[Cite as *State v. Wolfe*, 2022-Ohio-96.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
UNION COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE, **CASE NO. 14-21-16**

v.

LOGAN BRONSON WOLFE, **O P I N I O N**

DEFENDANT-APPELLANT.

Appeal from Union County Common Pleas Court
Trial Court No. 2020-CR-0185

Judgment Affirmed and Cause Remanded

Date of Decision: January 18, 2022

APPEARANCES:

Alison Boggs **for Appellant**

David W. Phillips **for Appellee**

MILLER, J.

{¶1} Defendant-appellant, Logan Bronson Wolfe, appeals the May 28, 2021 judgment of sentence of the Union County Court of Common Pleas. For the reasons that follow, we affirm the judgment of the trial court, but remand for the issuance of a nunc pro tunc entry correcting a mathematical error in the judgment entry.

I. Facts & Procedural History

{¶2} On October 14, 2020, Wolfe and two male accomplices entered SG's Market in Milford Center, Ohio. On entering the store, one of Wolfe's accomplices displayed a handgun and ordered the clerk to open the cash registers. The clerk complied and the three men "stuffed all of the money in their pockets." Wolfe also went into the store's back office, where he took a bag of cash from a cabinet. The trio then fled from the store.

{¶3} A short time later, a Union County sheriff's deputy watched as a black sedan with tinted windows drove by his stationary position. The deputy decided to follow the vehicle and check its registration. The vehicle registration came back to Wolfe, whose license was suspended. The deputy also observed that the vehicle's tags were expired. Based on this information, the deputy initiated a traffic stop.

{¶4} The deputy approached the vehicle and established contact with its three occupants. Wolfe was identified as the driver of the vehicle. Recognizing that

Wolfe and the other two occupants of the vehicle matched the descriptions of the persons who had just robbed SG's Market, the deputy requested backup.

{¶5} After explaining the reason for the traffic stop, the deputy ordered Wolfe to exit the vehicle. Wolfe obeyed, and the deputy proceeded to conduct a pat-down search of Wolfe. During the pat-down search, the deputy located a 9 mm magazine loaded with 15 rounds of ammunition. At that point, Wolfe, apparently alarmed by the sounds of the approaching backup officers' sirens, ran back to his vehicle and fled from the traffic stop.

{¶6} Deputies pursued Wolfe on U.S. 42 and U.S. 33 at speeds of up to 100 miles per hour. However, the pursuit was terminated shortly after 8:00 p.m. when officers lost sight of Wolfe's vehicle in heavy traffic near I-270. Although Wolfe evaded capture that evening, he was apprehended the next day at his girlfriend's grandfather's house in Westerville, Ohio.

{¶7} On October 30, 2020, the Union County Grand Jury indicted Wolfe on five counts: Count One of aggravated robbery in violation of R.C. 2911.01(A)(1), a first-degree felony; Count Two of aggravated burglary in violation of R.C. 2911.11(A)(2), a first-degree felony; Count Three of kidnapping in violation of R.C. 2905.01(A)(2), a first-degree felony; Count Four of theft in violation of R.C. 2913.02(A)(4), a fifth-degree felony; and Count Five of failure to comply with an order or signal of a police officer in violation of R.C. 2921.331(B), a fourth-degree

felony. Counts One, Two, Three, and Four each included a three-year firearm specification pursuant to R.C. 2941.145(A). Furthermore, Counts One, Two, and Five each included a specification pursuant to R.C. 2941.1417(A) for forfeiture of Wolfe's vehicle. On November 3, 2020, Wolfe appeared for arraignment and pleaded not guilty to the counts and specifications contained in the indictment.

{¶8} A change-of-plea hearing was held on April 22, 2021. At the hearing, the trial court was informed that Wolfe and the State had reached a plea agreement. Wolfe would plead guilty to Count One, Count Five, and their attendant specifications. In exchange, the State would request dismissal of Counts Two through Four and their accompanying specifications. There was no agreement as to sentencing.

{¶9} Prior to the change-of-plea hearing, Wolfe reviewed and executed a written plea agreement. The agreement included a section titled "**PLEA/PENALTIES**," which contained information about the possible sentences Wolfe could receive for Count One and its associated firearm specification. The agreement stated that Count One was a "felony of the first degree" and provided:

> For each F-1 there is a presumption in favor of the imposition of a prison term (~~or mandatory~~ prison, if checked) for these offenses. I understand these offenses each carry an indefinite sentence. For each qualifying F-1, the judge will select a term of 3, 4, 5, 6, 7, 8, 9, 10, or 11 years, and the term selected will be used to calculate the **minimum and maximum term** of incarceration imposed on me. The court may impose a fine of up to $20,000.00 on each felony of the first degree.

