

[Cite as *State v. Dowdell*, 2011-Ohio-1063.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94801**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**WAYNE DOWDELL**

DEFENDANT-APPELLANT

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**JUDGMENT:  
REVERSED AND REMANDED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-528356

**BEFORE:** Stewart, P.J., Celebrezze, J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** March 10, 2011

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MELODY J. STEWART, P.J.:

{¶ 1} Defendant-appellant, Wayne Dowdell, pleaded guilty to two counts of robbery, receiving maximum eight-year sentences on each count that the court ordered to be served consecutively. Although inartfully argued in his brief, we understand Dowdell to complain that his guilty plea was invalid because the court improperly advised him of the maximum sentence that it would impose.

{¶ 2} When addressing Dowdell during the plea colloquy, the court stated:

{¶ 3} “Mr. Dowdell, you’re going to plead guilty to two counts of robbery. And these are felonies of the second degree under Section 2912 [sic] of the Revised Code. You will go to prison on this I think, but Mr. Drucker [defense counsel], they’ll take a

good look at all the underlying facts here and you could receive either 2 or 3 or 4 or 5 or 6 or 7 or 8 years in a state penal institution and a fine not to exceed \$15,000. Do you understand that?”

{¶ 4} Dowdell agreed that he understood and entered a guilty plea. The court accepted the plea, found him guilty, and sentenced him to two eight-year terms and ordered them to run consecutively for a total of 16 years imprisonment.

{¶ 5} Crim.R. 11(C)(2) has no requirement for the court to advise a defendant sentences can be imposed consecutively. See *State v. Johnson* (1988), 40 Ohio St.3d 130, 532 N.E.2d 1295, syllabus; *State v. Roberts*, 8th Dist. No. 89236, 2008-Ohio-1942, ¶19. But the court cannot give a defendant the wrong impression on the length of sentence that it will impose. “Where the trial court promises a certain sentence, that promise becomes an inducement to enter a plea, and unless that sentence is given, the plea is not voluntary.” *State v. Triplett* (Feb. 13, 1997), 8th Dist. No. 69237, citing *State v. Simms* (Dec. 6, 1984), 8th Dist. No. 47796.

{¶ 6} The court told Dowdell that he could “go to prison” for the “felonies” up to a maximum term of eight years, not that each felony was punishable with a prison term of up to eight years. This gave Dowdell the understandable impression that the court would impose a prison term of no more than eight years for the combined “felonies.” The court’s statement was akin to promising beforehand what sentence would be imposed and then reneging on it. Any statement that objectively misleads a defendant as to the maximum sentence that the court will impose is an inducement that binds the court. Had

the court informed Dowdell that the felony counts were separately punishable by a maximum term of eight years, it could have imposed the sentences consecutively without first so informing Dowdell. But by stating that the “felonies” could subject him to a maximum prison term of eight years, the court told Dowdell that he would “go to prison” for no more than eight years on both counts. We therefore find that the court reneged on a sentence that induced the guilty plea. This rendered the plea involuntary, so it must be vacated. *State v. Bowen* (1977), 52 Ohio St.2d 27, 28, 368 N.E.2d 843.

{¶ 7} This cause is reversed and remanded for proceedings consistent with this opinion.

It is ordered that appellant recover of appellee his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

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

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MELODY J. STEWART, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and  
SEAN C. GALLAGHER, J., CONCUR