[Cite as *State v. Hazelton*, 2023-Ohio-2498.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 22CA18
	:	
v.	:	
	:	
TANNER M. HAZELTON,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Mary Adeline R. Lewis, Xenia, Ohio, for Appellant.

Nicole Tipton Coil, Prosecuting Attorney, Marietta, Ohio, for Appellee.

Smith, P.J.

{¶1} Tanner M. Hazelton appeals the entries of the Washington County Court of Common Pleas filed September 1, 2022 and September 8, 2022. First, Mr. Hazelton asserts that his guilty plea should be vacated due to the denial of his motion for intervention in lieu of conviction. Hazelton also contends that he entered a plea that was not made knowingly, intelligently or voluntarily. Upon review of the record, we find no merit to Hazelton's two assignments of error. Accordingly, we overrule both assignments of error and affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

{¶2} On February 16, 2022, Tanner M. Hazelton was indicted as follows:

Count 1- Menacing by Stalking, R.C. 2903.211(A)(1)/(B)(2)(C);

Count 2- Intimidation of an Attorney, Victim or Witness in a Criminal Case, R.C. 2921.04(A)/(D);

Count 3- Obstructing Official Business, R.C. 2921.31(A)(1)/(A)(2).

{¶3} This indictment was assigned case number 22CR91.[1] The Washington County Court of Common Pleas online docket indicates that on February 17, 2022, Hazelton was arraigned and entered not guilty pleas.[2] The parties proceeded to engage in pretrial discovery. It appears that the trial court conducted a pretrial hearing on March 17, 2022. The online docket also indicates on June 2, 2022: Journal Entry: Modification of Bond and Presentation of Terms of Plea Agreement.

{¶4} A Bill of Information was filed on June 8, 2022, charging Hazelton with R.C. 2917.21(A)(1)/(C)(2), Telecommunications Harassment, a felony of the 5th degree. This matter was assigned case number 22CR272. On June 10, 2022, Hazelton signed a Written Plea of Guilty to the sole count

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[1]This court is permitted to take judicial notice of the trial court's online docket as it pertains to the matters contained in this appeal. *See State v. Curtis,* 4th Dist. Meigs No. 18CA19, 2019-Ohio-5472, at fn 1; *State v. Kempton*, 4th Dist. Ross No. 15CA3489, 2018-Ohio-928, at ¶ 17.

[2]The trial court also issued a temporary protection order with a no contact order for a female victim, her residence, and the Marietta Memorial Hospital.

in the Bill of Information. The court's online docket indicates "to Dismiss 22CR91."[3] On that same day, the trial court filed a Judgment Entry of Guilty and ordered a presentence investigation. The docket for case number 22CR91 indicates that the three-count indictment was dismissed on July 6, 2022.

{¶5} On July 11, 2022, the trial court filed a Journal Entry: Plea of Guilty to a Bill of Information. The entry set forth as follows:

> The Court asked the Defendant if he could read and write, and the Defendant answered that he could, and advised the Court that he had read the Written Plea of Guilty, and discussed all of its terms with his attorney, and has signed the Written Plea of Guilty.

{¶6} The entry further set forth:

> The defendant advised the Court that he personally acknowledges that his attorney has informed him and advised him concerning all matters of which the Court just asked his attorney. Defendant advises the Court that he is satisfied with the services his attorney has performed for him. Defendant advised the Court that he does understand all of the terms in the Written Plea of Guilty which he signed voluntarily today.

{¶7} The entry also states:

> Upon inquiry the parties stipulated there are facts which constitute the offense charged. A statement was made by Attorney Coil as to the facts. Said statement of the facts was agreed to by Attorney Blakeslee and by Defendant,

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[3]The online dockets indicate both criminal cases arose from activities occurring on December 9, 2021 and indicate the same victims are involved in both cases.

> TANNER M. HAZELTON. The Court does FIND that Defendant has voluntarily, knowingly, and intelligently waived all of his constitutional rights.

