

[Cite as *State v. Rolfes*, 2015-Ohio-4696.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 102521

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JEREMY ROLFES**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
AFFIRMED AND REMANDED

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-04-458493-A

**BEFORE:** Celebrezze, A.J., Jones, J., and Keough, J.

**RELEASED AND JOURNALIZED:** November 12, 2015

**ATTORNEY FOR APPELLANT**

Brian R. McGraw  
55 Public Square  
Suite 2100  
Cleveland, Ohio 44113

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
BY: Mary McGrath  
Assistant Prosecuting Attorney  
The Justice Center, 8th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

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

{¶1} Appellant, Jeremy Rolfes, appeals his aggravated murder conviction, arguing that his pleas were not entered knowingly, intelligently, and voluntarily. He asserts that the trial court did not properly inform him of parole, misadvised him about postrelease control, and prejudicially failed to comply with Crim.R. 11 before accepting his plea to aggravated murder. After a thorough review of the record and law, this court affirms, but remands for the issuance of a nunc pro tunc entry correcting appellant's sentence.

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

{¶2} Appellant was indicted on November 4, 2004, and charged with two counts of aggravated murder with felony murder and one- and three-year firearm specifications. Appellant was accused of murdering Gregory Brown. Appellant was assigned counsel, and the death penalty case proceeded through pretrial discovery and motions.

{¶3} On June 14, 2005, appellant retracted his former not guilty pleas and entered a plea of guilty to an amended charge of aggravated murder, a violation of R.C. 2903.01, with a one-year firearm specification in Cuyahoga C.P. No. CR-04-458493-A. At the same hearing, appellant also pled guilty to drug trafficking, a violation of R.C. 2925.03, in Cuyahoga C.P. No. CR-04-459857. The court immediately proceeded to sentence appellant on both cases to an aggregate sentence of 21 years to life in prison: 20-years-to-life imprisonment for aggravated murder to be served consecutive to one year for the firearm specification, and six months for drug trafficking to be served concurrent to the other sentence. The court's journal entry indicates that "postrelease control is a part of this prison sentence for the maximum time allowed for the above felony(s) under R.C. 2967.28." The court orally informed appellant that he was subject to a mandatory period of postrelease control for five years.

{¶4} In 2015, appellant filed a motion seeking leave to file a delayed appeal, which this court granted. Appellant was appointed counsel, who filed an appellate brief assigning two errors for review:

I. [Appellant] entered a guilty plea without having  
been fully advised of  
all of the potential  
consequences of his  
plea; in other words,  
the plea process was  
not in substantial  
compliance with  
Criminal Rule 11(C).

II. [Appellant] was not properly advised of parole, a mistake by the trial court that resulted in substantial prejudice.

## **II. Law and Analysis**

### **A. Validity of Pleas**

{¶5} In his first assignment of error, appellant claims the court failed to properly advise him of his rights before accepting his pleas.

{¶6} 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,

[i]n 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.

{¶7} 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 information set forth in the rule to the defendant so that an informed decision can be made. The best way to ensure that pleas are entered knowingly and voluntarily is to simply follow the requirements of Crim.R. 11 when conducting a plea hearing.

{¶8} If a trial court fails to literally comply with Crim.R. 11, this court engages in a multitiered analysis to determine whether the trial judge failed to explain a defendant's constitutional or nonconstitutional rights because the analysis differs between the two. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 29-30.

{¶9} Appellant claims the court failed to advise him of the maximum penalties involved, the statutory code sections of the charged crimes, the potential for fines, that he was not subject to early or judicial release, and he would be subject to parole and postrelease control.<sup>1</sup> These alleged failings all fall under Crim.R. 11(C)(2)(a) and are nonconstitutional rights. *Clark* at ¶ 31.

{¶10} If the trial court imperfectly relayed information regarding non-constitutional rights, this court will then examine whether the error prejudiced the defendant. However, “[a] complete failure to comply with the rule does not implicate an analysis of prejudice.” *Id.* at ¶ 32, quoting *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, 881 N.E.2d 1224, paragraph two of the syllabus.

{¶11} Here, the trial court did mention the maximum penalties, the nature of the charges, and any early release. Therefore, this court must engage in a prejudice analysis to determine whether the trial court’s failure to properly inform appellant of these things rendered his pleas unknowing, unintelligent, or involuntary. The test for prejudice is “whether the plea would have otherwise been made.” *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

{¶12} When the state was explaining the plea agreement on the record, the prosecutor indicated that for the charge of aggravated murder, the penalty agreed to between the parties was a sentence of 20 years to life in prison without the possibility of early parole. (Tr. 11.) There would also be a consecutive one-year sentence for the firearm specification. The trial court stated the same terms. It advised appellant that by pleading guilty to aggravated murder, he

---

<sup>1</sup> Because appellant assigns a separate error related to the trial court’s information regarding parole and postrelease control, that topic will be addressed in the analysis for the second assignment of error.

would be subject to possible incarceration for 20 years to life, and there would be no possibility of early parole. The court similarly advised appellant of the sentence for the firearm specification. The court failed to advise appellant of the actual sentencing range for aggravated murder, which included life imprisonment without parole or parole eligibility after 20, 25, 30 years. Former R.C. 2929.03. The sentence also carried with it the possibility of a fine up to \$25,000. Former R.C. 2929.02(A).

{¶13} It is clear from the record that the trial court failed to inform appellant of the maximum penalties he faced prior to accepting his guilty plea to aggravated murder. However, appellant was not prejudiced by this failure. Appellant received a 21-year-to-life prison sentence, no fines were imposed, and appellant was informed that he would not be eligible for early release. The trial court imposed the sentence of which appellant was informed at the plea hearing. As the sentencing transcript indicates, there was an agreed sentence as part of the plea deal, which the court imposed. Appellant was not prejudiced by the failure to advise him of the possible range of penalties because the court informed him of all aspects of the sentence that was actually imposed.

