

In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case Nos. 2024-1464
	:	
Appellee,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
ALBERT FONTANEZ,	:	
	:	Court of Appeals
Appellant.	:	Case No. CA-23-113105

**MERIT BRIEF OF AMICUS CURIAE OHIO ATTORNEY GENERAL
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INTRODUCTION

Before trial courts may accept guilty pleas, they must inform defendants of several things. They must inform defendants who plead guilty to committing a felony of the constitutional rights they are giving up. *See* Crim.R.11(C)(2)(c). And they must inform *all* defendants, regardless of whether they are pleading guilty to a felony or a misdemeanor, of the “effect of the plea of guilty.” Crim.R.11(C)(2)(b); *see also* Crim.R.11(D) and (E). While it might seem obvious that defendants who plead guilty would understand that they are admitting their guilt, what *exactly* a court must say to defendants who plead guilty has been the subject of considerable debate. *See State v. Griggs*, 2004-Ohio-4415; *State v. Jones*, 2007-Ohio-6093.

This certified conflict case is the latest in a line of cases that have addressed that question. It asks whether a guilty plea is invalid when a trial court “fails to explicitly state that a guilty plea constitutes a complete admission of guilt” even though the court “otherwise complies with the requirements of Crim.R.11(C)(2), the admission of guilt is obvious from the context of the plea colloquy, and the defendant does not assert actual innocence?”

The Court’s precedent appears to already answer that question. The Court held over twenty years ago that defendants who have “entered a guilty plea without asserting actual innocence” are rarely prejudiced by a trial court’s failure to state that a guilty plea constitutes an admission of guilt because such defendants are “presumed to understand

that [they have] completely admitted [their] guilt.” *Griggs*, 2004-Ohio-4415 at ¶19; *see also Jones*, 2007-Ohio-6093 at ¶54. If *Griggs* and *Jones* had been the last word on the matter, then there would be no certified question for the Court to answer.

The certified question at issue here arises because of two of this Court’s more recent decisions, *State v. Sarkozy*, 2008-Ohio-509, and *State v. Dangler*, 2020-Ohio-2765. Those decisions involved Crim.R.11(C)(2)(a), which requires trial courts to inform defendants of “the maximum penalty” for the offenses involved. *See Sarkozy*, 2008-Ohio-509 at ¶22; *Dangler*, 2020-Ohio-2765 at ¶18. Although courts had traditionally required defendants to demonstrate prejudice whenever a trial court had “substantially” complied with the nonconstitutional requirements of Crim.R.11, *Sarkozy* held that the prejudice requirement did not apply when a court “completely failed” to comply with the rule. *Sarkozy*, 2008-Ohio-509 at ¶22. *Dangler* did away with the substantial compliance test and replaced that “muddled” test with a simpler three-part inquiry. *Dangler*, 2020-Ohio-2765 at ¶17. But it retained *Sarkozy*’s “completely failed” language—even though that language, like the “substantial compliance” standard that *Dangler* abandoned, measures the degree of a trial court’s compliance (or noncompliance) with Crim.R.11. *Id.* at ¶23.

Some courts have cited *Sarkozy* and *Dangler* as a reason to disregard *Griggs* and/or *Jones*. *See State v. Howard*, 2025-Ohio-340, ¶27 (11th Dist.); *State v. Jackson*, 2022-Ohio-3662, ¶12 (2d Dist.); *see also State v. Fox*, 2024-Ohio-349 (5th Dist.) (failing to apply *Griggs* and *Jones* without citing *Sarkozy* or *Dangler*). Those courts have held that a trial court

“completely” fails to comply with Crim.R.11 when it does not recite the words found in Crim.R.11(B)(1). *See id.* They have held that defendants in such cases therefore no longer need to demonstrate the prejudice that *Griggs* and *Jones* require. *See id.*

Other courts, like the Eighth District here, have continued to apply *Griggs* and *Jones*. *See State v. Fontanez*, 2024-Ohio-4579, ¶¶15–20 (8th Dist.) (en banc) (“App.Op.”). The Eighth District explained in this case that the Court has never overruled *Griggs*, that “inferior courts are generally bound by the precedent of superior courts,” and that the Court’s “reasoning in *Griggs* is consistent with the common-sense approach to the review of guilty pleas articulated in *Dangler*.” *Id.* at ¶¶15 and 18.

The certified question provides an opportunity for the Court to resolve this confusion and to reaffirm what it held over twenty years ago in *Griggs*. It should hold that *Sarkozy* and *Dangler* did not overrule sub silentio the Court’s earlier decisions in *Griggs* and *Jones*. And it should answer the certified question by holding, consistent with its earlier decisions, that a guilty plea of the type described by the certified question is valid unless a defendant asserted his innocence at the time he entered the plea.

STATEMENT

Albert Fontanez was charged with eighteen crimes across five separate cases. App.Op.¶45. Among other things, the State charged Fontanez with multiple counts of aggravated robbery and felonious assault, including a felonious assault charge that carried a one- and three-year firearm specification. *Id.* at ¶47. The State also charged him

with independent firearm-related crimes, including two counts of having weapons while under disability and one count of improper handling of firearms in a motor vehicle. *See id.* The State eventually offered Fontanez a plea deal that would significantly reduce the number of charges Fontanez faced and similarly reduce the sentence that Fontanez could potentially receive. *See id.* at ¶48. Fontanez initially rejected the State’s plea offer. App.Ct.R.7, Hearing Tr.6–7 (June 28, 2023). But at the final pretrial hearing, the State put that plea offer on the record nevertheless. *See* App.Ct.R.7, Hearing Tr.18–43. For each of the five pending cases, the trial court explained to Fontanez the charges that he was facing, along with the potential penalties, and the State explained its offer with respect to that case. *See id.* After consulting with his attorney, Fontanez decided to accept the State’s offer and plead guilty. App.Ct.R.7, Hearing Tr.44–47.

The trial court informed Fontanez of the rights that he would be giving up as a result of his guilty pleas. It explained the rights that he would have had, had he gone to trial, App.Ct.R.7, Hearing Tr.48–49, and it informed him of the process by which he would be sentenced if he pleaded guilty, *id.* at 49. The trial court then walked through each of the five pending cases, recited the underlying elements of the charges, and accepted Fontanez’s guilty plea as to those charges. *See* App.Ct.R.7, Hearing Tr.53–66. The court scheduled a sentencing hearing for several weeks later. App.Ct.R.7, Hearing Tr.69.

Several of Fontanez’s victims testified at his sentencing hearing. App.Ct.R.7, Hearing Tr.80–97 (July 20, 2023). They described the trauma they continued to suffer as a result

of Fontanez's actions. *See id.* One of the victims, whom Fontanez had intentionally hit with his car, testified that he still suffered from a broken clavicle, along with kidney and lung problems that the car's tire caused. App.Ct.R.7, Hearing Tr.87. Another victim described how he was assaulted by Fontanez and one of Fontanez's friends, while yet another friend of Fontanez restrained the victim's girlfriend. App.Ct.R.7, Hearing Tr.93–95.

When it was Fontanez's turn to address the court, he stated that while he was "willing to take fault" for his part in the charged crimes "100 percent," he did not "agree to all the circumstances and how they happened exactly how the victims say they happened." App.Ct.R.7, Hearing Tr.108. He questioned "what makes what [the victims] say factual?" and, when the court told Fontanez that he had admitted those facts when he pleaded guilty, Fontanez stated that he wanted to withdraw his plea. App.Ct.R.7, Hearing Tr.109. The trial court called a recess and gave Fontanez an opportunity to consult with his attorney. App.Ct.R.7, Hearing Tr.110.

When the sentencing hearing resumed, counsel informed the trial court that Fontanez did indeed wish to withdraw his plea. According to his counsel, the reason for Fontanez's change of heart was that he had been indicted in two additional cases that were not part of the original five-case plea agreement. App.Ct.R.7, Hearing Tr.112. Fontanez did not offer any reason other than this "change of heart" for wanting to withdraw his guilty plea. App.Ct.R.7, Hearing Tr.117.