{¶8} This entry established dates for a presentence investigation interview and sentencing for August 22, 2022.

{¶9} Over one month after entering a guilty plea, on July 22, 2022, Hazelton filed a motion for intervention in lieu of conviction (ILC). In the motion, Hazelton argued that his criminal conduct was due to his mental illness. He indicated he had obtained a mental health evaluation at the Family Resource Center. On August 16, 2022, the trial court found Hazelton preliminarily eligible for ILC.

{¶10} On August 22, 2022, the trial court heard Hazelton's motion for ILC. Hazelton submitted a letter from the Family Resource Center which contained an assessment that Hazelton suffered from bipolar disorder, depression, generalized anxiety disorder, and trauma/stress-related disorders. The letter contained the opinion that these disorders were factors leading to Hazelton's criminal conduct and that the likelihood of further criminal activities would be substantially reduced if Hazelton received treatment in lieu of conviction. Furthermore, Hazelton's counsel argued that his victim was not a person over the age of 65 or under the age of 13, permanently

disabled, or a peace officer. Hazelton promised to follow the conditions of ILC if granted.

{¶11} At this hearing, the victim gave an impact statement. She acknowledged limited contact with Hazelton, due to her pregnancy and an unsuccessful attempt at reconciliation with Hazelton. As directly relating to the underlying facts contained in the Bill of Information, the victim explained that Hazelton had used his position as a law enforcement officer to intimidate her.

{¶12} Upon hearing the arguments of counsel, the trial court concluded that while Hazelton was eligible for ILC, granting this motion would demean the seriousness of the offense. The trial court denied the motion. The trial court then proceeded to sentencing.

{¶13} The trial court imposed a sentence of three years of community control, with 60 days jail and credit for time served. The trial court noted that at the time of the offense, Hazelton was employed by Marietta College as a campus police officer and that he held a commission as a special deputy in Noble County. The court found that his employment resulted in him having a position of trust within the community which made his crime more serious.

{¶14} This timely appeal followed. Additional facts will be set forth where pertinent.

ASSIGNMENTS OF ERROR

I. THE APPELLANT'S PLEA SHOULD BE VACATED DUE TO THE DENIAL OF HIS MOTION FOR INTERVENTION IN LIEU OF CONVICTION.

II. THE APPELLANT'S PLEA WAS NOT MADE KNOWINGLY, INTELLIGENTLY, OR VOLUNTARILY DUE TO BEING MADE UNDER THE PRESUMPTION THAT IT WAS MERELY A NECESSARY ACTION TO BE CONSIDERED FOR INTERVENTION IN LIEU OF CONVICITON.

{¶15} Because they are interrelated, we will consider Hazelton's assignments of error jointly. Generally, " ' "[a] guilty plea waives all appealable errors except for a challenge as to whether the defendant made a knowing, intelligent and voluntary acceptance of the plea." ' " *State v. Robinson,* 4th Dist. Lawrence No. 13CA18, 2015-Ohio-2635, ¶ 45, quoting *State v. Neu*, 4th Dist. Adams No. 12CA942, 2013-Ohio-616, ¶ 13, quoting *State v. Patterson,* 5th Dist. Muskingum No. CT2012-0029, 2012-Ohio-5600, ¶ 30. However, here Hazelton contends that his plea of guilty was made purely because he was under the impression it was a precondition to his being considered for ILC. But for this belief, Hazelton argues, he would

not have made the plea. Hazelton asserts that his trial counsel advised him as such and that a review of the record demonstrates that the Court also understood that to be the reason for his plea. Based on the foregoing, Hazelton claims his plea was not knowingly made and should be vacated. In response, the State of Ohio argues that there is no information in the record which overrides the presumption that Hazelton's guilty plea was knowing, voluntary, and intelligent.

