific facts of Pruitt’s case and Pruitt’s criminal history, rather than offering blanket reference to the statutory sections. Although not required, the trial court offered reasons in support of its sentence. Further, the trial court stated in its sentencing entry that it “considered all required factors of the law[,]” and additionally, “the court finds that prison is consistent with the purpose of R. C. 2929.11.” This demonstrates that the trial court considered all that was required by law and the sentences are otherwise authorized

by law. *State v. Borden*, 6th Dist. Wood No. WD-18-015, 2019-Ohio-424, ¶ 13; *State v. Wilson*, 8th Dist. Cuyahoga No. 106862, 2019-Ohio-150, ¶ 8. We cannot review the sentences imposed. R.C. 2953.08(D)(1). The second assignment of error is overruled.

{¶ 10} Finally, in the third assignment of error, Pruitt claims the trial court failed to “adequately” explain the privilege against self-incrimination, which renders his guilty plea invalid.

{¶ 11} “When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily.” *State v. Engle*, 74 Ohio St.3d 525, 527, 1996-Ohio-179, 660 N.E.2d 450. The standard of review for determining whether a plea was knowing, intelligent, and voluntary within the meaning of Crim.R. 11 is substantial compliance for nonconstitutional issues and strict compliance for constitutional issues. *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990), citing *State v. Stewart*, 51 Ohio St.2d 86, 92-93, 364 N.E.2d 1163 (1977). “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.” *Nero*. In addition, when challenging his guilty plea based on the trial court’s lack of substantial compliance, a defendant must also show a prejudicial effect — that the plea would not have been otherwise entered but for the error. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 32, citing *Nero* at 108.

{¶ 12} According to Pruitt, the trial court explained the privilege against self-incrimination as a prohibition against the prosecutor commenting on Pruitt's silence:

Do you understand that if you went to trial you'd have the right to take the witness stand in your own defense and give your version of what did or did not happen on the dates identified in the indictment. On the other hand, you could choose to remain silent. If you made that decision, at no time would the *prosecutor* be permitted to comment on that fact, nor would they be allowed to argue that that fact's indicative of your guilt in this matter; do you understand that?

(Emphasis added.) Pruitt answered affirmatively at the time, but believes that the trial court should have further notified Pruitt that no "courtroom actors" could comment on his silence.

{¶ 13} In *State v. Hussing*, 8th Dist. Cuyahoga No. 97972, 2012-Ohio-4938, a similar argument was addressed. In that case, the trial court advised the defendant that "you have the absolute right to remain silent. If you were to proceed to trial and not testify, the *State of Ohio* could not use your silence against you in an effort to prove you guilty[.]" (Emphasis added.) *Id.* at ¶ 21. The defendant affirmatively responded. The defendant's argument that the trial court did not adequately explain the right against self-incrimination was overruled. *Id.* *Hussing* noted that "[s]trict compliance 'does not require a rote recitation of the exact language of the rule; rather, the focus on review is whether the record shows that the judge explained these rights in a manner reasonably intelligible to the defendant.'" *Id.* at ¶ 22, quoting *State v. Ballard*, 66 Ohio St.2d 480, 423 N.E.2d 115 (1981). That

advisement coupled with the defendant's affirmative response satisfied the constitutional concerns. *Id.*

{¶ 14} The same conclusion can be reached in this case. The trial court's advisement mirrored the *Hussing* advisement deemed to be in compliance with Crim.R. 11(C). The only difference was the trial court's use of the word "prosecutor" instead of the words "State of Ohio." There is no meaningful difference between the two terms for the purpose of factually distinguishing the two cases. The prosecutor represents the state of Ohio. As in *Hussing*, we find no error with the trial court's advisement. The third and final assignment of error is overruled.

{¶ 15} The convictions are affirmed. The case is remanded for the limited purpose of issuing a nunc pro tunc entry to impose final convictions on the crimes and relevant statutory provisions related to Counts 8 and 11.

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

The court finds there were reasonable grounds for this appeal.

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

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

SEAN C. GALLAGHER, JUDGE

**MARY J. BOYLE, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR**