

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Appellee

v.

ARIEL BUSH

Appellant

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C.A. No. 2025-CA-78

Trial Court Case No. 22-CR-0812(A)

(Criminal Appeal from Common Pleas
Court)

**FINAL JUDGMENT ENTRY &
OPINION**

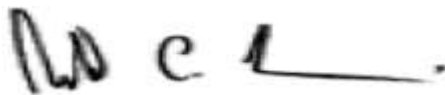
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Pursuant to the opinion of this court rendered on September 18, 2026, the judgment of the trial court is reversed and remanded for further proceedings consistent with the opinion.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



RONALD C. LEWIS, PRESIDING JUDGE

TUCKER, J., and HANSEMAN, J., concur.

OPINION
CLARK C.A. No. 2025-CA-78

JACOB S. SEIDL, Attorney for Appellant
JOHN M. LINTZ, Attorney for Appellee

LEWIS, P.J.

{¶ 1} Defendant-appellant Ariel Bush appeals from his convictions in the Clark County Common Pleas Court, challenging his guilty pleas to engaging in a pattern of corrupt activity, trafficking in a fentanyl-related compound, and having weapons while under disability. For the following reasons, we reverse the judgment of the trial court and remand the cause for further proceedings consistent with this opinion.

I. Course of Proceedings

{¶ 2} On November 1, 2022, in Clark C.P. No. 22-CR-0812, a Clark County grand jury returned a 21-count indictment against Bush, Richard Blankenship, and Todd Frye. The first ten counts of the indictment applied to Bush and alleged that he engaged in drug trafficking from October 2020 to November 8, 2021. The following three counts of the indictment are relevant to this appeal: Count 1 engaging in a pattern of corrupt activity, a first-degree felony in violation of R.C. 2923.32(A)(1); Count 4 trafficking in a fentanyl-related compound in an amount greater than or equal to 100 grams, a first-degree felony in violation of R.C. 2925.03(A)(2); and Count 9 having weapons while under disability, a third-degree felony in violation of R.C. 2923.13(A)(3). Count 4 contained a major drug offender specification. The indictment also contained forfeiture specifications. Bush pleaded not guilty to the charges.

{¶ 3} A jury trial was scheduled for January 30, 2023. A few days before the trial, the State filed a motion to consolidate Case No. 22-CR-0812 and Clark C.P. No. 23-CR-

0033 for the purposes of trial. According to the State, Case No. 23-CR-0033 was “merely to correct the specifications in Counts 4 (Bush) 13 (Blankenship) and 20 (Frye) to state the substance was a fentanyl-related compound.” The State further explained that Case No. 23-CR-0033 is a reindictment of Count 4 of the indictment in Case No. 22-CR-0812. Apparently, the trial court granted the motion to consolidate. Notably, however, the record before us does not contain a copy of the indictment in Case No. 23-CR-0033.

{¶ 4} Bush did not appear for the January 2023 trial, and a capias was issued for his arrest. Bush was finally arrested in December 2024. The trial was rescheduled for March 11, 2025. But Bush requested a continuance of the trial, which the trial court ultimately granted.

{¶ 5} On April 10, 2025, the State moved to consolidate Case No. 22-CR-0812 with Clark C.P. No. 25-CR-0287. According to the State, the conduct alleged in the indictment filed in Case No. 25-CR-0287 stemmed from the same nucleus of operative facts. The trial court granted the motion to consolidate. The indictment from Case No. 25-CR-0287 is not in the record before us.

{¶ 6} The trial was rescheduled for April 29, 2025. Following a motion to continue the trial filed by Bush, the trial court rescheduled the trial for May 5, 2025. Bush filed another motion to continue the trial, but it was denied.