(Boldface and strikethrough sic.). The words "or mandatory" were crossed out in blue ink. Immediately below this paragraph, next to an unchecked box, was the following:

> Counts _____ are mandatory terms; all other F-1 counts are non-mandatory terms.

Elsewhere in this section, Wolfe was notified that "[f]or the firearm specification, there is a mandatory prison term of 3 years to be served consecutive to any other prison term imposed." In a later section, under the heading "**FIREARM SPECIFICATION (IF APPLICABLE)**," Wolfe was again informed that he was required to serve a mandatory prison term for the firearm specification and that "[t]he term imposed for this specification must be served before and consecutive to any other prison term imposed for all other offenses."

{¶10} In another section of the written plea agreement, titled "**PRESUMPTION OF PRISON**," Wolfe was required to acknowledge that he was "entering a plea of guilty to a felony of the first or second degree or a felony which carries a presumption of prison." He was advised that "[t]he court must impose a prison term and cannot impose a community control sentence or grant [him] judicial release and place [him] on community control" unless the trial court made certain findings as required by R.C. 2929.13(D)(2). Wolfe was also informed that "[i]f all the sentences are mandatory, [he would] not [be] eligible for community control or judicial release."

{¶11} In a subsequent section, titled "**COMMUNITY CONTROL ELIGIBILITY**," a box was marked next to the following advisement: "I understand I am eligible to receive a community control sentence, but that to do so, the court must have a pre-sentence report to consider before the court can impose a community control sentence on me unless a pre-sentence investigation is waived (R.C. 2951.03(A))." In the next section, titled "**JUDICIAL RELEASE ELIGIBILITY**," Wolfe was advised that "[i]f a prison term is imposed, [he would be] eligible to file for judicial release based upon the non-mandatory minimum prison term imposed." Then, under a section titled "**80% RELEASE**," Wolfe was notified that, unless the prison term imposed on him included a "disqualifying prison term," he might be eligible for release from prison after serving 80 percent of his sentence. The form advised Wolfe that a "disqualifying prison term" included a prison term imposed for aggravated robbery. Finally, under a section titled "**DAYS OF EARNED CREDIT**," Wolfe was informed that he would not be eligible for "days of earned credit" pursuant to R.C. 2967.193 if "the prison sentence imposed * * * is a mandatory prison term or a prison term for an offense of violence * * *."

{¶12} Before accepting Wolfe's pleas, the trial court conducted a plea colloquy in accordance with Crim.R. 11. The trial court's plea colloquy largely tracked the written plea agreement. The trial court asked Wolfe whether he understood that Count One was a first-degree felony for which there was "a

presumption in favor of the imposition of a prison term." (Apr. 22, 2021 Tr. at 8). The trial court also asked Wolfe whether he understood that "for the firearm specification, * * * there's a mandatory * * * prison term of three years, which is to be served consecutive to any other prison term imposed." (Apr. 22, 2021 Tr. at 11, 16). Wolfe answered both questions in the affirmative. In addition, the trial court confirmed that Wolfe understood that he was "entering a plea of guilty to a felony of the first or second degree or a felony which carries a presumption of prison, and that the court must impose a prison term and [could not] impose a community control sentence or grant [him] judicial release and place [him] on community control" unless certain criteria were satisfied. (Apr. 22, 2021 Tr. at 18-19).

{¶13} When the trial court reached the part of its colloquy pertaining to Wolfe's eligibility for community control, the following exchange took place:

> [Trial Court]: And do you understand that as it relates to mandatory sentences, that you are not eligible for community control or judicial release?
>
> [Wolfe]: Yes, your Honor.
>
> [Trial Court]: I'm struggling with [the marked box in the "**COMMUNITY CONTROL ELIGIBILITY"** section of the written plea agreement] because of the gun spec. I think he's – that it's not –
>
> [Prosecutor]: Your Honor, I think * * *
>
> [Trial Court]: Is the intent – is the intent because of the – because after serving the gun spec that he could be put on community control on the remaining offenses?

[Defense Counsel]: Yes, sir. That's why I marked the box.

[Prosecutor]: It could be, your Honor.

[Trial Court]: Okay. I got you. All right. Do you understand * * * that you are eligible to receive a community control sentence, but that in order to do so, the court must have a presentence report to consider. And * * * before the court can impose a community control sentence, unless the presentence investigation is waived, and do you agree to cooperate and be truthful in your presentence investigation unless the same is waived?

[Wolfe]: Yes, your Honor.

[Trial Court]: And do you understand that if you are eligible for a community control – that you are eligible for a community control sentence of up to five years on the offenses not related to the gun spec?

[Wolfe]: Yes, your Honor.

(Apr. 22, 2021 Tr. at 19-20).

{¶14} After this exchange, the trial court proceeded to inquire whether Wolfe appreciated the implications of his pleas with respect to judicial release, 80 percent release, and days of earned credit. The trial court asked Wolfe whether he understood "that if a prison term is imposed, that [he would] be eligible to file for judicial release upon the non-mandatory minimum prison term imposed." (Apr. 22, 2021 Tr. at 21). The trial court also asked whether Wolfe was aware that he was "not eligible for 80% release because of pleading guilty to Count One, the offense

of aggravated robbery." (Apr. 22, 2021 Tr. at 23). Finally, the trial court queried whether Wolfe understood that because he would be "serving a mandatory sentence on a gun spec and that the aggravated robbery is an offense of violence, [he would not be] eligible for [days of earned credit] on those two sentences" under R.C. 2967.193. (Apr. 22, 2021 Tr. at 24). In response to each of these questions, Wolfe answered, "Yes, your Honor." (Apr. 22, 2021 Tr. at 21, 23-24).

{¶15} At the conclusion of the plea colloquy, the trial court found that Wolfe's guilty pleas were knowingly, intelligently, and voluntarily entered. Accordingly, the trial court accepted Wolfe's pleas and entered findings of guilty with respect to Count One, Count Five, and their accompanying specifications. In addition, the trial court dismissed Counts Two through Four and their associated specifications. The trial court continued the matter for the preparation of a presentence investigation report.

{¶16} A sentencing hearing was held on May 28, 2021. At the hearing, the trial court sentenced Wolfe as follows: a mandatory term of 3 years in prison for the firearm specification associated with Count One; a mandatory minimum term of 6 years in prison, with a maximum term of 9 years, for Count One; and a definite term of 17 months in prison for Count Five. The trial court ordered these prison terms to be served consecutively. Furthermore, the trial court ordered that Wolfe's vehicle be forfeited and sold at public auction.

II. Assignments of Error

{¶17} On June 25, 2021, Wolfe timely filed a notice of appeal. He raises the following three assignments of error for our review:

> **1. The trial court erred when it sentenced appellant to an indefinite term of prison on the aggravated robbery. An indefinite sentence pursuant to the mandates of the Reagan Tokes Law violates the separation of powers doctrine and the Due Process Clauses of the United States and Ohio Constitutions.**
>
> **2. Appellant's plea was not knowingly, voluntarily, and intelligently made.**
>
> **3. The trial court erred when it sentenced appellant to a mandatory minimum prison sentence of six years on the aggravated robbery count.**

For ease of discussion, we begin by addressing Wolfe's first and third assignments of error together. We then consider Wolfe's second assignment of error.

III. Discussion

A. First & Third Assignments of Error: With respect to Wolfe's sentence for aggravated robbery (Count One), did the trial court err by sentencing him to an indefinite prison term consisting partly of a mandatory minimum term?

{¶18} In his first and third assignments of error, Wolfe argues that his sentence for aggravated robbery is contrary to law. Wolfe's first assignment of error focuses on the indefiniteness of his sentence for aggravated robbery. He maintains that his indefinite sentence of 6-9 years in prison for aggravated robbery is contrary to law because the statutory provisions authorizing trial courts to impose indefinite sentences, i.e., certain provisions of the Reagan Tokes Law, are unconstitutional. In

his third assignment of error, Wolfe focuses on the mandatory nature of his 6-year minimum prison term for aggravated robbery. He contends the trial court erred by concluding that it was required to impose a mandatory minimum prison term pursuant to R.C. 2929.13(F)(8).

i. Standard of Review for Felony Sentences

{¶19} Under R.C. 2953.08(G)(2), an appellate court may reverse a sentence "only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law." *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, ¶ 1. Clear and convincing evidence is that "'which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.'" *Id.* at ¶ 22, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

ii. Wolfe's indefinite sentence for aggravated robbery does not violate the separation-of-powers doctrine or infringe on his due process rights.

