

[Cite as *State v. Robinson*, 2015-Ohio-4381.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102550

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MATTHEW A. ROBINSON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-14-588067-A

**BEFORE:** Celebrezze, A.J., E.T. Gallagher, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** October 22, 2015

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FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Appellant, Matthew A. Robinson, challenges the validity of his guilty plea to attempted having a weapon while under disability because he claims the court did not properly inform him of the maximum penalty involved, including the consequences his plea may have on his pending community control. After a thorough review of the record and law, this court affirms.

### **I. Factual and Procedural History**

{¶2} On August 3, 2014, a vehicle in which appellant was a passenger was the subject of a traffic stop. The police officer conducting the stop discovered a loaded firearm in the car. Appellant admitted the firearm was his. As a result of the traffic stop, he received two citations that were handled in the Cleveland Municipal Court, and was indicted on charges of having a weapon while under disability and improperly handling a firearm in a motor vehicle, in the Cuyahoga County Common Pleas Court. At a hearing on December 11, 2014, appellant changed his previously entered not guilty pleas and pled guilty to an amended charge of attempted having a weapon while under disability, a fourth-degree felony. Under the agreement worked out with the state, the other charge was dismissed.

{¶3} The plea hearing included a thorough colloquy between appellant and the trial judge where the judge inquired, “Mr. Robinson, are you presently on community control sanctions, known as probation, in any other case?” Appellant responded that he was.

After the court confirmed that appellant was on community control with a municipal court, it stated, “[b]e advised that by entering your plea today that may be a violation of your probation terms, but that court will have to make up their mind about that when they find out about this. Do you understand that?” Appellant then indicated he understood. The court then asked, “are you willing to go forward on that basis?” Appellant indicated he did.

{¶4} Ultimately, appellant’s guilty plea was accepted and the court set a sentencing hearing for January 9, 2015. On that date, after a thorough discussion of appellant’s circumstances and the positive changes he had made in his life, the court sentenced him to two years of community control. The court imposed costs and ordered the forfeiture of the firearm.

{¶5} On January 28, 2015, appellant filed a notice of appeal assigning one error for review: “Appellant did not enter his guilty plea knowingly, intelligently, or voluntarily because the trial court failed to properly inform him of the maximum penalties as required by Crim.R. 11(C)(2)(a).”

## **II. Law and Analysis**

{¶6} Appellant argues that his plea is invalid because the court failed to properly inform him of the maximum penalty involved, where appellant could have been subjected to additional penalties as a result of the violation of the terms of community control in another case.

{¶7} Crim.R. 11 requires a court to satisfy several requirements before accepting a guilty or no contest plea in a criminal case. Relevant to the present case, Crim.R. 11(C)(2) states:

In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and 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, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶8} The trial court must engage in a thorough colloquy to assure itself that a criminal defendant is entering a plea knowingly, intelligently, and voluntarily. *State v. Ballard*, 66 Ohio St.2d 473, 423 N.E.2d 115 (1981), paragraph one of the syllabus. Part of the court's responsibility is to accurately and clearly relay certain information set forth in the rule to defendants so they can make an informed decision.

The best way to ensure that pleas are entered knowingly and voluntarily is to simply follow the requirements of Crim.R. 11 when deciding whether to accept a plea agreement.

If a trial court fails to literally comply with Crim.R. 11, reviewing courts must engage in a multitiered analysis to determine whether the trial judge failed to explain the defendant's constitutional or nonconstitutional rights and, if there was a failure, to determine the significance of the failure and the appropriate remedy.

*State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 29-30.

{¶9} The maximum penalty a defendant faces for a given felony offense is supposed to be relayed pursuant to Crim.R. 11(C)(2)(a). This is a non-constitutional right as opposed to information relayed under Crim.R. 11(C)(2)(c). *Clark* at ¶ 31. Therefore, this court looks for substantial compliance. *Id.*, citing *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 12. “Under this standard, a slight deviation from the text of the rule is permissible; so long as the totality of the circumstances indicates that ‘the defendant subjectively understands the implications of his plea and the rights he is waiving,’ the plea may be upheld.” *Id.*, quoting *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

{¶10} Appellant claims his plea was not validly entered because the court failed to inform him of the maximum penalty he faced. At the plea hearing, before accepting appellant's plea, the following exchange took place:

THE COURT: Mr. Robinson, are you presently on community control sanctions, known as probation, in any other case?

THE DEFENDANT: Yes, sir.

THE COURT: Is that case with me or is it another court?

THE DEFENDANT: Another court.

THE COURT: Municipal court?

THE DEFENDANT: Yes.

THE COURT: Be advised that by entering your plea today that may be a violation of your probation terms, but that court will have to make up their mind about that when they find out about this.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Are you willing to go forward on that basis?

THE DEFENDANT: Yes.

THE COURT: All right. Are you presently on post-release control, sometimes referred to as parole or PRC?

THE DEFENDANT: No, sir.

(Tr. 7.)

{¶11} The court then went on to explain the maximum penalties involved as a result of the plea:

So it's attempted having weapons while under disability. That's in violation of two sections, the attempt statute, [R.C.] 2923.02, and 2923.13(A). As Count 1 is amended to take into consideration the attempt statute, it now is a felony of the fourth degree.