{¶ 7} On May 5, 2025, the day the trial was scheduled to begin, the State explained to the trial court that a plea offer had been made to Bush. According to the prosecutor, Bush would plead “guilty to count 1, that being engaging as a felony of the first degree for an agreed term of 11 to 16 and a half years, Count 4 trafficking as a felony in the first degree for a fentanyl-related compound. That is mandatory time for a term of 8 to 12 years, and also count 9, having weapons while under disability as a felony of the third degree for a term

of 1 year.” Plea Tr. 3-4. Bush’s counsel stated that the terms of the State’s offer were that “8 years would be mandatory, 12 years would be non-mandatory.” *Id.* at 6. After the trial court and counsel for the parties discussed more details of the criminal charges pending against Bush, the court took a short recess while defense counsel consulted with Bush about the offer from the State.

{¶ 8} After the short recess, the trial court was presented with a signed, written plea form. Pursuant to the plea agreement, Bush agreed to plead guilty to Counts 1, 4, and 9 of the indictment in return for the State recommending the dismissal of the remaining counts of the three indictments and the parties jointly recommending the following prison sentences: 11 to 16½ years for Count 1 (engaging in pattern of corrupt activity), 8 to 12 years for Count 4 (trafficking in a fentanyl-related compound), and 1 year for Count 9 (weapons under disability). The sentences would be served consecutively, for “a total agreed term of 20 years or a PSI.” Bush also agreed to forfeit several items listed in the forfeiture specification. The written plea form noted that the maximum penalty on Count 4 was 11 to 16½ years but did not state that the maximum penalty was mandatory.

{¶ 9} The trial court asked the State to put into the record the terms of the plea agreement and a factual statement about the charges against Bush. The prosecutor stated, in pertinent part:

Thank you, Your Honor. The terms of the plea agreement are that the Defendant will plead guilty to the following counts in the Case Number 22CR0812A, count 1, engaging in a pattern of corrupt activity as a felony of the first degree for an agreed term of 11 to 16 and a half years. Count 4, trafficking in a fentanyl related compound, a felony in the first degree. This is mandatory time in the amount of 8 to 12 years.

Count 9, weapons under disability as a felony in the third degree for a total of 1 year. Each of the mentioned counts 1, 4, and 9 are to be served consecutively for a total agreed term of 20 years incarceration. The remaining counts and specifications related to Mr. Bush on all three case numbers would then be dismissed.

Plea Tr. 12-13. Defense counsel agreed that this was a fair statement of the plea agreement. The trial court then asked Bush whether he understood that the agreement included a jointly recommended sentence of 20 years in prison. Bush responded, “8 mandatory, 12 non-mandatory, right? 8 mandatory, 12 non-mandatory?” *Id.* at 15. The trial court stated, “Yeah. I believe that’s correct, yeah.” *Id.* The court then began its plea colloquy with Bush. As part of its plea colloquy, the trial court gave the following explanation of the maximum sentences Bush faced on each count to which he was pleading guilty:

THE COURT: The engaging in a pattern of corrupt activity, that is a felony of the first degree. The maximum penalty for that offense is an indefinite sentence of 11 to 16 and a half years in prison and a \$20,000 fine. The trafficking in a fentanyl related compound is a first degree felony. The maximum penalty is an indefinite prison term of 11 to 16 and a half years in prison, a \$20,000 fine, and up to a 5 year driver’s license suspension. There’s also a mandatory minimum fine and prison is mandatory for that offense.

Id. at 16. The trial court did not inform Bush that it was required to impose the maximum prison sentence on Count 4. The court then explained to Bush the concept of indefinite sentencing and stated that the plea agreement contemplated “an indefinite sentence of 20

to 25 and a half years in prison with the presumption that you would be released after serving 20 years.” *Id.* at 18.

{¶ 10} The trial court finished its plea colloquy and Bush pleaded guilty to counts 1, 4, and 9 of the indictment. The trial court found him guilty of these three counts and stated that it would dismiss all the remaining counts and specifications according to the terms of the plea agreement, which “includes the counts in, remaining counts in 22CR812A and 23CR33A. And then I’ll also dismiss the new indictment, 25CR287 all pursuant to the terms of the plea agreement.” *Id.* at 20. The court then proceeded directly to sentencing.

