[Cite as *State v. Buffington*, 2025-Ohio-2575.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. 24CA4085 CASE NO. 24CA4086
v.	:	
VICTOR BUFFINGTON,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES[1]:

Felice L. Harris, Reynoldsburg, Ohio, for appellant.[2]

CRIMINAL APPEAL FROM MUNICIPAL COURT
DATE JOURNALIZED:7-17-25
ABELE, J.

{¶1} This is an appeal from a Portsmouth Municipal Court judgment of conviction and sentence. Victor Buffington, defendant below and appellant herein, assigns four errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED PLAIN ERROR AND ABUSED ITS DISCRETION BY CONVICTING AND SENTENCING VICTOR BUFFINGTON WITHOUT FIRST ACCEPTING A PLEA."

[1] Appellee did not file a brief.

[2] Different counsel represented appellant during the trial court proceedings.

SECOND ASSIGNMENT OF ERROR:

"VICTOR BUFFINGTON'S PLEA WAS NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE, IN VIOLATION OF CRIM.R. 11 AND HIS RIGHTS TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION."

THIRD ASSIGNMENT OF ERROR:

"MR. BUFFINGTON'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW WERE VIOLATED WHEN THE TRIAL COURT GRANTED AN *EX PARTE* DOMESTIC VIOLENCE TEMPORARY PROTECTION ORDER ('DVTPO') UPON INSUFFICIENT EVIDENCE AND IN VIOLATION OF R.C. 2919.26(C)(1). (ARRAIGNMENT TR. I)."

FOURTH ASSIGNMENT OF ERROR:

"VICTOR BUFFINGTON WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL DURING HIS PLEA HEARING IN CRB 2400560. (ARRAIGNMENT TR. I; PLEA TR.)"

{¶2} In trial court case number 2400556, on May 23, 2024, Scioto County Deputy Sheriff J. Arnold filed a criminal complaint that charged appellant with domestic violence threat in violation of R.C. 2919.25(C). The affidavit alleged that appellant knowingly caused his wife, M.B., to believe he "would cause her physical harm by making the statement 'the Army taught him to kill people by putting two in the chest and one in the head,' causing her to fear he would follow through with the statement."

{¶3} An Investigative Report Supplement stated that when deputies arrived at the home on May 22, 2024, appellant "was very

belligerent and demanded that [they] leave the residence because he did not call for law enforcement." Appellant's wife, M.B. stated, appellant "has been drinking for the past two days and being verbally abusive toward her and her son [C.A.]." In addition, appellant "threatens to throw stuff and break out the windows to the house . . . [and M.B.] fears Victor will kill either her or her son." When M.B. asked officers to help her gather some of her belongings so she could leave, "Victor got the keys and threw them into the house . . . yelling at [M.B.] while blocking the entrance to the residence. [M.B.] began to cry and ran from the porch then falling to the ground." Further, as deputies placed appellant under arrest, he "became angry and attempted to stop us from placing him in the cruiser."

{¶4} On May 23, 2024, appellant entered a not guilty plea and the trial court issued a temporary protection order and released appellant on a personal recognizance bond.

{¶5} The following day, in trial court case number 2400560, Deputy Arnold filed a criminal complaint that charged appellant with violating a protection order in violation of R.C. 2919.27. The complaint alleged that appellant "did recklessly violate the terms of TPO Case No. CRB 2400556 by sending his son inside the residence of [M.B.] the protected party in order to make contact

with her and collect items on his behalf."

{¶6} The Investigative Report Supplement stated that officers responded to a report that appellant, who had been arrested the day before for domestic violence, had returned to the residence and his son, entered the residence without permission, and "was taking items, including guns, from the residence." Officers found appellant sitting in a vehicle nearby, "still wearing clothing from the Scioto County Jail." Appellant told them, "he had come with his son to collect items from residence and he was OK to do so because he was 500 feet away." Inside the residence, M.B. said, "Tyler Buffington was in her residence uninvited and collecting items." When officers confronted him, "[h]e appeared out of a hallway and he was holding loaded pistol magazines and other items in his hand." After a scuffle, officers arrested both Tyler Buffington and appellant.