{¶20} Wolfe argues that his indefinite sentence of 6-9 years in prison for aggravated robbery is contrary to law because the indefinite sentencing provisions of the Reagan Tokes Law,[1] under which he was sentenced, run afoul of the separation-of-powers doctrine and infringe on his right to due process. At the outset,

[1] Because we have thoroughly explained these provisions in previous opinions, we need not do so here. *See, e.g.*, *State v. Barnhart*, 3d Dist. Putnam No. 12-20-08, 2021-Ohio-2874, ¶ 9; *State v. Hiles*, 3d Dist. Union No. 14-20-21, 2021-Ohio-1622, ¶ 11-16.

we note that Wolfe failed to object to the constitutionality of the Reagan Tokes Law in the trial court. "The '[f]ailure to raise at the trial court level the issue of the constitutionality of a statute or its application, which is apparent at the time of trial, constitutes a waiver of such issue and a deviation from this state's orderly procedure, and therefore need not be heard for the first time on appeal.'" *State v. Barnhart*, 3d Dist. Putnam No. 12-20-08, 2021-Ohio-2874, ¶ 7, quoting *State v. Awan*, 22 Ohio St.3d 120 (1986), syllabus. "However, we retain the discretion to consider a waived constitutional argument under a plain-error analysis." *Id.* at ¶ 8. "An error qualifies as 'plain error' only if it is obvious and but for the error, the outcome of the proceeding clearly would have been otherwise." *Id.* In this case, we elect to exercise our discretion to review Wolfe's constitutional arguments for plain error. *See id.* at ¶ 8, 15 (reviewing "waived" challenge to the constitutionality of the Reagan Tokes Law for plain error).

{¶21} Wolfe's challenge does not present a matter of first impression in this court. Since the indefinite sentencing provisions of the Reagan Tokes Law went into effect in March 2019, we have repeatedly been asked to weigh in on the constitutionality of these provisions. Issues of ripeness aside,[2] we have invariably

[2] A number of other appellate districts have concluded that separation-of-powers and due process challenges to the indefinite sentencing provisions of the Reagan Tokes Law are not yet ripe for review. *State v. Floyd*, 3d Dist. Marion No. 9-20-44, 2021-Ohio-1935, ¶ 20, fn. 2 (collecting cases). While we have concluded that as-applied due process challenges to the indefinite sentencing provisions are not ripe for review, we have "implicitly" determined that facial due process challenges, as well as separation-of-powers arguments, are ripe for review. *State v. Kepling*, 3d Dist. Hancock No. 5-20-23, 2020-Ohio-6888, ¶ 6, 11-15. We note that there is a case pending before the Supreme Court of Ohio to determine whether the constitutionality of the

concluded that the indefinite sentencing provisions of the Reagan Tokes Law do not violate the separation-of-powers doctrine or infringe on defendants' due process rights. *E.g.*, *State v. Crawford*, 3d Dist. Henry No. 7-20-05, 2021-Ohio-547, ¶ 10-11; *State v. Hacker*, 3d Dist. Logan No. 8-20-01, 2020-Ohio-5048, ¶ 22.

{¶22} In this case, Wolfe asks us to reconsider our earlier decisions. In recent months, a number of defendants have requested the same of us—requests that we have uniformly rejected. *E.g.*, *Barnhart* at ¶ 12-15; *State v. Mitchell*, 3d Dist. Allen No. 1-21-02, 2021-Ohio-2802, ¶ 17; *State v. Rodriguez*, 3d Dist. Seneca No. 13-20-07, 2021-Ohio-2295, ¶ 15. As Wolfe has not presented us with any compelling new reason to depart from our earlier precedent, we once again decline to do so. Consequently, we find no plain error in the trial court's decision to sentence Wolfe to an indefinite term of 6-9 years in prison for aggravated robbery. The indefiniteness of Wolfe's sentence for aggravated robbery does not render the sentence contrary to law.

iii. Wolfe's mandatory minimum term of 6 years in prison for aggravated robbery is not contrary to law.

{¶23} Wolfe also argues that his sentence for aggravated robbery is contrary to law because the trial court misinterpreted R.C. 2929.13(F)(8) as requiring the imposition of a mandatory minimum sentence. R.C. 2929.13(F)(8) provides:

Reagan Tokes Law is ripe for review. *See State v. Maddox*, 160 Ohio St.3d 1505, 2020-Ohio-6913. Oral argument in *Maddox* was held on June 29, 2021.

