

[Cite as *State v. Studgions*, 2016-Ohio-4701.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103612

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMIE P. STUDGIONS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART, REVERSED IN PART
AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-594528-A

BEFORE: E.A. Gallagher, P.J., E.T. Gallagher, J. and S. Gallagher, J.

RELEASED AND JOURNALIZED: June 30, 2016

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Jamie Studgions appeals his plea and sentence in the Cuyahoga County Court of Common Pleas. For the following reasons, we affirm in part, and reverse in part.

Facts and Procedural Background

{¶2} Studgions plead guilty to aggravated robbery, domestic violence and child endangering. The trial court merged Studgions' aggravated robbery and domestic violence counts as allied offenses of similar import and the state elected to have Studgions sentenced on the aggravated robbery charge. The trial court imposed an 11-year prison term on the aggravated robbery count, a 180-day term of local incarceration on the child endangering count and ordered the counts to run consecutively.

Law and Analysis

I. Consecutive and Maximum Sentences

{¶3} In his first assignment of error, Studgions argues that the trial court erred in imposing consecutive sentences for his felony count of aggravated robbery and misdemeanor count of child endangering and in imposing the maximum available sentences. The state concedes the former argument pursuant to *State v. Polus*, 145 Ohio St.3d 266, 2016-Ohio-655, 48 N.E.3d 553, wherein the Ohio Supreme Court held that pursuant to R.C. 2929.41(A) a trial court must impose concurrent sentences for felony and misdemeanor convictions unless the exception within R.C. 2929.41(B)(3) for certain

motor vehicle offenses applies. Because the exception in R.C. 2929.41(B)(3) is inapplicable to this case we find that the trial court erred in imposing consecutive sentences for Studgions' felony and misdemeanor offenses.

{¶4} Studgions' remaining consecutive sentences arguments are moot. However, we will address his contention that the trial court erred in imposing maximum sentences in this instance.

{¶5} We review felony sentences under the standard set forth in R.C. 2953.08(G)(2). *State v. Marcum*, Slip Opinion No. 2016-Ohio-1002, ¶ 16. Under R.C. 2953.08(G)(2), an appellate court may increase, reduce or modify a challenged felony sentence or may vacate the sentence and remand the matter to the sentencing court for resentencing if it "clearly and convincingly finds" that the sentence is "contrary to law." R.C. 2953.08(G)(2).

{¶6} A sentence is contrary to law if the trial court fails to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12. *State v. Carrington*, 8th Dist. Cuyahoga No. 100918, 2014-Ohio-4575, ¶ 22, citing *State v. Hodges*, 8th Dist. Cuyahoga No. 99511, 2013-Ohio-5025, ¶ 7.

{¶7} Studgions argues that maximum sentences are clearly and convincingly not supported by the record in this case and in excess of what is necessary to incapacitate him, deter him from committing future crime and rehabilitate him.

{¶8} R.C. 2929.11 provides that a sentence imposed for a felony shall be reasonably calculated to achieve two “overriding purposes” of felony sentencing: (1) “to protect the public from future crime by the offender and others” and (2) “to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.” R.C. 2929.11(A), (B). R.C. 2929.11(A) states that “[t]o achieve these purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.” R.C. 2929.11(B) further requires that the sentence imposed be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim” and “consistent with sentences imposed for similar crimes committed by similar offenders.”

{¶9} R.C. 2929.12 grants discretion to the trial court to determine the most effective way to comply with the purposes and principles set forth in R.C. 2929.11 when imposing a sentence. However, in exercising this discretion, the court must consider a non-exhaustive list of factors relating to the seriousness of the offender’s conduct and the likelihood of recidivism and may, in addition, consider any other factors relevant to achieving these purposes and principles of sentencing. Regarding the imposition of the maximum sentences, there is no statutory requirement for findings in order to impose such a sentence, and a trial court has the discretion to impose a prison sentence within the statutory range. “Trial courts have full discretion to impose a prison sentence within the

statutory range and are no longer required to make findings or give their reasons for imposing maximum * * * sentences.” *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus.

{¶10} On the record before us, we cannot say that the trial court’s imposition of maximum sentences was clearly and convincingly not supported by the record. The record reflects that Studgions and Yeletta Coulter were in a dating relationship at the time of the offense. On March 28, 2015 Coulter was at home with her 12-year old grandson when Studgions arrived, visibly drunk. Coulter demanded Studgions leave but he refused and began striking Coulter in the face while demanding money. The confrontation escalated and Studgions stabbed Coulter in the hand and arm with a grilling fork before stabbing her twice in the chest with a butcher knife. Studgions has a history of criminal conduct including convictions for receiving stolen property, attempted first degree murder, theft, armed robbery, soliciting, disorderly conduct, aggravated vehicular highjacking and aggravated robbery. Studgions was also on postrelease control at the time of the offense. Based on these facts, we find no error in the trial court’s imposition of maximum sentences.

{¶11} Studgions’s first assignment of error is sustained, in part, and overruled, in part.