The trial court denied Fontanez's request to withdraw his plea. It concluded that Fontanez was not surprised by his arraignment in the two new cases. App.Ct.R.7, Hearing Tr.118–19. And it further concluded that the State would be prejudiced if the court allowed Fontanez to withdraw his plea. App.Ct.R.7, Hearing Tr.121.

Fontanez appealed to the Eighth District Court of Appeals, raising two assignments of error. He alleged 1) that the trial court failed to adequately inform him of the effect of his guilty plea and 2) that the trial court erred in denying his motion to withdraw his plea. *See* Fontanez App.Ct.Br. A divided panel affirmed. *See State v. Fontanez*, 2024-Ohio-1590 (8th Dist.). As is relevant here, the panel majority held that “[b]ecause a guilty plea is obviously an admission of guilt,” Fontanez was required to show that he was prejudiced by the trial court’s failure to recite the specific language found in Crim.R.11(B)(1). *Id.* at ¶17. Fontanez, the majority held, did not even attempt to make that showing. He did not, the majority wrote, “claim any prejudice.” *Id.* at ¶21. Judge Ryan dissented. Citing this Court’s decision in *Dangler*, the dissent would have held that Fontanez was not required to show prejudice. *See id.* at ¶41 (Ryan, J., dissenting).

The Eighth District sua sponte granted en banc review on the basis that its decision conflicted with other Eighth District panel opinions. *See State v. Fontanez*, 2024-Ohio-4579, ¶1 (8th Dist.). The en banc court focused on two legal questions: 1) whether the trial court’s failure to inform Fontanez that a guilty plea is “a complete admission of guilt constitutes a complete failure to comply with Crim.R. 11 such that a showing of prejudice

is not required to invalidate the plea,” and 2) whether this Court’s decision in *Griggs* remains good law after the Court’s later decision in *Dangler*. *Id.* at ¶5.

A majority of the Eighth District held that *Griggs* remains good law and that, absent a claim of actual innocence, courts may presume that defendants who plead guilty understand that their pleas are a complete admission of guilt. *Id.* at ¶20. Judge Ryan, joined by several other members of the Eighth District, dissented again. *See id.* at ¶¶22–44. The dissent would have held that the trial court failed to completely comply with Crim.R.11 and that “*Griggs* cannot coexist with *Dangler*.” *Id.* at ¶43 (Ryan, J., dissenting).

After the Eighth District granted en banc review, but before it issued its en banc opinion, Fontanez had moved to certify a conflict with the Fifth District’s decision in *Fox*, 2024-Ohio-349 (5th Dist.). *See* App.R.26, Motion to Certify a Conflict. After the Eighth District issued its en banc decision it granted his motion, finding that a conflict existed with respect to the *Fox* decision, as well as the Second District’s decision in *State v. Dumas*, 2024-Ohio-2731 (2d Dist.). R.37, Sept. 20, 2024 Order.

Fontanez sought two different forms of review in this Court. He filed a notice of certified conflict. And he separately filed a memorandum in support of jurisdiction. His memorandum in support of jurisdiction contained a single proposition of law, which challenged the trial court’s refusal to allow him to withdraw his guilty plea. The Court determined that a conflict exists, but denied Fontanez’s request for discretionary review. 01/22/2025 Case Announcements, 2025-Ohio-156.

ARGUMENT

Certified conflict question:

Does a trial court completely fail to comply with Crim.R. 11(C)(2) so as to render a guilty plea invalid when it fails to explicitly state that [a] guilty plea constitutes a complete admission of guilt[] where the trial court otherwise complies with the requirements of Crim.R. 11(C)(2), the admission of guilt is obvious from the context of the plea colloquy, and the defendant does not assert actual innocence?

The effect of a guilty plea is, or at least should be, obvious. A “plea of guilty, from an early period in the history of criminal procedure, both in England and in the several states of the Union, has been regarded as an admission of every material fact well pleaded in the indictment, dispensing with the necessity of proving them, and authorizing the court to proceed to judgment.” *Craig v. State*, 49 Ohio St. 415, 418 (1892). Lest there be any doubt about what a guilty plea signifies, Crim.R.11 requires courts to inform defendants who wish to plead guilty about the “effect of the plea of guilty.” Crim.R.11(C)(2)(b), (D), and (E). Specifically, the rule requires courts to tell defendants that a “plea of guilty is a complete admission of the defendant’s guilt.” Crim.R.11(B)(1); *see also Jones*, 2007-Ohio-6093 at ¶25.