> (F) Notwithstanding [R.C. 2929.13(A)-(E)], the court shall impose a prison term or terms under * * * [R.C. 2929.14] * * * and except as specifically provided in [R.C. 2929.20], [R.C. 2967.19(C)-(I)], or [R.C. 2967.191] or when parole is authorized for the offense under [R.C. 2967.13] shall not reduce the term or terms pursuant to [R.C. 2929.20], [R.C. 2967.19], [R.C. 2967.193], or any other provision of [R.C. Chapters 2967 or 5120] for any of the following offenses:
>
> * * *
>
> (8) Any offense, other than [carrying concealed weapons], that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to [R.C. 2929.14(B)(1)(a)] for having the firearm[.]

Wolfe argues that R.C. 2929.13(F)(8) "merely directs a court to order a prison sentence for the underlying offense * * * and not consider community control." He claims that R.C. 2929.13(F)(8) does not set forth "a directive to impose mandatory prison time for the aggravated robbery, just merely that a defendant has to do time for the aggravated robbery." Although Wolfe concedes that he must serve a mandatory prison sentence for the firearm specification, he maintains that R.C. 2929.13(F)(8) "does not transfer the mandatory-ness of the gun specification to the underlying offense."

{¶24} Wolfe's argument is without merit. Under R.C. 2929.13(F)(8), "when a defendant is convicted of committing *any* felony (with the exception of carrying concealed weapons) while having or controlling a firearm, the court is required to impose a prison term—*not* community control sanctions—in addition to the

mandatory prison term for [any] firearm specification * * *." (Emphasis sic.) *State v. Culp*, 6th Dist. Lucas No. L-19-1281, 2020-Ohio-5287, ¶ 13; *accord State v. Shields*, 2d Dist. Montgomery No. 28573, 2020-Ohio-3204, ¶ 11; *State v. Galvan*, 8th Dist. Cuyahoga No. 108658, 2020-Ohio-1285, ¶ 20; *State v. Wofford*, 1st Dist. Hamilton No. C-180411, 2019-Ohio-2815, ¶ 8, 10. "A plea to or conviction of a firearm specification automatically meets the criteria in R.C. 2929.13(F)(8) that triggers a mandatory prison term for the underlying offense * * *." *Culp* at ¶ 14; *see Shields* at ¶ 11 ("By pleading guilty to the firearm specification, Shields agreed that he had a firearm on or about his person or under his control while committing the aggravated robbery.").

{¶25} Here, Wolfe pleaded guilty to aggravated robbery in violation of R.C. 2911.01(A)(1) and to its accompanying firearm specification. By pleading guilty to the firearm specification, Wolfe acknowledged that his accomplices brandished a firearm while committing the aggravated robbery. Accordingly, under R.C. 2929.13(F)(8), the trial court was required to impose a mandatory prison sentence upon Wolfe's conviction for the aggravated robbery offense. *Culp* at ¶ 14-15; *Shields* at ¶ 11; *Wofford* at ¶ 10. Therefore, the mandatory nature of Wolfe's minimum 6-year prison sentence for aggravated robbery does not render the sentence contrary to law.

{¶26} Wolfe's first and third assignments of error are overruled.

B. Second Assignment of Error: Did the trial court comply fully with Crim.R. 11(C)(2)(a) and, if not, must Wolfe's guilty plea to aggravated robbery (Count One) be vacated?

{¶27} In his second assignment of error, Wolfe argues the trial court failed to comply with Crim.R. 11(C)(2)(a) before it accepted his guilty plea to aggravated robbery. Wolfe correctly observes the trial court did not advise him that it had to impose a mandatory prison sentence for the aggravated robbery offense and that the trial court erroneously advised he was eligible for community control after serving the mandatory time for the firearm specification. He claims the trial court's "dramatic error" calls into question whether his pleas were knowing and voluntary.

i. Felony Pleas & Crim.R. 11(C)

{¶28} "Because a no-contest or guilty plea involves a waiver of constitutional rights, a defendant's decision to enter a plea must be knowing, intelligent, and voluntary." *State v. Dangler*, 162 Ohio St.3d 1, 2020-Ohio-2765, ¶ 10. "If the plea was not made knowingly, intelligently, and voluntarily, enforcement of that plea is unconstitutional." *Id.*

{¶29} Crim.R. 11, which outlines the procedures that trial courts must follow when accepting pleas, "'ensures an adequate record on review by requiring the trial court to personally inform the defendant of his rights and the consequences of his plea and determine if the plea is understandingly and voluntarily made.'" *Id.* at ¶ 11, quoting *State v. Stone*, 43 Ohio St.2d 163, 168 (1975). Crim.R. 11(C), which

applies specifically to a trial court's acceptance of pleas in felony cases, provides in relevant part as follows:

> (2) 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.

