[Cite as *State v. Carpenter*, 2003-Ohio-3019.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 81571

STATE OF OHIO,	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	AND
vs.	:	
	:	OPINION
JAMES CARPENTER,	:	
	:	
Defendant-Appellant	:	
	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	JUNE 12, 2003
CHARACTER OF PROCEEDINGS	:	Criminal appeal from
	:	Common Pleas Court
	:	Case No. CR-416731
JUDGMENT	:	AFFIRMED.
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiff-appellee:

William D. Mason, Esq.
Cuyahoga County Prosecutor
BY: Rebecca J. Maleckar, Esq.
Assistant County Prosecutor
The Justice Center – 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

For defendant-appellant:

Robert L. Tobik, Esq.
Cuyahoga County Public Defender
BY: Patricia Koch Windham, Esq.
Assistant Public Defender
1200 West Third Street, N.W.
100 Lakeside Place
Cleveland, Ohio 44113

MICHAEL J. CORRIGAN, P.J.:

{¶1} Defendant James Carpenter pleaded guilty to one count of aggravated burglary and one count of aggravated robbery. Each count carried a one-year firearm specification. In this appeal, he argues that the court failed to ensure that he entered his guilty plea with an understanding of the nature of the charge. He maintains that the court merely explained the offenses with which he was charged, and that explanation was insufficient under Crim.R. 11.

{¶2} Crim.R. 11(C)(2)(a) requires the court to satisfy itself that the accused understands the nature of a charge before pleading guilty. The term "nature of the charge" is not defined in the Rules of Criminal Procedure, but we have never interpreted that phrase to require the court to inform the accused of the actual elements of the charged offense. See *State v. Rainey* (1982), 3 Ohio App.3d 441, 442. Indeed, that proposition has been repeatedly rejected. See *State v. Krcal*, Cuyahoga App. No. 80061, 2002-Ohio-3636, at ¶25 (collecting cases). Instead, we look to the circumstances of the case to determine whether the accused understood the charge. *State v. Swift* (1993), 86 Ohio App.3d 407, 412.

{¶3} Nothing in the record shows that Carpenter did not understand the nature of the charges to which he pleaded guilty. In fact, the court specifically asked Carpenter "do you understand

the offenses, aggravated robbery and aggravated burglary?" Carpenter replied affirmatively, and with the absence of any evidence to the contrary, Carpenter's affirmative reply leaves no doubt that he understood the nature of the charges against him. The assigned error is overruled.

Judgment affirmed.

MICHAEL J. CORRIGAN
PRESIDING JUDGE

PATRICIA A. BLACKMON, J., CONCURS IN JUDGMENT ONLY.

ANNE L. KILBANE, J., DISSENTS WITH SEPARATE OPINION.

ANNE L. KILBANE, J., DISSENTING:

{¶4} On this appeal from Judge Robert T. Glickman's acceptance of appellant James Carpenter's pleas of guilt, I dissent. The record reveals that the requirements of both Crim.R. 11(C) and R.C. 2943.032 were not met and, therefore, this case should be reversed and remanded.

{¶5} Crim.R. 11(C)(2) mandates that the judge must determine that when a defendant enters a guilty plea, it is made knowingly, intelligently and voluntarily. Knowledge of the maximum penalty for the offense involved is vital and must be communicated to and understood by the defendant. Since post-release control is a potential part of every prison sentence, with additional incarceration as a sanction or penalty should the control be violated, R.C. 2943.032 requires the judge to "inform the defendant

personally" that he may be subject to an additional prison term if he violates the conditions of post-release control.

{¶6} At the plea hearing, Carpenter was told:

> **The Court: The State of Ohio has offered to allow you to plead to two counts, one being aggravated burglary, the other being aggravated robbery. Each one of these counts is a felony of the first degree. Felonies of first degree are potentially punishable by a period of incarceration anywhere from three to ten years in one year increments; do you understand that?**
>
> **The Defendant: Yes, your Honor**
>
> **.The Court: Also, in each one of these counts, there is a one-year firearm specification. That means you would have to serve one year in the penitentiary prior to beginning any sentence you receive for either charge. Do you understand?**
>
> **The Defendant: Yes, your Honor.**
>
> **The Court: so your minimum sentence here is four years. Do you understand that ?**
>
> **The Defendant: Yes, your Honor.**
>
> *******
>
> **The Court: These charges also carry a potential fine of up to $20,000, but I presume, Mr. Carlin, that your client is indigent.**
>
> *****.**

{¶7} Carpenter was not advised that five years of post-release control would be part of his sentence and that, should he violate the terms and/or supervision of such control, the parole board could impose a prison term, as part of the sentence, of up to one-

half of the prison term he would be given.[1] Moreover, he was told only the minimum prison term, not the maximum - potentially twenty-one to thirty-one years.[2] At the sentencing hearing, post-release control and the penalties associated with violations thereof were not made part of the sentence, but the judge purported to impose the maximum term of post-release control in the resulting journal entry, along with court costs.

{¶8} Although the issue presented on appeal involved only a general claim that Carpenter did not understand the nature of the charges, this court on its own motion has the power to notice plain error to avoid a clear miscarriage of justice.[3] The judge violated both Crim.R. 11(C) and R.C. 2943.032 by failing to inform the defendant, prior to accepting his plea, that post-release control was part of the maximum sentence available.

{¶9} Although the substantial compliance rule applies to plea procedures that are not constitutionally mandated[4] and requires a showing of prejudice before a guilty plea will be invalidated,

---

[1]R.C. 2967.28(B)(1), 2967.28(F)(3).

[2]See R.C. 2929.141, which states that a defendant who commits a felony while on post-release can be imprisoned for the remaining period of post-release control, but without satisfying the post-release control obligation. Therefore, Carpenter faced five years of administrative post-release control as well as five years of judicial post-release control. In fact, because R.C. 2929.141 allows imprisonment without terminating post-release control, the statute potentially allows the defendant to be imprisoned in perpetuity for the same crime.

[3]*State v. Barnes*, 94 Ohio St.3d 21, 27-28, 2002-Ohio-68, 759 N.E.2d 1240.

[4]*State v. Nero* (1990), 56 Ohio St.3d 106, 107-108, 564 N.E.2d 474.

prejudice is nonetheless presumed in certain non-constitutional cases. In *State v. Delventhal*,[5] the court explained that the substantial compliance rule is not satisfied where the judge is required to inform the defendant personally and fails to do so.[6] Where the judge has a duty to impart the necessary understanding to the defendant, he cannot simultaneously fail in that duty and determine that the defendant had the necessary understanding. Thus, in such cases there can be no finding of substantial compliance because the defendant's lack of the required understanding is itself a sufficient showing of prejudice.[7]

{¶10} Crim.R. 11 and R.C. 2943.032 require that a judge, prior to accepting a guilty plea, inform the defendant personally that post-release control may result in additional prison time, and that the maximum penalty includes post-release control with additional prison time for violation of such control. The failure to give Carpenter this information fails the substantial compliance test, including its prejudice requirement.

{¶11} Because Carpenter did not receive the required information concerning the maximum sentences. I would vacate the guilty pleas and remand.

---

[5]Cuyahoga App. No. 81034, 2003-Ohio-1503.

[6]Id. at ¶8.

[7]Id.