{¶7} On June 4, 2024, appellant appeared in court on both cases. In case number 2400556 (domestic threat), the court purported to accept a no contest plea and sentenced appellant to (1) serve 11 days in jail with 11 days credit for time served, and (2) pay court costs. In case number 2400560 (violation of a protection order), the trial court purported to accept appellant's

no contest plea and stipulation of guilt. The court sentenced appellant to (1) serve 180 days in jail to be suspended, (2) serve three years of probation, and (3) pay court costs. This appeal followed.

I.

{¶8} In his first assignment of error, appellant asserts that the trial court committed plain error and abused its discretion when it convicted and sentenced him without first accepting a plea. In particular, appellant contends that the trial court did not directly address appellant or request him to enter a plea and appellant did not address the court or enter a plea.

{¶9} The entirety of the June 4, 2024, plea/sentencing transcript for the combined cases reflects the following:

> [TRIAL COURT]: Good afternoon, Mr. Buffington. Mr. Scott has made an appearance and we have a Domestic Threat and a Violation of Temporary Protection Order. The alleged victim is [M.B.] and she is represented here today by Teresa Carver, the Victim's Advocate. Counsel do you want to state on the record our discussions?
>
> ATTORNEY SCOTT: Yes, your Honor. After a process, we have come to an agreement to, essentially, plead to the two charges. Mr. Buffington will be released today with time served and have the remaining days over his head with probation. In addition to that, Mr. Buffington will be able to retain his house on June 15th at 6:00 p.m., which will give the alleged victim time to obtain a new residence. Beyond that, Mr. Buffington will be released today at approximately 3:00 p.m. and will be permitted to go to the house to secure his car, car keys, wallet and some clothing items. Court costs will be assessed and no

> fine.
>
> [TRIAL COURT]: Ok, very good. On the Violation of Temporary Protection Order, the Court will accept a no contest plea and stipulation of guilt. 180 days in the county jail is the sentence with 180 days suspended, three years probation and court costs only. As far as term of the probation, you are to remain away from the property at 512 Coleman Road until 6:00 p.m. on June 15th. That is a probation term, Mr. Buffington, and violation of that lands you in jail. With the exception that, today at 3:00 p.m. you are to be released from jail and you can go to that property address and pick up your car, your clothing will be [in] the car with your wallet and the keys to the car. We will have a probation officer or bailiff there to make sure that you get your items and your car.
>
> On the Domestic Threat, we will accept a no contest plea and make a stipulation of guilty. 11 days in the county jail will be the sentence with 11 days credit, court costs only and no fine. You stay out of here, you stay out of jail. No other problems with the victim. You've probably fought tougher battles. Good luck to you. You get out today and go get your items. Thank you, counsel.
>
> ATTORNEY SCOTT: Thank you, your Honor.

{¶10} Appellant argues that the record does not reflect that he entered a plea; thus no plea existed for the trial court to accept and no basis exists for appellant's convictions. However, because appellant failed to raise this issue in the trial court, he has waived all but plain error. *See State v. Brooks,* 2024-Ohio-420, ¶ 29 (4th Dist.), citing *State v. Cooper*, 2023-Ohio-2100, ¶ 13, (3d Dist.) (defendant waived all but plain error when he failed to raise in trial court concerns about lack of bill of particulars,

much less raise constitutional argument).

{¶11} To establish plain error under Crim.R. 52(B), the party claiming error must establish: (1) that an error, i.e., a deviation from a legal rule, occurred; (2) that the error constituted an "obvious" defect in the trial proceedings; and (3) that this obvious error affected substantial rights, i.e., the error must have affected the outcome of the trial. *State v. Morgan*, 2017-Ohio-7565, ¶ 36. Consequently, appellant must demonstrate a reasonable probability exists that, but for the trial court's error, the outcome of the proceeding would have been otherwise. *State v. West*, 2022-Ohio-1556, ¶ 35-36. Under the plain error standard, "the defendant bears the burden of 'showing that but for a plain or obvious error, the outcome of the proceeding would have been otherwise, and reversal must be necessary to correct a manifest miscarriage of justice.' " *West* at ¶ 22, quoting *State v. Quarterman*, 2014-Ohio-4034, ¶ 16. Generally, a defendant bears the burden to establish prejudice. *See State v. Davis*, 2017-Ohio-2916, ¶ 23 (3d Dist.). However, in certain circumstances described below, no showing of prejudice is required.