{¶ 11} At the sentencing hearing, the trial court stated that it would impose the sentences agreed to in the plea agreement. The court explained, in pertinent part:

THE COURT: I will follow the joint recommendation in count 1, engaging in a pattern of corrupt activity, a felony of the first degree. The Court will order the Defendant be sentenced to an indefinite prison term of 11 to 16 and a half years in prison. On count 4, trafficking in a fentanyl related compound, a felony of the first degree, the Court will impose a sentence of 8 to 12 years in prison.

On count 9, having weapons under disability, the Court will impose a sentence of 1 year in prison. All of these sentences will run consecutively.

So the total sentence will be 20 to 25 and a half years in prison.

Id. at 21.

{¶ 12} In its sentencing entry, the trial court ordered Bush to serve the following prison terms: (1) an indefinite prison term of 11 to 16½ years for engaging in a pattern of corrupt activity in violation of R.C. 2923.32(A)(1) as set forth in count 1 of the indictment; (2) an indefinite prison term of 8 to 12 years for trafficking in fentanyl in violation of

R.C. 2925.03(A)(2) “as set forth in count four of the indictment;” and (3) a definite prison term of 1 year for having weapons while under disability in violation of R.C. 2923.13(A)(3) as set forth in count 9 of the indictment. The trial court ran the sentences consecutive to each other and stated that it “hereby adopts the joint recommendation, finding the aggregate prison term of twenty (20) to twenty-five and one-half (25½) year prison term to be an appropriate, fair, and just disposition given the facts and circumstances of the case and law.”

{¶ 13} Bush filed an appeal from the trial court’s judgment.

II. The Guilty Pleas Must Be Vacated Because They Were Not Made Knowingly and Voluntarily

{¶ 14} Bush’s first assignment of error states:

THE SENTENCE IMPOSED ON COUNT 4 IS CONTRARY TO LAW AND NOT AUTHORIZED BY LAW BECAUSE THE INDICTMENT CHARGED TRAFFICKING IN 100 GRAMS OF A FENTANYL-RELATED COMPOUND WITH A MAJOR-DRUG-OFFENDER SPECIFICATION, THE JUDGMENT ENTRY SENTENCED APPELLANT “AS SET FORTH IN COUNT FOUR OF THE INDICTMENT,” AND THE MANDATORY INDEFINITE TERM UNDER R.C. 2925.03(C)(9)(h) IS 11 TO 16.5 YEARS—NOT THE 8 TO 12 YEARS THE COURT IMPOSED.

{¶ 15} Bush contends that the sentence imposed on him was contrary to law because the trial court was required to impose a mandatory maximum sentence of 11 to 16½ years on Count 4 of the indictment rather than the 8 to 12 years imposed by the trial court. Further, Bush argues that the sentence on Count 4 of the indictment was the centerpiece of the plea agreement and the fact that the contemplated 8-to-12-year term was not authorized

by law rendered the plea bargain illusory. Therefore, Bush asks us to vacate the trial court's judgment and his guilty pleas and remand the cause for further proceedings.

{¶ 16} The State does not concede that the sentence imposed on Count 4 is contrary to law. Instead, the State contends that the trial court was not required to impose a maximum sentence on Count 4 because Bush pleaded guilty to a violation of R.C. 2925.03(A)(2), the major drug offender specification in Count 4 was dismissed, and Bush did not specifically plead guilty to having an amount greater than or equal to 100 grams of fentanyl-related compound. However, the State proposes that if we were to conclude that the trial court was required to impose a maximum sentence on Count 4, we should simply remand the cause for resentencing and allow the trial court and the parties to change the sentences for counts 1 and 4 in a way that would reflect the total 20-to-25½-year sentence to which Bush had agreed.

