[Cite as *State v. Johnson*, 2016-Ohio-1070.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA3612
vs.	:	
ASHLEY INEZ-LARICE JOHNSON,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

James M. Sweeney, James Sweeney Law, LLC, Columbus, Ohio appellant.

Mark E. Kuhn, Scioto County Prosecuting Attorney, and Pat Apel, Scioto County Assistant Prosecuting Attorney, Portsmouth, Ohio for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:2-29-16
ABELE, J.

{¶ 1} This is an appeal from a Scioto County Common Pleas Court judgment of conviction and sentence. Ashley Inez-Larice Johnson, defendant below and appellant herein, pled guilty to (1) three counts of drug trafficking in violation of R.C. 2925.03(A)(2); and (2) one count of tampering with evidence in violation of R.C. 2921.12. Appellant assigns the following errors for review:[1]

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY IMPOSING CONSECUTIVE PRISON SENTENCES AGAINST

[1] Appellant neglects to include in her brief a separate statement of the assignments of error. App.R. 16(A)(3). We take the assignments of error from her "table of contents."

MS JOHNSON WITHOUT MAKING THE STATUTORILY MANDATED FINDINGS IN SUPPORT OF CONSECUTIVE SENTENCES, IN VIOLATION OF R.C. 2929.14(C)(4)."

SECOND ASSIGNMENT OF ERROR:

"DEFENDANT-APPELLANT'S GUILTY PLEA WAS NOT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY MADE."

{¶ 2} Appellant and a co-defendant, Khadeja S. Avery, were apparently recruited in Detroit, Michigan, to drive what the State has characterized as a "huge load of dope" to Huntington, West Virginia. Although the record is somewhat unclear, the two women were apparently stopped and arrested while driving through Scioto County.

{¶ 3} On December 23, 2013, the Scioto County Grand Jury returned a seven count indictment that charged appellant with three counts of drug trafficking, three counts of drug possession and tampering with evidence. Although she initially pled not guilty to all the charges, she later agreed to plead guilty to the trafficking counts and tampering count.

{¶ 4} At the February 19, 2014 change of plea hearing, the trial court endeavored to ascertain if appellant (and her co-defendant) understood her rights. The trial court then accepted appellant's pleas, found her guilty of the aforementioned offenses and sentenced her to serve a mandatory eleven year sentence on the first trafficking count and three years on the remaining counts. The court further ordered that all sentences be served consecutively, for a cumulative total of twenty years. The court also dismissed the remaining three counts. This appeal followed.

I

{¶ 5} Before we consider the merits of the assignments of error, we first address the standard review. When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. The failure to satisfy any one of these requirements renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution. See *State v. Veney*, 120 Ohio St.3d 176, 2008–Ohio–5200, 897 N.E.2d 621, ¶7; *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). Appellate courts employ a de novo standard of review to determine whether a plea was knowingly, intelligently and voluntarily entered. *State v. Redavide*, 2nd Dist. Montgomery No. 26070, 2015-Ohio-3056, at ¶10; *State v. Green*, 8th Dist. Cuyahoga No. 101990, 2015-Ohio-2700, at ¶6; *State v. Leonhart*, 4th Dist. Washington No. 13CA38, 2014-Ohio-5601, at ¶36. In other words, appellate courts will conduct their own, independent review of the record without any deference to the trial court.

II

{¶ 6} In her first assignment of error, appellant asserts that the trial court erred when it imposed consecutive sentences without making the R.C. 2929.14(C)(4) findings. We, however, reject this argument.

{¶ 7} R.C. 2953.08(D)(1) states that "[a] sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge." Here, the sentence was part of a negotiated plea and cannot be challenged on appeal if it is authorized by law.[2] Appellant, however, does not argue that her sentence was unauthorized by

[2] The hearing transcript reveals that in reciting the terms of the plea agreement, the trial court expressly mentioned that the aggregate sentences would amount to twenty years in prison and asked defense counsel and appellant if that was their understanding of the agreement. Both responded affirmatively.

law. Rather, she contends that the trial court failed to make the R.C. 2929.14(C)(4) findings before it imposed sentence. However, this Court and others have held that the findings are not necessary when the parties have a negotiated plea. See e.g. *State v. Pulliam*, 4th Dist. Scioto No. 14CA3609, 2015-Ohio-759, at ¶12; *State v. Davis*, 4th Dist. Scioto Nos. 13CA3589 & 13CA3593, 2014-Ohio-5371, at ¶24; *State v. Weese*, 2nd Dist. Clark No. 2013–CA–61, 2014-Ohio-3267, at ¶5. But see *State v. Sergent*, 11th Dist. Lake No. 2013-L-125, 2015-Ohio-2603.[3]

{¶ 8} For these reasons, we hereby overrule appellant's first assignment of error.