{¶12} A defendant's plea must be made knowingly, intelligently, and voluntarily. *State v. Dangler*, 2020-Ohio-2765, ¶ 10, citing *Parke v. Raley*, 506 U.S. 20, 28-29 (1992); *State v. Clark*, 2008-

Ohio-3748, ¶ 25. Enforcement of a plea that is not made knowingly, intelligently, and voluntarily is unconstitutional under the United States and Ohio Constitutions. *State v. Engle*, 74 Ohio St.3d 525, 527 (1996). Further, this court conducts a de novo review to determine whether a no-contest plea to a misdemeanor petty offense complied with Crim.R. 11(E). *State v. Scott*, 2025-Ohio-1244, ¶ 16 (4th Dist.), citing *Cleveland v. Greene*, 2024-Ohio-4899, ¶ 4 (8th Dist.). "Under a de novo review, we afford no deference to the trial court's decision." *Scott*, *id.*, quoting *Mollett v. Lawrence Cty. Bd. of Dev. Disabilities*, 2024-Ohio-1434, ¶ 46 (4th Dist.), citing *McNichols v. Gouge Quality Roofing, LLC.*, 2022-Ohio-3294, ¶ 25 (4th Dist.).

{¶13} Crim.R. 11 outlines the trial court procedures to accept a plea, and "'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.'" *Dangler* at ¶ 11, quoting *State v. Stone*, 43 Ohio St.2d 163, 168 (1975). A trial court's obligations in accepting a plea depend upon the level of the offense to which the defendant is pleading. *State v. Watkins*, 2003-Ohio-2419, ¶ 25. For example, the Supreme Court of Ohio has held that "[i]n accepting a plea to a misdemeanor involving a petty

offense, a trial court is required to inform the defendant only of the effect of the specific plea being entered. Crim.R. 11(E) construed." *State v. Jones*, 2007-Ohio-6093, syllabus paragraph one. The requirement to inform a defendant of the effect of the plea appears in Crim.R. 11(C)(2)(b) for felony cases, in Crim.R. 11(D) for misdemeanor cases involving serious offenses, and in Crim.R. 11(E) for misdemeanor cases involving petty offenses.

{¶14} Relevant to the case sub judice, Crim.R. 11(E) requires that, "[i]n misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty." As noted above, the Ohio Supreme Court has held that Crim.R. 11(E) requires the trial court to inform a defendant of the effect of the specific plea being entered, and that the requirement of informing the defendant of the effect of the plea is not satisfied by informing the defendant of the maximum possible penalty and the right to a jury trial. *Jones*, *supra*, at ¶ 14, 20, 22. Instead, "to satisfy the requirement of informing a defendant of the effect of a plea, a trial court must inform the defendant of the appropriate language under Crim.R. 11(B)," either orally or in writing before accepting a plea. *Jones* at ¶ 25, 51; *Lakewood v.*

Hoctor, 2023-Ohio-375, ¶ 6 (8th Dist.).

{¶15} Regarding the effect of a no-contest plea, Crim.R. 11(B)(2) provides:

> The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information or complaint, and the admission shall not be used against the defendant in any subsequent civil or criminal proceeding.

{¶16} A trial court's failure to advise a defendant of the Crim.R. 11(B) language regarding the effect of a no-contest plea to a petty misdemeanor offense makes a prejudice analysis unnecessary and the plea must be vacated. *Hoctor,* 2023-Ohio-375, at ¶ 7, citing *State v. Clay*, 2022-Ohio-631, ¶ 11, citing *Brecksville v. Grabowski*, 2017-Ohio-7885, ¶ 13 (8th Dist.); *State v. Jackson*, 2022-Ohio-3662, ¶ 12, 14 (2d Dist.); *State v. Brown*, 2021-Ohio-3443, ¶ 12 (9th Dist.). Although the same is true when a trial court fails to provide any explanation regarding the effect of a no-contest plea as required by Crim.R. 11(C)(2) in a felony case, "a trial court's *complete* failure to comply with a portion of Crim.R. 11(C) eliminates the defendant's burden to show prejudice." *Dangler* at ¶ 15.