A court’s failure to provide the required advisement does not automatically call into question the validity of a defendant’s guilty plea. Although “failure to adequately inform a defendant of his constitutional rights would invalidate a guilty plea under a presumption that it was entered involuntarily and unknowingly, failure to comply with nonconstitutional rights will not invalidate a plea unless the defendant thereby suffered

prejudice.” *Griggs*, 2004-Ohio-4415 at ¶12. The test for prejudice, the Court has held, is “whether the plea would have otherwise been made.” *Id.* (quoting *State v. Nero*, 65 Ohio St. 3d 106, 108 (1990)).

Prejudice is difficult to prove for a defendant who seeks to challenge his guilty plea on the basis that the court of common pleas did not inform him that the effect of that plea was a complete admission of guilt. The Court has held that because a “defendant who has entered a guilty plea without asserting actual innocence is presumed to understand that he has completely admitted his guilt ... a court’s failure to inform the defendant of the effect of his guilty plea as required by Crim.R. 11 is presumed not to be prejudicial.” *Griggs*, 2004-Ohio-4415 at syl.; see *Jones*, 2007-Ohio-6093 at ¶54. Thus, under *Griggs* and *Jones*, a court’s failure to inform a defendant that a guilty plea is a complete admission of guilt provides a reason to vacate that plea only if the defendant asserted that he was innocent at the time he pleaded guilty. See *id.*

Despite this seemingly clear precedent, a split has developed among Ohio appellate courts over whether and when a common pleas court’s failure to advise a defendant about the consequences of a guilty plea requires a reviewing court to vacate the plea on appeal. The Second, Fifth, and Eleventh appellate districts have held that this Court implicitly overruled *Griggs* and *Jones* when it decided *Sarkozy* and *Dangler*. See *State v. McGlinch*, 2019-Ohio-1380, ¶29 (2d Dist.); *Dumas*, 2024-Ohio-2731 (2d. Dist.); *Howard*, 2025-Ohio-340 at ¶¶25–27 (11th Dist.); see also *Fox*, 2024-Ohio-349 (5th Dist.) (failing to

apply *Griggs* and *Jones* without citing *Sarkozy* or *Dangler*). The Court in *Sarkozy* held that a defendant is not required to show prejudice when a trial court completely fails to comply with Crim.R.11. *Sarkozy*, 2008-Ohio-509 at ¶22. And in *Dangler* it changed the analytical framework that applies to Crim.R.11 errors by abandoning the “tiers of compliance” analysis that it had traditionally applied to such claims. *See Dangler*, 2020-Ohio-2765 at ¶17.

The Eighth District, by comparison, continues to apply *Griggs* and *Jones*. *See App.Op.*¶¶15–20. It has the better reading of the Court’s precedent. Although *Dangler* changed the way that courts must approach Crim.R.11 claims, it did not undermine *Griggs*’s foundational premise: that “a defendant who has entered a guilty plea without asserting actual innocence is presumed to understand that he has completely admitted his guilt.” *See Griggs*, 2004-Ohio-4415 at ¶19.

The Court should answer the certified question by reaffirming its decision in *Griggs* and holding that unless a defendant asserts his innocence at the time he pleads guilty, “a court’s failure to inform the defendant of the effect of his guilty plea as required by Crim.R. 11 is presumed not to be prejudicial.” *Griggs*, 2004-Ohio-4415 at syl. It should further hold that the Eighth District correctly determined that Fontanez cannot demonstrate the prejudice that *Griggs* and *Jones* require.