STANDARD OF REVIEW

{¶16} The ultimate inquiry when reviewing a trial court's acceptance of a guilty plea is whether the defendant entered the plea in a knowing, intelligent, and voluntary manner. *See State v. Pigge,* 4th Dist. Ross No. 09CA3136, 2010-Ohio-6541, at ¶ 13; *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, at ¶ 7, citing *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution." ' " *State v. Felts,* 4th Dist. Ross No. 13CA3407, 2014-Ohio-2378, ¶ 14, quoting *State v. Veney,* 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 7, quoting *Engle,* 74 Ohio St.3d 525, 527. A defendant enters a plea in a knowing, intelligent, and voluntary manner when the trial court fully advises the defendant of all the

constitutional and procedural protections set forth in Crim.R. 11(C) that a guilty plea waives. *See State v. Clark,* 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, at ¶ 25, citing *Engle*, 74 Ohio St.3d at 527; *State v. Eckler,* 4th Dist. Adams No. 09CA878, 2009-Ohio-7064, at ¶ 48.

{¶17} Thus, when a court reviews a trial court's acceptance of a guilty plea, it must independently review the record to ensure that the trial court followed the dictates of Crim.R. 11(C). *See State v. Kelley,* 57 Ohio St.3d 127, 128, 566 N.E.2d 658 (1991) ("When a trial court or appellate court is reviewing a plea submitted by a defendant, its focus should be on whether the dictates of Crim.R. 11(C) have been followed."); *Eckler* at ¶ 48 (noting that standard of review is de novo); *State v. Hamilton,* 4th Dist. Hocking No. 05CA4, 2005-Ohio-5450, at ¶ 9; *see also State v. Gilmore,* 8th Dist. Cuyahoga Nos. 92106, 92107, 92108, and 92109, 2009-Ohio-4230, at ¶ 12.

{¶18} Crim.R. 11(C)(2)(a)-(c) sets forth the process a trial court must follow before accepting a guilty plea. *See Pigge, supra,* at ¶ 14. The rule prohibits a trial court from accepting a guilty plea unless the court personally addresses the defendant and advises him or her of the constitutional rights. When a trial court engages in a plea colloquy with the defendant, it must strictly comply with Crim.R. 11(C)(2)(c), which sets forth the constitutional rights a guilty plea waives. *Pigge, supra*, at ¶ 15. Thus, the trial court must

explain to the defendant, either literally or in a reasonably intelligible manner, that a guilty plea waives (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination. *Veney* at syllabus and ¶¶ 18, 27 (stating that trial court must literally comply with Crim.R. 11(C)(2)(c)).

{¶19} Strict compliance is not the standard with regard to the non-constitutional notifications. *See State v. Rexroad,* 4th Dist. Scioto No. 21CA3972, 2023-Ohio-356, at ¶ 26. Rather, “with respect to the non-constitutional notifications required by Crim.R. 11(C)(2)(a) and 11(C)(2)(b), substantial compliance is sufficient.” *Veney* at ¶ 14, citing *State v. Stewart*, 51 Ohio St.2d 86, 364 N.E.2d 1163 (1977). “ ‘Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.’ ” *Id.* at ¶ 15, quoting *State v. Nero,* 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

{¶20} Crim.R. 11(C)(2)(a) provides that the trial court must personally address the defendant and determine if 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." Based on Hazelton's argument hereunder, we believe Crim.R. 11(C)(2)(a) is the subpart of the rule which is implicated. Therefore, we must decide whether the trial court substantially complied with the required notification, that is, whether under the totality of the circumstances, Hazelton subjectively understood the implications of his plea.