Crim.R. 11(C)(2)(a)-(c).

{¶30} "When a criminal defendant seeks to have his conviction reversed on appeal, the traditional rule is that he must establish that an error occurred in the trial-court proceedings and that he was prejudiced by that error." *Dangler* at ¶ 13. However, in the criminal-plea context, the Supreme Court of Ohio has carved out two limited exceptions to the prejudice component of the traditional rule. *Id.* at ¶

14-15. First, when a trial court fails to explain the constitutional rights listed in Crim.R. 11(C)(2)(c) that a defendant waives by pleading guilty or no contest, it is presumed that the plea was entered involuntarily and unknowingly, and no showing of prejudice is required. *Id.* at ¶ 14. Second, "a trial court's *complete* failure to comply with a portion of Crim.R. 11(C) eliminates the defendant's burden to show prejudice." (Emphasis sic.) *Id.* at ¶ 15. "Aside from these two exceptions, the traditional rule continues to apply: a defendant is not entitled to have his plea vacated unless he demonstrates he was prejudiced by a failure of the trial court to comply with the provisions of Crim.R. 11(C)." *Id.* at ¶ 16.

ii. The trial court did not comply fully with Crim.R. 11(C)(2)(a), but Wolfe's guilty plea to aggravated robbery need not be vacated.

{¶31} In determining whether to vacate a defendant's plea due to a trial court's alleged noncompliance with Crim.R. 11(C), we engage in a three-step inquiry. First, we ask whether the trial court has complied with the relevant portion of Crim.R. 11(C). *Dangler*, 162 Ohio St.3d 1, 2020-Ohio-2765, at ¶ 17. If we determine that the trial court has not complied fully with the relevant portion of Crim.R. 11(C), we then query whether the failure is "of a type that excuses a defendant from the burden of demonstrating prejudice." *Id.* Finally, if we find that the failure is not one of the two types that relieves the defendant of his burden to demonstrate prejudice, we ask whether the defendant has shown that he was prejudiced by the trial court's noncompliance with Crim.R. 11(C). *Id.* Applying

this analysis to the facts of this case, we conclude that, notwithstanding the defects in the trial court's plea colloquy, Wolfe is not entitled to vacation of his guilty plea to aggravated robbery.

a. The trial court did not comply fully with Crim.R. 11(C)(2)(a).

{¶32} The relevant portion of Crim.R. 11(C) in this case is Crim.R. 11(C)(2)(a). This court has previously held that to comply with Crim.R. 11(C)(2)(a) "in instances 'where a defendant faces a mandatory prison sentence,' a 'trial court must determine, prior to accepting a plea, that the defendant understands that he or she is subject to a mandatory prison sentence and that as a result of the mandatory prison sentence, he or she is not eligible for * * * community control sanctions.'" *State v. Swoveland*, 3d Dist. Van Wert No. 15-17-14, 2018-Ohio-2875, ¶ 12, quoting *State v. Tutt*, 8th Dist. Cuyahoga No. 102687, 2015-Ohio-5145, ¶ 19.

{¶33} Here, the trial court did not determine prior to accepting Wolfe's guilty plea to aggravated robbery that Wolfe understood that he would be subject to a mandatory prison term for the offense and that he was ineligible for community control. During the plea colloquy, the trial court did not advise Wolfe that his guilty plea would result in a mandatory prison term or otherwise ensure that Wolfe was aware of that fact. Furthermore, the trial court affirmatively indicated that Wolfe was eligible for community control for the offense when it told Wolfe he was "eligible for a community control sentence of up to five years on the offenses not

related to the gun spec." (Apr. 22, 2021 Tr. at 20). Finally, errors in the written plea agreement—particularly the deletions and omissions in the "**PLEA/PENALTIES**" section indicating that there were no first-degree felonies requiring mandatory prison time and the inaccurate advisements concerning the presumption of prison and community-control eligibility—compounded the flaws in the trial court's plea colloquy. Therefore, we conclude the trial court did not comply fully with Crim.R. 11(C)(2)(a). *See State v. Terrell*, 2d Dist. Clark No. 2020-CA-24, 2021-Ohio-1840, ¶ 16.

b. The trial court did not completely fail to comply with Crim.R. 11(C)(2)(a).