II. Guilty Plea

{¶12} In his second assignment of error Studgions argues that his guilty plea was invalid because the trial court failed to inform him that if he violates the conditions of

postrelease control the parole board may impose upon him a residential sanction that includes a new prison term of up to nine months pursuant to R.C. 2943.032.

{¶13} In this instance, the trial court informed Studgions that he would be subject to five years of mandatory postrelease control, and if he violated the terms and conditions of postrelease control, he could be sent back to prison for “up to one-half of the original sentence.”

{¶14} Among other requirements, Crim.R. 11(C)(2) mandates that when a defendant pleads guilty, the trial court must personally address the defendant and determine that the defendant is making the plea voluntarily with an understanding of the nature of the charges and the maximum penalty.

{¶15} A trial court must strictly comply with the Crim.R. 11(C)(2)(c) requirements regarding the waiver of constitutional rights, which means that the court must actually inform the defendant of his constitutional rights he is waiving and make sure that the defendant understands them. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 18, 27.

{¶16} With respect to nonconstitutional rights, which are set forth in Crim.R. 11(C)(2)(a) and (b), “substantial compliance” is sufficient. *Id.* at ¶ 14, citing *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), citing *Stewart*. “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.’” *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 31, quoting *Nero* at 108.

{¶17} When the trial court does not “substantially comply” with Crim.R. 11(C)(2)(a), a reviewing court must then “determine whether the trial court partially complied or failed to comply with this rule.” *Clark* at ¶ 32. *See also State v. Soltis*, 8th Dist. Cuyahoga No. 92574, 2009-Ohio-6636, citing *Clark*. “If the trial judge partially complied, e.g., by mentioning mandatory postrelease control without explaining it, the plea may be vacated only if the defendant demonstrates a prejudicial effect.” *Id.*, citing *Nero*. The test for prejudice is “whether the plea would have otherwise been made.” *Nero* at 108.

{¶18} In cases involving a mandatory period of postrelease control, postrelease control is part “of the maximum penalty involved in an offense for which a prison term will be imposed.” *State v. Perry*, 8th Dist. Cuyahoga No. 82085, 2003-Ohio-6344, ¶ 10, citing *State v. Jones*, 8th Dist. Cuyahoga No. 77657, 2001 Ohio App. LEXIS 2330 (May 24, 2001). However, the advisement about the maximum penalty involved is a nonconstitutional right and the substantial compliance rule applies. *State v. Gonzalez*, 8th Dist. Cuyahoga No. 100848, 2015-Ohio-673, ¶ 11.

{¶19} Studgions argues that his plea is invalid because the trial court stated that he could be returned to prison for “up to one-half of the original sentence” rather than “nine

months” in conformance with R.C. 2943.032. Ohio courts have previously rejected this argument and found substantial compliance where the court informed the defendant that a violation of postrelease control could result in a prison term of “up to one half” of the original sentence rather than nine-months. *State v. Jennings*, 2d Dist. Clark No. 2013 CA 60, 2014-Ohio-2307, ¶ 12; *State v. Jones*, 2d Dist. Montgomery No. 24772, 2013-Ohio-119, ¶ 8; *State v. Cargill*, 9th Dist. Summit Nos. 27011 and 27590, 2015-Ohio-661, ¶ 6.

{¶20} The above decisions reasoned that a defendant cannot show prejudice where a trial court erroneously overstates the length of additional prison time that can be imposed for a violation of postrelease control conditions. These decisions are consistent with our own authority. *See, e.g., State v. Achtziger*, 8th Dist. Cuyahoga No. 94752, 2011-Ohio-333 (finding no violation of Crim.R. 11 where the trial court failed to strictly conform to R.C. 2943.032 by informing the defendant that he could face a new prison term of up to nine months for a violation of postrelease control); *State v. White*, 8th Dist. Cuyahoga No. 95098, 2011-Ohio-1562, ¶ 18-21 (holding that a trial court is not required to inform a defendant that he would be subject to periods of imprisonment of nine months for subsequent violations of postrelease control but only that a violation of his postrelease control could result in a prison term of up to one-half his original sentence); *State v. Gonzalez*, 8th Dist. Cuyahoga No. 100848, 2015-Ohio-673, ¶ 13-14 (finding no evidence of prejudice where the trial court failed to inform the defendant that a postrelease control violation may result in a prison term of up to one-half of his original sentence); *State v.*

Collins, 8th Dist. Cuyahoga No. 91113, 2009-Ohio-851, ¶ 11-14 (finding substantial compliance where the trial court alluded to a violation of postrelease control resulting in a prison term of “half the time that you’ve been sentenced to” rather than verbatim compliance with R.C. 2943.032). Consistent with the above authority we find no evidence of prejudice to Studgions on the record before us.

{¶21} Studgions’s second assignment of error is overruled.

{¶22} The judgment of the trial court is affirmed in part, reversed in part, and remanded to the lower court for further proceedings 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 in part, any bail pending is terminated. Case remanded to the trial court for further proceedings consistent with this opinion.

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

EILEEN A. GALLAGHER, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
SEAN C. GALLAGHER, J., CONCUR