{¶21}We have reviewed the record in its entirety and find no evidence that Hazelton's guilty plea was conditioned upon the granting of his motion. The only evidence surrounding the circumstances of Hazelton's plea is contained in a document captioned "Written Plea of Guilty," set forth on Page Two, Paragraph Six:

> I understand the nature of these charges and the possible defenses I might have. I am satisfied with my attorney's advice regarding any defenses I might have. I am satisfied with my attorney's advice, counsel and competence. I am not now under the influence of drugs or alcohol. No threats have been made to me. No promises have been made to me except as part of this plea agreement, stated entirely as follows: **Plead to Bill of Information as charged. Dismiss case 22CR91. No agreed Disposition.**[4]

{¶22} Hazelton signed and initialed each of the document's three pages. Furthermore, on Page Three, the written plea document states:

[4]In Hazelton's Statement, Praecipe and Notice to the Court Reporter, he requests only a transcript of the Sentencing Hearing and Hearing on Defendant-Appellant's Motion for Intervention in Lieu of Conviction held August 22, 2022. Hazelton did not request that a transcript of his change of plea hearing be included.

> By pleading guilty, I admit committing the offense and will tell the Court the facts and circumstances of my guilt. I know the Judge may either sentence me today or refer my case for a pre-sentence investigation. * * * I enter this plea voluntarily.

{¶23} In support of his argument, Hazelton cites his counsel's statement at the plea hearing as follows:

> [A]s a precondition to ask for intervention in lieu of conviction, he has to plea guilty. So I think that if the court denies his request for intervention, his guilty plea goes out the window.

{¶24} Furthermore, the trial court stated at sentencing:

> On June 10th we had a hearing with respect to the plea to telephone harassment, fifth degree felony. And the Court at that time made a finding of guilty in that to the telephone communication harassment in the Bill of Information. And the sentence was postponed, pending the receipt of the presentence report, as well as Attorney Blakeslee's motion for intervention in lieu.

{¶25} Hazelton argues his counsel's statement "sheds light" on his understanding and intent when he pled guilty and also demonstrates his reliance upon the advice and representation of counsel. He also argues the court's statement implies its own understanding that the Appellant was pleading guilty in order to be considered for ILC. Thus, he concludes his plea was not knowingly made because he was advised that the plea was a mere precondition to his ability to be considered for ILC. We disagree.

{¶26} We first observe that on Page 11 of Hazelton's brief, he mischaracterizes his counsel's statement as occurring at the plea hearing. The plea hearing occurred on June 10, 2022. However, a review of the motions hearing and sentencing transcript reveals that this statement occurred at the conclusion of the ILC hearing which occurred on August 22, 2022. Counsel's statement therefore was made after his plea was previously entered and after the ILC motion was denied. Thus, we are not persuaded that this evidences a precondition that Hazelton relied upon prior to entering his plea. As to the trial court's statement, we do not find this suggests Hazelton's intent when entering his plea. The statement indicates only that the ILC motion was forthcoming and there would be a delay waiting for the motion and the PSI.

{¶27} Admittedly, we do not have a full picture of the plea hearing and the trial court's colloquy with Hazelton because we do not have the benefit of a plea hearing transcript. Hazelton did not order a transcript of the plea hearing, which was his duty to provide if he wished to have it considered. Thus, we are unable to determine what may have been expressly discussed on the record during his plea hearing. In such situations we must presume the regularity of the trial court proceeding. *See State v. Bear,* 4th Dist. Gallia No. 20CA9, 2021-Ohio-1539, at ¶ 32.

{¶28} In conclusion, it appears that the trial court substantially complied with informing Hazelton of the implications of his plea. And nothing in this record demonstrates that Hazelton's guilty plea was conditioned upon the granting of the motion for ILC or that Hazelton was promised that he would be allowed to seek vacation of his plea if his motion was denied. Based on the foregoing, we conclude that Hazelton's plea was entered knowingly, intelligently, and voluntarily. We do not find that Hazelton's plea should be vacated. Accordingly, we overrule the second assignment of error.

{¶29} Hazelton also asserts that when the trial court did not grant his request for ILC, the court should have allowed his previously entered plea to be withdrawn and should have proceeded with the case as if the plea had not been entered, based on the language of the ILC statute, R.C. 2951.041(C). After Hazelton's appeal was filed, he emailed the court a post-sentence motion to withdraw his plea which was also denied.