A felony of the fourth degree means I have two choices at the time of sentencing. We're not going to be sentencing today, but you need to know the risks involved. My choice is I could put you on probation for a term of up to five years.

I can require you to participate in programs beneficial to you and to the community, and I can put you in the county jail, not prison, but the county jail for up to 180 days.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: My only other choice, if I don't put you on probation, is to put you in prison for a period of time for a minimum of six months, a maximum of 18 months; and regardless of which one I pick, I can also fine you up to \$5,000.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: So if I put you in prison directly or if I put you on probation and you violate probation and then I put you in prison for the probation violation and you serve whatever time I order and are released, the State of Ohio has to make a decision whether or not to put you on post-release control, sometimes referred to as parole.

For a crime like this, it is optional. It is not mandatory that they do that. If they decide to do it, it will be up to three years.

If you are on post-release control and you violate those terms, you can be returned to prison for half of the time you served for that violation or if you draw a new case and are found guilty or plead guilty to that new case, you will have to stand for that new case punishment, plus that's a PRC violation, for which you can be returned to prison for the greater of one year or what remains of the three-year period and that might be held to serve consecutive to the sentence in the new case.

Do you understand all of that?

THE DEFENDANT: Yes.



THE COURT: You can also be charged with the crime of escape, which is a separate felony and has its own degree of prison time for a PRC violation.

Do you understand all of the risks involved for PRC?

THE DEFENDANT: Yes.

THE COURT: Now, do you have any questions about any of your rights, the nature of these charges or any of the risks or penalties that I have mentioned this morning?

THE DEFENDANT: No, sir.

(Tr. 10-12.)

{¶12} The transcript reveals that the court fully informed appellant of the potential penalties involved in this case. The court also informed appellant that he could be subjected to additional penalties if another court found that his conviction resulted in a violation of a condition of community control. The court substantially complied with Crim.R. 11 regarding the maximum potential penalty appellant faced.

{¶13} The court used the terms community control and probation together when explaining the potential punishments. However, the court made clear that it was referencing community control and that it was sometimes referred to as probation. The trial judge gave the proper legal term and followed that with the colloquial term with which more people may be familiar. The record indicates appellant subjectively and objectively understood the terms used: distinguishing between community control or probation on the one hand and postrelease control or parole on the other, and answering questions differentiating between the two. While there is a great deal of distinction

between postrelease control and parole as highlighted by the Ohio Supreme Court in *Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, at ¶ 36-37, that distinction is not relevant here. {¶14} Appellant argues the trial court erred because it did not inform appellant that the municipal court could sentence appellant to incarceration as a result of his plea. However, the trial court has no control or knowledge of the potential penalties for violating community control in a separate case before a different court. This is similar to a situation addressed by this court regarding the potential consequences for violating terms of parole. *State v. Cummings*, 8th Dist. Cuyahoga No. 89093, 2007-Ohio-6305. This court previously determined a trial court had no duty to explain the possible penalties that may result from a violation of parole imposed in a different case that may result from a guilty plea. *Id.* at ¶ 9-10. The *Cummings* court found that it was the parole authority, not the trial court that had control over the punishment for a violation of parole or even if the new criminal conviction constituted a violation of probation. *Id.* at ¶ 9, quoting *State v. Flint*, 36 Ohio App.3d 4, 10, 520 N.E.2d 580 (8th Dist.1986). Additionally, in *State v. Dotson*, 8th Dist. Cuyahoga No. 101911, 2015-Ohio-2392, this court rejected the argument that a trial court must inform a criminal defendant about the possibility that a court may impose a term of imprisonment for a violation of postrelease control that would arise as a result of a guilty plea. *Id.* at ¶ 12.

{¶15} The requirement appellant wishes to read into the criminal rule has no basis therein and has implicitly been rejected by this court. The “maximum penalty” specified in Crim.R. 11 applies to the charge to which the plea relates, not to possible consequences

that may be imposed by a different judge in an unrelated case. So this court has clearly determined that the trial court is not required to inform a criminal defendant of the consequences that may be imposed for a violation of community control. *Id.*

{¶16} The *Dotson* court cited *State v. Landgraf*, 2d Dist. Clark No. 2014 CA 12, 2014-Ohio-5488, as the only case to hold that any similar advisement is necessary under the rule. That court held that a plea was invalid where the court failed to inquire whether a defendant was on postrelease control and failed to advise him of any consequences from violating terms of that previously imposed postrelease control, including that any sentence for the violation could be imposed consecutive to other prison terms. *Landgraf* at ¶ 22. Here, the court did inquire if appellant was on community control and advised him that there may be consequences imposed by the other judge for any violation of terms of community control. Even under the holding of *Landgraf*, the trial court substantially complied with Crim.R. 11. While the better practice is to relay potential penalties that may result from a plea as the trial court did in the present case, the failure to do so does not render a plea void.

{¶17} Appellant's sole assignment of error is overruled.

### **III. Conclusion**

{¶18} The trial court substantially complied with Crim.R. 11 when it properly explained the maximum penalty involved for the charge presently before the trial court.

{¶19} Judgment affirmed.

It is ordered that appellee recover of said 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 common pleas court 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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FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

EILEEN T. GALLAGHER, J., and  
ANITA LASTER MAYS, J., CONCUR