{¶ 17} In reviewing felony sentences, appellate courts must apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 2016-Ohio-1002, ¶ 22. Under this statute, an appellate court may increase, reduce, or otherwise modify a sentence, or it may vacate the sentence and remand for resentencing, only if it “clearly and convincingly” finds either: (1) that the record does not support certain specified findings or (2) that the sentence imposed is otherwise contrary to law. R.C. 2953.08(G)(2).

{¶ 18} The sentence imposed by the trial court was jointly recommended by the parties. “A sentence imposed upon a defendant is not subject to review under [R.C. 2953.08] if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.” R.C. 2953.08(D)(1). “[A] sentence is ‘authorized by law’ and is not appealable within the meaning of R.C. 2953.08(D)(1) only if it comports with all mandatory sentencing provisions.”

State v. Underwood, 2010-Ohio-1, ¶ 20. “A trial court does not have the discretion to exercise its jurisdiction in a manner that ignores mandatory statutory provisions.” *Id.*, citing *State v. Simpkins*, 2008-Ohio-1197, ¶ 27 (“Every judge has a duty to impose lawful sentences”); accord *State v. Adams*, 2017-Ohio-8245, ¶ 11 (2d Dist.) (“There is simply no case law that allows a trial court to enter a sentence that is contrary to law.”).

{¶ 19} This appeal hinges on the plain language in Count 4 of the indictment, which provides:

TRAFFICKING IN A FENTANYL RELATED COMPOUND (F1)

That as a continuous course of conduct from on or about October 20, 2020 to on or about November 8, 2021, at Clark County, Ohio, ARIEL JOSIA BUSH . . . did knowingly prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute fentanyl or a compound, mixture, preparation, or substance containing fentanyl, in an amount greater than or equal to one-hundred grams, knowing or having reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person, in violation of Section 2925.03(A)(2) of the Ohio Revised Code, and against the peace and dignity of the State of Ohio.

(Emphasis in original.)

{¶ 20} Count 4 identified R.C. 2925.03(A)(2) as the statute Bush had violated. R.C. 2925.03(A)(2) prohibits any person from knowingly doing the following: “Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance . . . when the offender knows or has reasonable cause to believe that the controlled substance . . . is intended for sale or resale by the offender or another person.” Further, R.C. 2925.03(C) identifies the potential penalties for a violation of

R.C. 2925.03(A)(2). Notably, 2925.03(C)(9)(h) provides:

(9) If the drug involved in the violation is a fentanyl-related compound or a compound, mixture, preparation, or substance containing a fentanyl-related compound and division (C)(10)(a) of this section does not apply to the drug involved, whoever violates division (A) of this section is guilty of trafficking in a fentanyl-related compound. The penalty for the offense shall be determined as follows:

(h) If the amount of the drug involved . . . equals or exceeds one hundred grams . . . , trafficking in a fentanyl-related compound is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(Emphasis added.)

{¶ 21} R.C. 2929.14 covers the range of prison sentences for felonies. For a felony of the first degree committed on or after March 22, 2019, a trial court generally has the discretion to impose a prison term with a stated minimum term selected by the court of “three, four, five, six, seven, eight, nine, ten, or eleven years” and a maximum term that is determined pursuant to R.C. 2929.144.

{¶ 22} Count 4 of the indictment plainly states that Bush violated R.C. 2925.03(A)(2) by trafficking in a fentanyl-related compound in an amount greater than or equal to 100 grams, which triggers the mandatory maximum sentencing provision of R.C. 2925.03(C)(9)(h). The trial court stated that it was sentencing Bush for a criminal violation “as set forth in count four of the indictment.” Therefore, the trial court was required to sentence Bush to a mandatory indefinite prison sentence of 11 to 16½ years on Count 4.

Instead, the trial court sentenced Bush to an indefinite prison term of 8 to 12 years on Count 4. The trial court's failure to impose a mandatory maximum sentence on Count 4 resulted in a sentence that is clearly and convincingly contrary to law.