{¶30} Given that Hazelton now argues his plea should have been vacated, we will review his argument under the standard of review for post-sentence motions. " 'An appellate court reviews a trial court's decision on a motion to withdraw a plea under an abuse-of-discretion standard.' " *State v. Brown,* 4th Dist. Ross No. 21CA3758, 2022-Ohio-4197, at ¶ 10, quoting

State v. Francis, 104 Ohio St. 3d 490, 2004-Ohio-6894, 820 N.E.2d 355, ¶ 32, citing *State v. Smith,* 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph two of the syllabus (deciding a post-sentence motion to withdraw a guilty plea is within the trial court's discretion); *State v. Xie,* 62 Ohio St.3d 521, 584 N.E.2d 715 (1992), paragraph two of the syllabus. The Supreme Court has defined " 'abuse of discretion' as an 'unreasonable, arbitrary, or unconscionable use of discretion, or as a view or action that no conscientious judge could honestly have taken.' " *State v. Kirkland,* 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 67, quoting *State v. Brady,* 119 Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 23. " 'Abuse of discretion' has been described as including a ruling that lacks a 'sound reasoning process.' " *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.,* 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

{¶31} Crim.R. 32.1 provides that "a motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment or permit the defendant to withdraw his or her plea." " ' "A defendant who seeks to withdraw a plea of guilty after the imposition of sentence has the

burden of establishing the existence of manifest injustice." ' " *Brown, supra,* at ¶ 11, quoting *State v. Straley,* 159 Ohio St.3d 82, 2019-Ohio-5206, 147 N.E.3d 623, ¶ 14, quoting *State v. Smith,* 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph one of the syllabus; *State v. Smith,* 4th Dist. Ross No. 21CA3739, 2021-Ohio-4028, ¶ 16. "A 'manifest injustice' is defined as a clear or openly unjust act." *Straley* at ¶ 14, citing *State ex rel. Schneider v. Kreiner,* 83 Ohio St.3d 203, 208, 699 N.E.2d 83 (1998). It "relates to a fundamental flaw in the plea proceedings resulting in a miscarriage of justice." *Id.,* citing *State v. Tekulve,* 188 Ohio App.3d 792, 2010-Ohio-3604, 936 N.E.2d 1030, ¶ 7 (1st Dist.), citing *Kreiner* at 208, 699 N.E.2d 83, and *Smith* at 264, 361 N.E.2d 1324. While manifest injustice has been described under various circumstances, it is permissible as grounds to withdraw a post-sentence motion to withdraw a plea "only in extraordinary cases." ' " *Id.,* quoting *Smith* at 264, 361 N.E.2d 1324. " ' "The logic behind this precept is to discourage a defendant from pleading guilty to test the weight of potential reprisal, and later withdraw the plea if the sentence was unexpectedly severe." ' " *State v. Caraballo*, 17 Ohio St.3d 66, 67, 477 N.E.2d 627 (1985), quoting *State v. Peterseim,* 68 Ohio App.2d 211, 213, 428 N.E.2d 863 (8th Dist.1980), quoting *Kadwell v. United States,* 315 F.2d 667 (C.A. 9 1963).

{¶32} In Hazelton's untitled motion to withdraw, filed October 13, 2022, he asserts:

> I would like to file a motion on my own behalf. I spoke with the public defenders office. They advised me I have the right to file a motion to withdraw my guilty plea. When my intervention was denied I requested my attorney to withdraw my please as in the law it states I have the right to do so. He didn't do this correctly.

{¶33} The trial court ruled as follows:

> The Court finds that the filing does not conform to the rules of criminal procedure or the local rules. Furthermore, the Court is without jurisdiction to rule on the motion, if it were valid, as the Defendant's pending appeal has divested this Court of jurisdiction to rule on said motion.