{¶34} This case does not involve the trial court's purported failure to explain the constitutional rights listed in Crim.R. 11(C)(2)(c). Therefore, Wolfe will be entitled to vacation of his guilty plea without a showing of prejudice only if the trial court completely failed to comply with Crim.R. 11(C)(2)(a). As one court has explained:

> [A] trial court's total failure to inform a defendant of a distinct component of the maximum penalty during a plea colloquy constitutes a complete failure to comply with Crim.R. 11(C)(2)(a), thereby requiring the vacation of the defendant's guilty or no contest plea. Or stated differently, a complete failure to comply with Crim.R. 11(C)(2)(a) involves a trial court's complete omission in advising about a distinct component of the maximum penalty. By contrast, a trial court's mention of a component of the maximum penalty during a plea colloquy, albeit incomplete or perhaps inaccurate, does not constitute a complete failure to comply with Crim.R. 11(C)(2)(a).

(Citations omitted.) *State v. Fabian*, 12th Dist. Warren No. CA2019-10-119, 2020-Ohio-3926, ¶ 20; *accord State v. Harris*, 2d Dist. Clark No. 2020-CA-29, 2021-Ohio-1431, ¶ 22.

{¶35} In resolving this part of our inquiry, the Second District Court of Appeals's recent opinion in *Terrell* is especially instructive. In *Terrell*, the defendant agreed to plead guilty to operating a vehicle under the influence of alcohol ("OVI"), aggravated vehicular homicide, and aggravated vehicular assault. The OVI offense required a mandatory period of incarceration. *Terrell* at ¶ 6. By law, the defendant was also required to serve mandatory prison terms for his aggravated vehicular homicide and aggravated vehicular assault offenses. *Id.* at ¶ 16. Yet, before accepting the defendant's pleas to the aggravated vehicular homicide and aggravated vehicular assault offenses, the trial court indicated that the defendant was eligible for community control for those offenses. *Id.* at ¶ 4-5, 7. The Second District concluded that the trial court did not completely fail to comply with Crim.R. 11(C)(2)(a):

> [T]he trial court told [the defendant] multiple times that community control sanctions were possible for [his] aggravated vehicular homicide and aggravated vehicular assault offenses.
>
> In addition, the trial court specifically advised [the defendant] that his OVI offense carried a mandatory term of incarceration while providing no similar advisement for the other two offenses. By omitting a similar advisement for aggravated vehicular homicide and aggravated vehicular assault, and by indicating that community control sanctions were possible for those offenses, the trial court

> effectively indicated that prison terms were not mandatory for those offenses when they, in fact, were. This incorrect information was also provided in the plea form. Therefore, instead of completely omitting information, the trial court simply provided inaccurate information regarding [the defendant's] eligibility for community control sanctions. For this reason, rather than a complete failure, we find that the trial court partially failed to comply with a component of Crim.R. 11(C)(2)(a).

Id. at ¶ 19-20.

{¶36} The instant case shares many similarities with *Terrell*. Here, similar to *Terrell*, the trial court incorrectly instructed Wolfe that community control sanctions were possible for the aggravated robbery offense after he completed serving the mandatory three-year term for the firearm specification. Moreover, much the same as the trial court in *Terrell*, the trial court in this case failed to advise Wolfe that his aggravated robbery offense carried a mandatory term of imprisonment while simultaneously advising him that he was required to serve a mandatory prison term for the firearm specification. The instant case is also like *Terrell* to the extent that the written plea agreement in this case contained erroneous information. Ultimately, the bottom line here is the same as in *Terrell*: rather than completely omitting information about the mandatory nature of Wolfe's sentence for the aggravated robbery offense or his eligibility for community control, the trial court merely provided Wolfe with inaccurate information. We conclude that the trial court did not completely fail to comply with Crim.R. 11(C)(2)(a) and that Wolfe is not excused from having to establish prejudice. *See State v. Straley*, 159

Ohio St.3d 82, 2019-Ohio-5206, ¶ 17, 19 (where the defendant was misinformed that his sentences were not mandatory and that community control was "legally possible," rejecting an argument that the trial court wholly failed to comply with Crim.R. 11(C)(2)(a) and requiring a showing of prejudice).

c. Wolfe has not demonstrated that he was prejudiced by the trial court's failure to comply fully with Crim.R. 11(C)(2)(a).