I. The Court did not implicitly overrule *Griggs* and *Jones* when it decided *Dangler* or *Sarkozy*.

For many years, the Court evaluated a trial court's compliance with the requirements of Crim.R.11 under a "substantial compliance" standard. See *State v. Stewart*, 51 Ohio St. 2d 86, syl. (1977); *Nero*, 56 Ohio St. at 108; *Griggs*, 2004-Ohio-4415 at ¶12; *Sarkozy*, 2008-Ohio-509 at ¶¶19–20; *State v. Clark*, 2008-Ohio-3748, ¶32. Under that standard, appellate courts were instructed to determine whether a common pleas court had substantially complied with the nonconstitutional requirements of Crim.R.11. "Substantial compliance," the Court instructed, meant that "under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving." *Nero*, 56 Ohio St. 3d at 108. Even if a common pleas court did not recite the "precise verbiage" of Crim.R.11, a defendant's guilty plea remained valid as long as the common pleas court had substantially complied with the rule and the defendant could not demonstrate prejudice. See *Stewart*, 51 Ohio St. 2d at 91–92; see *Nero*, 56 Ohio St. 3d at 108–09.

The Court in *Dangler* abandoned the substantial compliance approach to analyzing alleged Crim.R.11 errors. It held that the Court had "muddled" its caselaw by "suggesting different tiers of compliance" with Crim.R.11. *Dangler*, 2020-Ohio-2765 at ¶17. Rather than asking whether a common pleas court "partial[ly]" or "substantially" complied with Crim.R.11, the Court held that the relevant questions were: "(1) has the trial court complied with the relevant provision of the rule? (2) if the court has not

complied fully with the rule, is the purported failure of a type that excuses a defendant from the burden of demonstrating prejudice? and (3) if a showing of prejudice is required, has the defendant met that burden?" *Id.*

What the Court *did not* do in *Dangler* is overrule *Griggs* and *Jones*. *Dangler*, which involved a no-contest plea and not a guilty plea, did not even cite either decision. *See generally Dangler*, 2020-Ohio-2765. If anything, *Griggs* and *Jones* are even more relevant now because they answer two of the questions that are dispositive under *Dangler*'s analytical approach. They indicate both (1) that a common pleas court's failure to inform a defendant that a guilty plea is a complete admission of guilt is the type of error that *does* require a defendant to demonstrate prejudice and (2) that a defendant cannot demonstrate prejudice unless he asserted his innocence at the time he pleaded guilty. *See Griggs*, 2004-Ohio-4415 at ¶¶12, 19; *Jones*, 2007-Ohio-6093 at ¶54.

Fontanez cites *Dangler* as holding that a defendant is not required to show prejudice if a common pleas court "complete[ly]" failed to comply with a portion of Crim.R.11(C). Fontanez Br.18 (quoting *Dangler*, 2020-Ohio-2765 at ¶15. And he is right that the Court in *Dangler* noted that the trial court in that case "did not completely fail to comply with Crim.R. 11(C)(2)(a)'s requirement that it explain the maximum penalty." *Dangler*, 2020-Ohio-2765 at ¶23. But his argument at most shows that the Court should clarify the standard it adopted in *Dangler*.

The Court in *Dangler* criticized the “tiers of compliance” analysis as having “muddled” the Court’s Crim.R.11 jurisprudence for many years. *See Dangler*, 2020-Ohio-2765 at ¶17. Fontanez’s approach to analyzing whether a trial court “completely” failed to comply with Crim.R.11 would revive the tiers of compliance approach that *Dangler* expressly rejected, however. True, asking whether a common pleas court “completely” failed to comply with Crim.R.11 is not the same as asking whether the common pleas court substantially complied with the rule. Any nonzero level of compliance with Crim.R.11 is not a “complete” failure, even though that same amount of compliance would be far from substantial. *See Clark*, 2008-Ohio-3748 at ¶32 (noting the difference between a complete failure and substantial compliance); *see also State v. Bishop*, 2018-Ohio-5132, ¶19 (same). But as Fontanez applies the “complete” failure analysis here, reviewing courts would nevertheless have to weigh the degree to which a trial court failed to comply with Crim.R.11.