{¶17} In *Hoctor*, before the trial court accepted the defendant's no contest plea the court informed him of the nature of the charges, the maximum penalties involved, and all of the

constitutional rights he waived. *Id.* at ¶ 8. "However, the record reflects that at no point did the trial court inform appellant of the effect of a no-contest plea, either orally or in writing." *Id.* The court observed that while it appeared that the defendant "was aware of what was transpiring and understood the charges to which he was pleading no contest, we are constrained to follow the authority discussed herein." *Id.* "'Although Crim.R. 11(E) does not require the trial court to engage in a lengthy inquiry when a plea is accepted to a misdemeanor charge involving a petty offense, the rule does require that certain information be given on the effect of the plea.'" *Id.* at ¶ 8, citing *Jones*, 2007-Ohio-6093, at ¶ 51. Thus, because the trial court failed to provide any explanation of the effect of the no-contest plea, the Eighth District concluded that Hoctor did not enter a knowing, intelligent, and voluntary plea, and the court vacated the plea. *Id.*

{¶18} Similar to *Hoctor,* in the case sub judice, the record does not reflect that the trial court advised appellant of the effect of his no-contest plea. Moreover, as appellant contends, it appears from the record that appellant did not enter a no-contest plea. Appellant points to *State v. Keltner*, 2024-Ohio-2017 (12th Dist.) for support. Charged with two counts of domestic violence,

Keltner appeared with her attorney for trial where they discussed a plea to one count of domestic violence. The trial court ascertained that the victims agreed to the plea arrangement and that Keltner intended to enter a plea. After a brief dialogue with Keltner, the trial court entered a judgment of conviction for one count of domestic violence and ordered her to serve 180 days in jail with 178 days suspended. However, Keltner failed to enter a plea. *Id.* at ¶ 1-2. The court noted that while the Crim.R. 11 misdemeanor plea procedure is much less elaborate than the felony procedure, citing *State v. Fluhart*, 2021-Ohio-2153, ¶ 15 (12th Dist.), "a court may not convict and sentence a defendant where no plea has been entered upon the record." *Id.* at ¶ 7, citing *State v. Muhire*, 2023-Ohio-1181, ¶ 10 (12th Dist.). Although the record showed that the trial court informed Keltner of the amount of jail time she could receive, advised her that a guilty plea is an admission of guilt, and Keltner acknowledged that she understood those advisements, the record did not reflect that Keltner tendered a guilty plea. *Id.* at ¶ 8.

{¶19} Similarly, in *Muhire*, *supra,* 2023-Ohio-1181 (12th Dist.), the trial court, defense counsel, and Muhire discussed the defendant's intent to enter a no contest plea to misdemeanor vehicular manslaughter. *Id.* at ¶ 3-4. However, Muhire "never

actually entered a no contest plea into the record prior to the trial court issuing its decision finding Muhire guilty." *Id.* at ¶ 10. Moreover, the court held, "even if we were to find Muhire had entered a no contest plea prior to the trial court finding him guilty, Muhire's plea was not knowingly, intelligently, and voluntarily made," *id.* at ¶ 11, because the record did not indicate that the trial court advised Muhire that a no contest plea did not constitute an admission of guilt or that it could not be used against him in a subsequent civil or criminal proceeding pursuant to Crim.R. 11. *Id.*

{¶20} Finally, appellant cites *State v. Singleton*, 2006-Ohio-6314 (2d Dist.). Singleton intended to enter a no-contest plea to two housing code violations and the parties left the hearing "under the impression that a no-contest plea had been tendered." *Id.* at ¶ 71. However, the record did not reflect that Singleton ever expressly entered a no-contest plea at the hearing. *Id.* The court held:

> The tendering of a plea of no contest or of guilty has substantial consequences to a criminal defendant. For that reason, we are not prepared to recognize an implied plea. In our view, an implied plea would be inconsistent with the requirement in Crim.R. 11(A) that "[a]ll other pleas [besides a plea of not guilty by reason of insanity] may be made orally." In our view, to effectuate the tendering of a no-contest plea, a criminal defendant must do so by either signing a writing reflecting an express plea, or orally, either by saying, affirmatively, that he is

> pleading "no contest" or by responding affirmatively t to the trial court's question, "are you pleading no contest," phrased in the present tense, indicative mood.