{¶34} The trial court was correct. Generally, the filing of a notice of appeal divests a trial court of jurisdiction to consider a motion to withdraw a guilty plea. *See State v. Estep,* 4th Dist. Lawrence No. 11CA7, 2012-Ohio-6296, at ¶ 7 (internal citations omitted); *State v. Elkins,* 2016-Ohio-8579, 77 N.E.3d 360, at fn. 1 (4th Dist.); State v. Colon, 2017-Ohio-8478, 99 N.E. 3d 1197, at fn. 1 (8th Dist.).

{¶35} Even if the trial court had jurisdiction to rule on Hazelton's motion, we would not find it abused its discretion. Hazelton has failed to demonstrate a manifest injustice. "This is an 'extremely high standard' that permits a defendant to withdraw his plea 'only in extraordinary cases.' "

State v. Cassell, 2017-0-769, 79 N.E.3d 588, at ¶ 25 (4th Dist.) quoting *State v. Walton*, 4th Dist. Wash. No. 13CA9, 2014-Ohio-618, 2014 WL 705418, ¶ 10. R.C. 2951.041 provides in pertinent part:

> (A) If an offender is charged with a criminal offense, including but not limited to a violation of section 2913.02, 2913.03, 2913.11, 2913.21, 2913.31, or 2919.21 of the Revised Code, and the court has reason to believe that * * * at the time of committing that offense, the offender had a mental illness, * * * and that the mental illness, * * * was a factor leading to the offender's criminal behavior, *the court may accept, prior to the entry of a guilty plea,* the offender's request for intervention in lieu of conviction. (Emphasis added.)

{¶36} Clearly, this language indicates only that an offender may request ILC prior to entering a plea and a trial court's acceptance is optional.

{¶37} In support of his argument that his plea should have been vacated due to the denial of his motion for ILC, Hazelton directs us to R.C. 2951.041(C) which provides:

> If the court denies an eligible offender's request for intervention in lieu of conviction, the court shall state the reasons for the denial, with particularity, in a written entry. * * * If the court finds that the offender is not eligible or does not grant the offender's request, the criminal proceedings against the offender shall proceed as if the offender's request for intervention in lieu of conviction had not been made.

{¶38} But the language of the ILC statute does not support Hazelton's interpretation. Hazelton pled guilty prior to making his request. When his

request for ILC was denied, the only logical conclusion is that the trial court should then proceed to impose sentence. At least one other appellate court has considered this issue and also found that nothing in the language of R.C. 2951.041 requires a court to vacate a plea following denial of an ILC motion. *See State v. Fowle,* 5th Dist. Delaware No. 09CAA040035, 2010-Ohio-586, at ¶ 21 (Nothing in the statute requires the court to vacate appellant's plea following the denial of his ILC motion).

{¶39} As set forth above, we have found nothing in the record to demonstrate that a grant of ILC was agreed upon by the parties or was made part of the plea agreement. Hazelton's subjective and mistaken belief does not entitle him to rescind a guilty plea validly entered. *See State v. Vore*, 4th Dist. Athens No. 19CA06, 2021-Ohio-185, at ¶ 24.

{¶40} Based on our review, it appears only that Hazelton had a change of heart about his guilty plea after it resulted in a conviction and sentence. The trial court imposed a 60-day jail sentence, with credit for 17 days served, and three years of community control sanctions. A defendant's change of heart is insufficient to demonstrate manifest injustice, particularly where the change of heart is based upon a dissatisfaction with the sentence imposed. *See State v. Vinson,* 2016-Ohio-7604, 73 N.E.3d 1025, at ¶ 44 (8th Dist.).

{¶41} For the foregoing reasons, we find no merit to Hazelton's argument that his plea should have been vacated. The first assignment of error is also overruled.

{¶42} Having found no merit to either of Appellant's assignments of error, the judgment of the trial court is hereby affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Abele, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

____

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.