{¶ 23} We also conclude that Bush's guilty pleas were not entered knowingly and voluntarily. "Due process requires that a defendant's plea be made knowingly, intelligently, and voluntarily; otherwise, the defendant's plea is invalid." *State v. Bishop*, 2018-Ohio-5132, ¶ 10, citing *State v. Clark*, 2008-Ohio-3748, ¶ 25. The written plea form signed by Bush and the oral explanation of the plea agreement at the plea hearing reflect the fact that Bush was induced into pleading guilty, in part, by the State's promise to recommend to the trial court that Bush receive a prison sentence of 8 to 12 years on Count 4 despite the fact that such a sentence would be a statutorily proscribed act. As the Ohio Supreme Court has explained, a guilty plea "can be viewed neither as voluntary where induced by a promise, the very essence of which is nonperformable, nor as knowing where the fact of illegality was insufficiently delineated and, therefore, is void." *State v. Bowen*, 52 Ohio St.2d 27, 29-30 (1977), citing *Machibroda v. United States*, 368 U.S. 487, 493 (1962).

{¶ 24} Although the trial court informed Bush at his plea hearing that the maximum sentence on Count 4 was 11 years, Bush was not informed prior to his plea that the court was required to impose a maximum sentence on Count 4. Rather, the parties were clearly under the impression that Bush could, and likely would, receive a prison sentence of 8 to 12 years on Count 4. Moreover, the trial court made it plain that it was adopting the sentence stated in the parties' plea agreement. Because the trial court was required to impose a prison sentence of 11 to 16½ years on Count 4 of the indictment, Bush's guilty pleas that were entered on the understanding that he could, and likely would, receive a prison sentence of 8 to 12 years on Count 4 were not entered knowingly and voluntarily.

Consequently, we must reverse the trial court's judgment. *Bowen* at 29-30; *accord State v. Barajas-Larios*, 2008-Ohio-5460, ¶ 18-19 (2d Dist.) (holding that the voluntary and knowing character of defendant's guilty plea was negated where the trial court agreed to impose a sentence that would not exceed seven years when the law plainly required a mandatory ten-year prison term); *State v. Figueroa-Benitez*, 2025-Ohio-1146, ¶ 10-12 (10th Dist.) (holding that the trial court should vacate the judgment entry and plea agreement where the trial court had imposed a jointly recommended sentence that did not conform to the mandatory sentence required by law); *Adams*, 2017-Ohio-8245, at ¶ 11 (2d Dist.) (stating that the trial court "had no choice but to vacate the guilty plea and start over" where nine years in prison was the minimum sentence the trial court could legally impose and the trial court had previously prompted defendant's guilty plea by its representation that it would sentence defendant to seven years in prison); *State v. Tartleton*, 2014-Ohio-5820, ¶ 24 (7th Dist.) (holding that the State could not offer, and the defendant could not knowingly and intelligently accept, a plea agreement based on a proposed hybrid sentence that was a legal impossibility).

{¶ 25} The first assignment of error is sustained.

III. Bush's Remaining Assignments of Error Are Overruled as Moot

{¶ 26} Bush's second and third assignments of error state:

APPELLANT'S GUILTY PLEA WAS NOT KNOWING, INTELLIGENT,
AND VOLUNTARY BECAUSE THE CIRCUMSTANCES SURROUNDING
THE PLEA DEPRIVED HIM OF A MEANINGFUL CHOICE.

APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL
IN CONNECTION WITH HIS GUILTY PLEA.

{¶ 27} In these two assignments of error, Bush contends that his guilty pleas should be vacated because he made them under “immediate pressure” and his trial counsel rendered ineffective assistance. Based on our resolution of Bush’s first assignment of error, his remaining assignments of error are moot. Therefore, Bush’s second and third assignments of error are overruled. App.R. 12(A)(1)(c).

IV. Conclusion

{¶ 28} Having sustained Bush’s first assignment of error, we reverse the judgment of the trial court and remand the cause for further proceedings consistent with this opinion.

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TUCKER, J., and HANSEMAN, J., concur.