There is yet one more problem with Fontanez’s argument. *Griggs* and *Jones* held that because a defendant who pleads guilty “is presumed to understand that he has completely admitted his guilt,” a trial court can substantially comply with Crim.R.11 without reciting the specific words found in Crim.R.11(B)(1). *See Griggs*, 2004-Ohio-4415 at ¶19. But Fontanez now argues that a trial court’s failure to recite those same words is a “complete” failure to comply with that rule. He never explains, however, how what

the Court has already held deemed to be “substantial” compliance with Crim.R.11 can be transformed into a “complete” failure to comply with that same rule.

Fontanez attempts to avoid this problem by at least implying that *Dangler* replaced the Court’s substantial compliance test with a strict compliance standard. See Fontanez Br.20. But if that is what the Court meant to do, then it would have said so. The Court has repeatedly declined to require strict compliance with Crim.R.11; it has held that the “absence of a ritualistic incantation of an admonishment which is not constitutionally guaranteed does not establish grounds for vacating the plea.” *Stewart*, 51 Ohio St. 2d at 93. Strict compliance, it has said, would represent “regression to the exaltation of form over substance. *State v. Billups*, 57 Ohio St. 2d 31, 38–39 (1979). If the Court in *Dangler* had intended to depart from this longstanding precedent then it would have done so explicitly. It did not. And while Fontanez at least acknowledges that the Court “has never required a rote recitation of the language in Crim.R.11,” see Fontanez Br.11 n.4, his insistence that a trial court “hew” relatively closely to the language of the rule would nevertheless require effectively that.

Fontanez cites *Sarkozy* as further support for the principle that a defendant does not need to demonstrate prejudice when a common pleas court “completely” fails to comply with Crim.R.11. See Fontanez Br.16. *Sarkozy* is of limited help to him here, however. Like *Dangler*, *Sarkozy* did not involve a defendant who argued that the court that accepted his guilty plea failed to advise him of the consequences of that plea. It also did not discuss

Griggs or *Jones* in any meaningful way—let alone overrule either decision. *See generally Sarkozy*, 2008-Ohio-509. *Sarkozy* instead dealt with a different question: what must trial courts tell defendants about the possibility that they may be required to serve a term of postrelease control after they serve their prison sentence. *Id.* at ¶1. That question bedeviled the Court for many years and gave rise to the Court’s now-abandoned jurisprudence that drew a distinction between void judgments and those that are merely voidable. *See State v. Harper*, 2020-Ohio-2913, ¶¶1–6; *see also Bishop*, 2018-Ohio-5132 at ¶¶60–61 (Kennedy, J., dissenting). So even if *Sarkozy* could be read as requiring relatively strict compliance with Crim.R.11 in the context of postrelease control, it should not be expanded beyond that context. What a court must tell a defendant at the plea stage about postrelease control is different from what a court must say about the effect of a guilty plea. Defendants may or may not be familiar with the concept of postrelease control, but it is well understood that “a guilty plea typically subsumes an admission of guilt.” *Griggs*, 2004-Ohio-4415 at ¶19.

Fontanez inadvertently highlights the flaws in his argument when he asserts that the failure to inform a defendant about the effect of a guilty plea is a form of structural error. *See Fontanez Br.11*, 28–31. If that is the consequence of Fontanez’s argument, then it is just one more reason why his argument is wrong. The Court has limited structural errors to errors involving constitutional violations. It has held that a “structural error is a violation of the basic constitutional guarantees that define the framework of a criminal

trial; it is a fundamental *constitutional* defect in the proceeding that is presumptively prejudicial and not susceptible to harmless-error review.” *State v. Maldonado*, 2024-Ohio-2652, ¶22 (quoting *State v. Jones*, 2020-Ohio-3051, ¶2) (emphasis in *Jones*). There is no constitutional right to be informed of the consequence of a guilty plea, however. That right flows from Crim.R.11 alone. See *Griggs*, 2004-Ohio-4415 at ¶12. By arguing that the failure to inform a defendant under Crim.R.11 about the effects of a guilty plea is a reversible error regardless of whether a defendant was prejudiced, Fontanez inappropriately elevates what is, at most, an error in the application of Ohio’s criminal rules to an error that has the same practical effect as a more weighty constitutional violation.