III

{¶ 9} Appellant's second assignment of error raises the issue of whether her plea was knowing, intelligent and voluntary. In particular, she asserts that the trial court failed to comply with Crim.R.12(C)(2)(a) which provides, in pertinent part:

> "(2) In felony cases the court . . . shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:
>
> (a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved . . ."

{¶ 10} At the outset, we note that when this rule concerns the waiver of constitutional rights, strict compliance is mandatory. *State v. Mosly*, 12th Dist. Warren No. CA2014–12–142, 2015-Ohio-3108, at ¶8; *State v. Taylor*, 8th Dist. Cuyahoga No. 101609, 2015-Ohio-1643, at ¶8. However, when Crim.R. 12(C)(2)(a) involves the waiver of non-constitutional rights, the law bstantial requires sucompliance. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897

[3]The Ohio Supreme Court has before it *Sergent* in order to settle the conflict with both *Pullman* and *Weese*. See 143 Ohio St.3d 1476, 38 N.E.2d 898, 2015-Ohio-3958.

N.E.2d 621, at ¶14; also see *State v. Brigner*, 4th Dist. Athens No. 14CA19, 2015-Ohio-2526, at ¶10; *State v. Barner*, 4th Dist. Meigs No. 10CA9, 2012-Ohio-4584, at ¶8.

{¶ 11} Appellant argues that the trial court failed to comply with Crim.R. 11(C)(2)(a) because it failed to inform her of the maximum penalty for each offense. Because this is a non-constitutional issue, we look for substantial compliance with the rule. Here, we readily conclude the court substantially complied with the rule. The following colloquy took place at the change of plea hearing:

> "THE COURT: Right. Okay. It will be a negotiated plea pursuant to Section 2953.08(D) and Criminal Rule 11 F [sic], on the Trafficking in Drugs with the major drug offender, they will receive a [sic] 11 year mandatory prison sentence. On Count 3 Trafficking in Drugs, being Oxycodone, a three year non-mandatory sentence, Count 5 Trafficking in Oxymorphone, a three year non-mandatory sentence, and Count 7 Tampering with Evidence, a three year non-mandatory sentence, all running consecutively with each other for an aggregate 20 year prison sentence. * * *
>
> [Defense counsel], is this your understanding, sir?
>
> [COUNSEL]: Yes, Your Honor, that is our understanding
>
> THE COURT: And Ms. Johnson, is this your understanding?
>
> [APPELLANT]: Yes." (Emphasis added.)

{¶ 12} As a negotiated plea, the minimum and maximum are the same sentence. It is difficult to conceive how the trial court could have been more explicit with appellant than (1) expressly stating that she would serve a twenty year prison term, and (2) asking her if that was her understanding of the plea agreement.[4]

[4] Again, appellant responded affirmatively when the trial court asked if the twenty year sentence was what she understood the plea agreement entailed.

{¶ 13} Furthermore, on February 20, 2014 appellant executed, and counsel caused to be filed, two separate forms that acknowledged the maximum penalties for all the charges to which she pled guilty. The first form stated that the maximum on Count I (trafficking) carried an eleven year maximum term. The second form stated that the remaining counts all carried three year maximum terms. If the trial court's colloquy with appellant was not enough to inform her of the maximum penalty, surely these two acknowledgments were.

{¶ 14} A similar set of circumstances arose in *State v. Houston*, 4th Dist. Scioto No. 12CA3472, 2014-Ohio-2827. In *Houston*, the trial court repeated the agreed sentence from the plea agreement at the change of plea hearing, and the defendant had executed acknowledgment forms as to maximum penalties for the offenses. We held this was sufficient to establish substantial compliance with Crim.R. 11(C)(2)(a). Id. at ¶¶10-12. We reach the same conclusion here. Appellant was asked if she was aware that she would receive twenty years imprisonment, and she answered in the affirmative. Appellant also executed acknowledgment forms to that effect. Not only do we find substantial compliance with Crim.R. 11(C)(2)(a), we also do not understand how appellant suffered any prejudice from the trial court's actions.

{¶ 15} For all these reasons, we hereby overrule appellant's second assignment of error. Having considered all of the errors assigned and argued, we hereby affirm the trial court's judgment.

JUDGMENT AFFIRMED.

[Cite as *State v. Johnson*, 2016-Ohio-1070.]

JUDGMENT ENTRY

It is ordered that the judgment be affirmed in favor of appellee. Appellee to 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 Scioto County Common Pleas Court to carry this judgment into execution.

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

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.