

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

State of Ohio

Court of Appeals No. E-13-054

Appellee

Trial Court No. 2012-CR-289

v.

Charlie S. Hines

**DECISION AND JUDGMENT**

Appellant

Decided: May 9, 2014

\* \* \* \* \*

Kevin J. Baxter, Erie County Prosecuting Attorney, Mary Ann Barylski and Frank Romeo Zeleznikar, Assistant Prosecuting Attorneys, for appellee.

Karin L. Coble, for appellant.

\* \* \* \* \*

**YARBROUGH, P.J.**

**I. Introduction**

{¶ 1} Appellant, Charlie Hines, appeals the judgment of the Erie County Court of Common Pleas, sentencing him to a total of 60 months in prison following his plea of

guilty to two counts of sexual battery. For the reasons more fully set forth below, we reverse.

### **A. Facts and Procedural Background**

{¶ 2} On July 11, 2012, an indictment was filed against Hines relating to a string of incidents involving improper sexual contact with his stepdaughter. The 11-count indictment was comprised of one count of gross sexual imposition in violation of R.C. 2907.05(A)(4), one count of rape in violation of R.C. 2907.02(A)(1)(b), and nine counts of sexual battery in violation of R.C. 2907.03(A)(5). Each count was a felony of the third degree, with the exception of the rape count, which was a felony of the first degree.

{¶ 3} Hines initially entered a plea of not guilty. He then moved to suppress an audio recording that was obtained at the police station during police questioning, but his motion to suppress was denied. Thereafter, Hines entered into plea negotiations with the state, and an agreement was reached in which Hines agreed to plead guilty to two counts of sexual battery in exchange for the state's dismissal of the remaining charges. In addition, the plea agreement provided that Hines "shall be classified as a tier 3 [sex] offender, no community notification requested or found applicable."

{¶ 4} After the foregoing agreement was reached by the parties, a plea hearing was held at which the state recited the terms of the plea agreement. Relevant to this appeal, the state indicated: "The Defendant shall be classified as a Tier III offender by statute, and the State has put in here that there will be no community notification requested or found to be applicable. If you read the statute that's why – there's certain requirements

the Court has to find and I believe with reading that that they would not be applicable to this Defendant.” Following the state’s recitation of the terms of the plea agreement, the trial court conducted a Crim.R. 11 colloquy. Notably, the trial court was silent as to the issue of community notification under R.C. 2950.11. Ultimately, the trial court accepted Hines’ guilty plea, and continued the matter for sentencing.

{¶ 5} At sentencing, the court did not address the community notification requirement. Further, the sentencing entry does not specify whether Hines is subject to community notification. At the conclusion of the sentencing hearing, the trial court imposed a prison sentence of 30 months as to each count, and ordered the sentences to be served consecutively. Hines’ timely appeal followed.

### **B. Assignment(s) of Error**

{¶ 6} On appeal, Hines assigns the following errors for our review:

Assignment of Error I: Appellant’s guilty plea was involuntary and unknowing when the trial court failed to substantially comply with Crim.R. 11 by informing appellant of the punitive consequences of his plea.

Assignment of Error II: The trial court erred in sentencing appellant to consecutive sentences.

Assignment of Error III: The trial court failed to state any reasons for disapproving appellant’s eligibility for an Intensive Program Prison (IPP).

## II. Analysis

{¶ 7} In his first assignment of error, Hines argues that the trial court erred in accepting his guilty plea despite the fact that it was not knowingly and voluntarily given. Specifically, Hines contends that his plea was involuntary because he was not informed, as purportedly required under Crim.R. 11, that he would be subject to community notification as a tier III sex offender. Additionally, Hines asserts that his trial counsel was ineffective for failing to object to the trial court's imposition of such sanctions where the plea agreement allegedly provided that community notification would not be imposed.

{¶ 8} Before accepting a guilty plea, Crim.R. 11(C) requires that the trial court inform a defendant of the constitutional rights he is waiving by entering the plea. The underlying purpose of Crim.R. 11(C) is to insure that certain information is conveyed to the defendant that would allow him to make a voluntary and intelligent decision regarding whether to plead guilty. *State v. Ballard*, 66 Ohio St.2d 473, 479-480, 423 N.E.2d 115 (1981). With respect to constitutional rights, a trial court must strictly comply with the dictates of Crim.R. 11(C). *State v. Colbert*, 71 Ohio App.3d 734, 737, 595 N.E.2d 401 (11th Dist.1991). However, a trial court need not use the exact language found in that rule when informing a defendant of his constitutional rights. *Ballard*, *supra*, paragraph two of the syllabus. Rather, a trial court must explain those rights in a manner reasonably intelligible to the defendant. *Id.*

{¶ 9} For nonconstitutional rights, scrupulous adherence to Crim.R. 11(C) is not required; the trial court must substantially comply, provided no prejudicial effect occurs before a guilty plea is accepted. *State v. Stewart*, 51 Ohio St.2d 86, 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.” *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

{¶ 10} Here, Hines concedes that he was adequately informed of his constitutional rights prior to entering his guilty plea. However, he argues that the trial court failed to substantially comply with Crim.R. 11 with regard to his non-constitutional rights. Specifically, Hines asserts that “multiple errors occurred involving the term of his negotiated plea regarding lifting the required community notification requirements due to his Tier III sex offender status.”