II. The trial court did not “completely” fail to inform Fontanez of the effect of his guilty pleas.

Under *Dangler*, it is no longer relevant whether a trial court has “substantially” complied with Crim.R.11. The relevant question is whether the error complained of is the type of error that entitles a defendant to bypass the prejudice requirement. *Dangler*, 2020-Ohio-2765 at ¶17. Because the error in this case—the failure to tell a defendant that a guilty plea is an admission of guilt—is a nonconstitutional error, that question turns in part on whether the trial court “completely” failed to comply with Crim.R.11. It did not. The key insight of *Griggs* is that it is well-understood that “a guilty plea typically subsumes an admission of guilt” and that “a defendant who has entered a guilty plea without asserting actual innocence is presumed to understand that he has completely

admitted his guilt.” *Griggs*, 2004-Ohio-4415 at ¶19; *see also Jones*, 2007-Ohio-6093 at ¶¶59–60 (Lundberg-Stratton, J., concurring in part and dissenting in part) (noting that “common sense” instructs that “‘pleading guilty’ really means ‘pleading guilty’”). A trial court therefore does not “completely” fail to comply with Crim.R.11 when, in the absence of a profession of innocence, it accepts a defendant’s confession of guilt.

Even if the Court believes that its precedent requires more, the trial court provided more here. Although the trial court in this case did not recite the words of Crim.R.11(B)(1) verbatim, it did walk through each offense to which Fontanez was pleading guilty and informed Fontanez of the elements of that offense before asking him for his plea. *See App.Ct.R.7, Hearing Tr.54–65*. The trial court also emphasized key facts of some of the offenses. For example, the trial court noted that Fontanez shot and used a bat to smash one of his victim’s vehicles, *App.Ct.R.7, Hearing Tr.60*, and that he stole another victim’s iPhone, *see App.Ct.R.7, Hearing Tr.61*. At a minimum, the trial court gave Fontanez *some* notice of the effect of his pleas and Fontanez should have understood from the context of the plea colloquy that his guilty plea constituted a complete admission that he committed the acts charged.

In arguing otherwise, the Eighth District dissent mistakenly asked whether the trial court completely *complied* with Crim.R.11 rather than whether it completely *failed* to comply with that rule. *See App.Op.¶¶30–31*. The difference is significant. Complete compliance with the rule would require a court to perfectly recite the language found in

Crim.R.11(B). A trial court that gives a partial advisement by, for example, informing a defendant that he is admitting the elements of the offenses, does not perfectly comply with Crim.R.11. It does not completely *fail* to comply with that rule either, however. But that is what the Eighth District dissent would have held; it would have overlooked the significant difference between partial compliance and total failure.

Fontanez, for his part, makes a similar mistake. He assumes that the trial court completely failed to comply with Crim.R.11, but he never explains why that is so. *See, e.g.,* Fontanez Br.21–22, 26–27. He never analyzes the trial court’s plea colloquy in any meaningful detail, let alone shows that it *completely failed* to comply with Crim.R.11.

III. Fontanez was not prejudiced by the common pleas court’s failure to inform him that his guilty plea was a complete admission of guilt.

Ultimately, it does not matter *why* Fontanez must demonstrate prejudice. It does not matter whether he must demonstrate prejudice because the trial court did not “completely” fail to comply with Crim.R.11, or because the degree of a court’s compliance with that rule is simply not relevant as long as that degree is above zero. What matters is that Fontanez was required to show that he was prejudiced. He did not (and cannot) make that showing.

Accepting for the sake of argument that the common pleas court did not comply with Crim.R.11, the next question under *Dangler* is whether the trial court’s error was the type of error that requires a defendant to show prejudice. *Dangler*, 2020-Ohio-2765 at ¶17. *Griggs* and *Jones* both indicate that it is. The Court held in both cases that the failure to

inform a defendant of the effects of a guilty plea “will not invalidate a plea unless the defendant thereby suffered prejudice.” *Griggs*, 2004-Ohio-4415 at ¶12; *Jones*, 2007-Ohio-6093 at ¶54.