{¶37} Because we conclude that the trial court did not completely fail to comply with Crim.R. 11(C)(2)(a), Wolfe must establish that he was prejudiced by the trial court's failure to comply fully with Crim.R. 11(C)(2)(a). In this context, "[t]he test for prejudice is 'whether the plea would have otherwise been made.'" *Dangler*, 162 Ohio St.3d 1, 2020-Ohio-2765, at ¶ 16, quoting *State v. Nero*, 56 Ohio St.3d 106, 108 (1990). "Prejudice must be established '"on the face of the record."'" *Id.* at ¶ 24, quoting *Hayward v. Summa Health Sys./Akron City Hosp.*, 139 Ohio St.3d 238, 2014-Ohio-1913, ¶ 26, quoting *Wagner v. Roche Laboratories*, 85 Ohio St.3d 457, 462 (1999).

{¶38} After review, we find nothing on the face of the record indicating that Wolfe would not have pleaded guilty to aggravated robbery had he been correctly informed that he would be required to serve a mandatory prison term for the offense. First, there is nothing in the record suggesting that Wolfe had any false impressions about the type of penalty the trial court was going to impose for the offense, i.e., a prison sentence versus a community control sanction. In some cases, a defendant

may decide to enter a plea based on the likelihood or possibility that the trial court will impose a community control sanction for the offense. Indeed, "the prospect of [community control] would be a factor weighing heavily in favor of a plea. That [community control] is statutorily precluded could affect a person's decision to enter a plea of no contest or guilty." *State v. May*, 64 Ohio App.3d 456, 460 (9th Dist.1989). Here, however, there is nothing in the record demonstrating that Wolfe believed he might be sentenced to a community control sanction and that his decision to plead guilty rested on this belief. To the contrary, Wolfe admits that it was his "expectation that his change of plea to the aggravated robbery would result in a prison sentence."

{¶39} In addition, the record indicates that Wolfe was correctly advised, both in the written plea agreement and by the trial court during the plea colloquy, that he was ineligible for 80 percent release and days of earned credit with respect to the aggravated robbery offense. Finally, although Wolfe was given misleading information regarding his eligibility for judicial release as it relates to the aggravated robbery offense, he does not argue, and the record does not show, that the determining factor in his decision to plead guilty was a belief that he would be eligible for judicial release. *See State v. Foster*, 1st Dist. Hamilton No. C-170245, 2018-Ohio-4006, ¶ 24-25. Accordingly, we conclude that Wolfe has not established prejudice. As a result, Wolfe is not entitled to have his guilty plea to aggravated

robbery vacated based on the trial court's failure to comply fully with Crim.R. 11(C)(2)(a).

{¶40} Wolfe's second assignment of error is overruled.

IV. Conclusion

{¶41} For the foregoing reasons, Wolfe's assignments of error are overruled. However, while not raised by Wolfe, we note that the trial court's May 28, 2021 judgment entry of sentence contains a mathematical error with respect to Wolfe's aggregate sentence. At the sentencing hearing, the trial court sentenced Wolfe to 3 years in prison for the firearm specification, 6-9 years in prison for aggravated robbery, and 17 months in prison for failure to comply with an order or signal of a police officer. Moreover, the trial court ordered that these sentences be served consecutively. The trial court's judgment entry of sentence accurately states both the individual sentence imposed for each offense and the fact that the trial court ordered consecutive service.

{¶42} When added together, the trial court ordered Wolfe to serve an aggregate minimum term of 10 years and 5 months in prison and an aggregate maximum term of 13 years and 5 months in prison. Yet, both at the sentencing hearing and in its judgment entry of sentence, the trial court incorrectly stated that Wolfe's aggregate minimum term was 10 years and 7 months in prison and that his aggregate maximum term was 13 years and 7 months in prison. Accordingly, this

matter must be remanded to the trial court for the issuance of a nunc pro tunc entry correcting this miscalculation. *See State v. Jackson*, 8th Dist. Cuyahoga No. 108364, 2020-Ohio-491, ¶ 15 (holding that although the trial court incorrectly calculated defendant's sentence both at the sentencing hearing and in its original sentencing entry, correction via nunc pro tunc entry was appropriate as court's explanation of the sentence confirmed that it made a mathematical error).

{¶43} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the Union County Court of Common Pleas, but remand this matter to the trial court so that it can issue a nunc pro tunc entry correcting the mathematical error in its judgment entry of sentence.

Judgment Affirmed and
Cause Remanded

ZIMMERMAN, P.J. and SHAW, J., concur.

/jlr