{¶14} Appellant was also properly informed of the charges against him. Appellant argues that the court failed to comply with Crim.R. 11 because it failed to state the statutory code section under which he was charged. However, appellant was informed of the type and nature of that charge. For instance, the prosecutor explained that appellant was charged and would plead guilty to aggravated murder, an unclassified felony and further included the statutory definition of that charge (purposefully causing the death of Gregory Brown “while committing or attempting to commit or while fleeing immediately after committing or attempting to commit

aggravated robbery.”) (Tr. 11.) Therefore, appellant was not prejudiced by the alleged failure even if the court was required to state the revised code section for aggravated murder.

{¶15} Appellant was not prejudiced by the advisement relating to the above arguments before the court accepted his guilty plea to aggravated murder. Therefore, this assigned error is overruled.

### **B. Advisement Regarding Parole**

{¶16} Appellant was advised that he would be ineligible for early parole but was also advised about postrelease control at the plea hearing. Appellant entered pleas in two cases during the change of plea hearing. Besides the aggravated murder charge in Case No. CR-04-458493, in Case No. CR-04-459857 appellant pled guilty to fifth-degree felony drug trafficking, a violation of R.C. 2925.03(A). Appellant was properly advised of the possible range of imprisonment. At the end of the colloquy, the court informed appellant that he would be subject to five years of postrelease control should he be released from prison. The court did not reference to which charge this period of control related. However, the journal entry of sentence in CR-458493 references a period of community control.

{¶17} Postrelease control is a part of the sentence imposed for drug trafficking. R.C. 2967.28. The court improperly informed appellant that it would be up to five years. In fact, postrelease control was discretionary for up to three years for a fifth-degree felony. Former R.C. 2967.28(C).

{¶18} Appellant argues that postrelease control was not a part of the sentence and that appellant was subject to parole, not postrelease control. However, the change of plea hearing and the sentencing dealt with two cases and the advisement regarding postrelease control came after the court referenced penalties for both charged crimes. Therefore, it can be said that the



advisement about postrelease control, although incorrect in duration, was a proper part of the sentence in Case No. CR-04-459857.

{¶19} Generally, a court does not have to inform a defendant about the possibilities or intricacies of parole for a sentence that could last for the defendant's lifetime. *Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, at ¶ 37 ("Because parole is not certain to occur, trial courts are not required to explain it as part of the maximum possible penalty in a Crim.R. 11 colloquy."). However, when the court does convey information about parole or informs a defendant subject to parole facts regarding postrelease control, the defendant may be prejudiced by the improper information. *Id.* at ¶ 41.

{¶20} In *Clark*, the defendant was improperly informed of postrelease control provisions when he was subject to parole, not postrelease control. The Ohio Supreme Court recognized that the trial court did not have to inform the defendant of parole, but when it did convey information about an inapplicable period of postrelease control, the trial court erred. *Id.* at ¶ 39.

That error could, in certain circumstances, result in prejudice. The *Clark* court remanded the case to the appellate court to undertake a prejudice analysis. *Id.* at ¶ 41.

{¶21} This court has previously applied the *Clark* decision to a case similar to the one presently before us. *State v. Rogers*, 8th Dist. Cuyahoga No. 99246, 2013-Ohio-3246. In *Rogers*, the trial court improperly informed the defendant pleading guilty to murder about an inapplicable period of postrelease control. This court undertook a prejudice analysis when reviewing the trial court's decision denying a postsentence motion to withdraw a guilty plea and determined that the record did not support any. *Id.* at ¶ 36-37.

{¶22} Here, appellant was subject to a period of postrelease control for the felony drug trafficking charge, but the court misadvised appellant of the discretionary nature and length of

that control. The court also improperly included a postrelease control sanction in the journal entry of sentence in Case No. CR-04-458493. The trial court was otherwise not obligated to inform appellant of parole. *Clark* at ¶ 37. *See also* R.C. 2929.19.

{¶23} The advisement during the plea colloquy did not result in prejudice. Appellant has failed to show that he would not have entered his plea in light of the significant deal offered by the state in removing the specifications that could have resulted in capital punishment, the three-year firearm specification, and dismissing other serious charges including aggravated robbery. *See State v. Anderson*, 8th Dist. Cuyahoga No. 92576, 2010-Ohio-2085, ¶ 29. This case is not similar to one where a defendant asked specific questions about parole and postrelease control to which the trial court gave incorrect responses. *State v. Wolford*, 8th Dist. Cuyahoga No. 92607, 2010-Ohio-434. The record does not indicate appellant was under the mistaken belief that he would not be subject to parole after his possible release from prison. Appellant's second assignment of error is overruled.

### III. Conclusion

{¶24} Appellant was not properly advised of the maximum penalty he faced, but that failure did not result in prejudice. Appellant was subject to postrelease control for the drug trafficking conviction and the court was not required to advise appellant about the terms or conditions of parole applicable to a murder charge prior to accepting his plea. However, the court erred in setting forth a term of postrelease control in the journal entry of sentence in Case No. CR-04-458493. The trial court must amend the journal entry of sentence nunc pro tunc to remove any period of postrelease control from Case No. CR-04-458493.

{¶25} Judgment affirmed; cause remanded to the lower court for the issuance of a nunc pro tunc entry consistent with this opinion.

It is ordered that appellant and appellee share the 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated.

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

---

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

LARRY A. JONES, SR., J., and  
KATHLEEN ANN KEOUGH, J., CONCUR