{¶ 11} In his first alleged error, Hines argues that the state induced him into entering the guilty plea by promising him that he would not be subject to community notification requirements as part of his registration as a sex offender. As noted above, the state did, in fact, include the following statement in the written plea agreement: “[Hines] shall be classified as a tier 3 [sex] offender, no community notification requested or found applicable.” As promised, the state reiterated this statement at the plea hearing. Contrary to Hines’ assertion, we find no evidence in the record that demonstrates that the state requested community notification in this case. Rather, the state fulfilled its promise

to him by not requesting community notification. Therefore, Hines' first argument is without merit.

{¶ 12} Next, Hines contends that the trial court failed to inform him of the consequences of his tier III sex offender classification, namely that such classification would include community notification requirements. In support of his argument, Hines cites to *State v. Hawkins*, 2d Dist. Greene No. 2012-CA-49, 2013-Ohio-2572. In *Hawkins*, the court held that the trial court did not comply with Crim.R. 11 where it “simply told [the defendant] ‘there will be a registration requirement and I will announce that at the sentencing and you will have to follow those requirements.’” *Id.* at ¶ 13. In the present action, the trial court failed to mention any registration requirements that would result from the guilty plea. While we recognize that the trial court is not “required to review each of the numerous individual restrictions and requirements set forth in R.C. Chapter 2950 in order to substantially comply with nonconstitutional provisions of Crim.R. 11,” the court must at least inform the defendant about the fact that a tier III conviction includes community notification. *Id.* at ¶ 19; *see also State v. Jackson*, 1st Dist. Hamilton No. C-110645, 2012-Ohio-3348, ¶ 6 (stating that community notification requirements are part of the penalty imposed for the offense and, as such, must be explained by the trial court prior to accepting a defendant’s guilty plea); *compare State v. Creed*, 8th Dist. Cuyahoga No. 97317, 2012-Ohio-2627 (finding that the trial court substantially complied with Crim.R. 11(C) where it notified the defendant that he would be subject to “various reporting and notification requirements for life”). Since Hines was

not informed of the community notification requirements stemming from his classification as a tier III sex offender, he did not enter a knowing plea to the two counts of sexual battery. *Jackson* at ¶ 6.

{¶ 13} Accordingly, Hines' first assignment is well-taken.

### III. Conclusion

{¶ 14} For the foregoing reasons, the judgment of the Erie County Court of Common Pleas is reversed and Hines' guilty plea is vacated. Hines' remaining assignments of error are moot. This matter is remanded to the trial court for further proceedings consistent with this decision. Costs are assessed to the state pursuant to App.R. 24.

Judgment reversed.

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

Arlene Singer, J.

\_\_\_\_\_  
JUDGE

Stephen A. Yarbrough, P.J.  
CONCUR.

\_\_\_\_\_  
JUDGE

James D. Jensen, J.  
CONCURS AND WRITES  
SEPARATELY.

\_\_\_\_\_  
JUDGE

**JENSEN, J.**

{¶ 15} I concur with my colleagues’ conclusion that the trial court failed to substantially comply with Crim.R. 11(C) by failing to address registration and community notification requirements before accepting Hines’ plea. I write separately because I disagree with their conclusion that “the state fulfilled its promise to [Hines] by not requesting community notification.”

{¶ 16} Under R.C. 2950.11(F), the community notification requirement is *automatic*. *State v. Pletcher*, 4th Dist. Ross No. 08CA-3004, 2009-Ohio-1819, ¶ 23-24. The trial court, however, may dispense with the requirement if it “finds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to January 1, 2008.” R.C. 2950.11(F)(2).

{¶ 17} At the plea hearing, the state represented to the court that no facts existed which would warrant community notification, yet when the court sentenced Hines almost three months later, it sat quietly by while the court imposed a sentence that, by the state’s own representations, was not supported by the facts. Ideally, Hines’ own attorney would have drawn the court’s attention to the provision of the plea agreement that contemplated that the notification requirement would be dispensed with. But I believe that the state too had a duty to alert the court to the terms of the plea agreement. Accordingly, the fact that the state did not *request* community notification—when under the statute, community



notification was *automatic*—is hardly evidence that the state “scrupulously honored” the plea agreement as it insists it did.

{¶ 18} I otherwise concur with the majority opinion.

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>.