The final question under *Dangler* is whether a defendant has carried his burden of demonstrating prejudice. *Dangler*, 2020-Ohio-2765 at ¶17. *Griggs* and *Jones* again provide the answer. This time the answer is “no.” Fontanez did not assert his innocence at the time that he pleaded guilty. *See* App.Ct.R.7, Hearing Tr.53–66. He therefore cannot establish the prejudice that those cases require. *See Griggs*, 2004-Ohio-4415 at ¶19; *Jones*, 2007-Ohio-6093 at ¶54. And although Fontanez now suggests that he wanted to withdraw his plea because he “[s]uddenly” realized that his guilty plea required him to accept responsibility for his crimes, *see* Fontanez Br.6, that is not the reason that he gave in the common pleas court for wanting to change his plea. At the time that Fontanez asked to withdraw his guilty plea he said that his change of heart was prompted by additional charges that had been filed against him in a different case. *See* App.Ct.R.7, Hearing Tr.112, 117.

That is not enough to establish prejudice. *Griggs* and *Jones* indicate that a defendant can show that he was prejudiced by a common pleas court’s failure to advise him of the effect of a guilty plea only if he professed his innocence *at the time that he pleaded guilty*. *See Griggs*, 2004-Ohio-4415 at ¶19; *Jones*, 2007-Ohio-6093 at ¶54. Even if courts could consider defendants’ later statements, including those made when they seek to withdraw

a plea, that would not matter here. It was not until Fontenez appealed that he argued that he did not understand the effect of his plea. He therefore failed to preserve any argument about prejudice twice over—first by not asserting his innocence when he entered his guilty plea, and again by failing to do so when he sought to withdraw that plea.

Fontanez argues that it is “upside-down” to condition a showing of prejudice on a defendant’s assertion of innocence at the time he pleaded guilty because “no reasonable trial court” would accept a guilty plea under such circumstances. Fontanez Br.22. He is wrong. There is a specific legal vehicle that allows courts and defendants to do just that: an *Alford* plea. An *Alford* plea “is ‘[a] guilty plea that a defendant enters as part of a plea bargain without admitting guilt.’” Cf. *Disciplinary Counsel v. Mason*, 2019-Ohio-1269, ¶6 n.1 (quoting Black’s Law Dictionary 86 (10th Ed.2014)). Unlike a traditional guilty plea, an *Alford* plea does not include an admission that the defendant “committed the particular acts claimed to constitute the crime charged in the indictment.” *North Carolina v. Alford*, 400 U.S. 25, 32 (1970); see also *id.* at 37 (noting that an “individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.”).

That is the type of plea that *Griggs* and *Jones* effectively require a defendant to enter if he is to show prejudice from a trial court’s failure to recite the words of Crim.R.11(B)(1).

See Griggs, 2004-Ohio-4415 at ¶¶13, 19. Those cases recognize that it is difficult for a defendant who pleads guilty to claim that he was unaware of the effect of a guilty plea because it is well understood that “a guilty plea, absent an assertion of actual innocence, is an admission of guilt.” *Id.* at ¶¶14, 19; *see also Jones*, 2007-Ohio-6093 at ¶54. As the concurrence in *Jones* put it, “common sense” instructs that “‘pleading guilty’ really means ‘pleading guilty.’” *Jones*, 2007-Ohio-6093 at ¶60 (Lundberg Stratton, J., concurring in part and dissenting in part). While Fontanez appears to question the logic of those decisions, and while he has argued that they are no longer good law in light of *Dangler*, he has not asked the Court to explicitly overrule either decision. *See generally* Fontanez Br. The Court should not do so of its own accord. *See Epcon Cmtys. Franchising, L.L.C. v. Wilcox Dev. Grp., L.L.C.*, 2024-Ohio-4989, ¶15 (noting that “our judicial system relies on the principle of party presentation, and courts should ordinarily decide cases based on issues raised by the parties”).

CONCLUSION

For these reasons, the Court should answer the Certified Question by reaffirming its decisions in *Griggs* and *Jones* and it should affirm the Eighth District’s judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Dave Yost in Support of Appellee was served this 5th day of June, 2025, by e-mail on the following:

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