{¶21} Thus, because the Second District concluded that the record did not reflect that Singleton expressly tendered a no-contest plea, "there was no plea for the trial court to accept, and consequently no basis for the judgment of conviction." *Id.* at ¶ 72. Accordingly, the court reversed the judgment and remanded the cause for further proceedings. *See also State v. Tye*, 2025-Ohio-587, ¶ 7 (12th Dist.)(defendant's misdemeanor violation of protection order conviction reversed and remanded for further proceedings when record demonstrated defendant failed to enter guilty plea into record prior to trial court's judgment of conviction); *Cleveland v. Chappell*, 2017-Ohio-4070, ¶ 13 (8th Dist.) (although housing court explained Crim.R. 11 effects of entering no contest plea, defendant did not tender formal plea following Crim.R. 11 explanation, nor did record contain signed writing reflecting expressed plea).

{¶22} Similarly, in *State v. Huffman*, 2024-Ohio-5273, ¶ 9 (5th Dist.), the Fifth District recently observed that the trial court completely failed to comply with Crim.R. 11 and did not explain the effect of Huffman's pleas. The court further concluded that the trial court's complete failure to comply with the rule obviated the

need for a prejudice analysis. In *Huffman*, the prosecutor recited its recommendation to amend Huffman's charges and counsel confirmed their understanding of the negotiated resolution and indicated Huffman's intent to plead guilty to one count and no contest with a stipulated finding of guilty to another count. The trial court immediately granted the amendments to the charges and found Huffman guilty of both. Huffman did not speak and no signed plea form existed in the record. Thus, the court found the record "devoid of any compliance with Crim.R. 11(E)," *id.* at ¶ 10, and vacated Huffman's plea and remanded.

{¶23} In the case sub judice, in addition to the plea/sentencing transcript being devoid of compliance with Crim.R. 11(E), no signed plea agreement exists in either case record. In case number 2400556 (domestic violence threat), the record contains an unsigned June 4, 2024 document that reflects a plea of "J-No Cont" and Jail "Jail Days: 11" and "Costs 130.00." A June 5, 2024 "Entry of Sentence" states:

> The defendant herein having pled J-No Cont, found guilty of Domestic Threat on 06/04/2004, and
>
> Defendant being present in open Court and having been given an opportunity to make a statement to the court on his own behalf and to present information in mitigation of punishment, now therefore,
>
> The Court finds that the imposition of a fine and jail sentence in this case is suited to deterrence of the

> offense and correction of the offender.
>
> It is the sentence of this Court that the defendant Victor P Buffington, be sentenced to 11 consecutive days in the Scioto County Jail and fined the sum of $.00 and costs[.]
>
> ENTER: CREDIT FOR TIME SERVED.

{¶24} Similarly, in Case number 2400560, an unsigned trial court document states that on June 4, 2024, appellant entered a "Plea: J-No Cont," the court ordered appellant to serve 180 days in jail with 180 suspended, "Prob: 3," and "Dispo" states, "Deft may take residence of 512 Coleman, West Ports. At 6 pm on 6-15-24; Deft may pickup personal items on 6-4-24 at 3 pm with an officer." The "Entry of Sentence" provides[3]:

> The defendant herein having pled J-No Cont, found guilty of VIOL of TPO on 06/04/2024, and
>
> Defendant being present in open Court and having been given an opportunity to make a statement to the court on his own behalf and to present information in mitigation of punishment, no therefore,
>
> The Court finds that the imposition of a fine and jail sentence in this case is suited to deterrence of the offense and correction of the offender.
>
> It is the sentence of this Court that the defendant Victor P Buffington, be sentenced to 180 consecutive days in the Scioto County Jail and fined the sum of $.00 and costs 180 days of jail to be suspended and defendant placed on 3 year(s) of probation. As part of this probation, defendant must complete:

[3] Another entry ordered community control and ordered appellant to pay fees of $30 per month.

> ENTER: DEFT MAY TAKE RESIDENCE OF 512 COLEMAN, WEST PORTS. AT 6 PM ON 6-15-24; DEFT MAY PICKUP PERSONAL ITEMS ON 6-4-24 AT 3 PM WITH AN OFFICER[.]

{¶25} In the case sub judice, the record does not reflect that the trial court advised appellant of the effect of his no-contest plea, nor does it reflect that appellant expressly tendered a no-contest plea. Moreover, neither case record contains a signed plea agreement. Thus, no plea existed for the trial court to accept, and consequently no basis existed for the judgment of conviction. Accordingly, we conclude that the record is devoid of any compliance with Crim.R. 11(E). Because a trial court's failure to advise a defendant of the Crim.R. 11(B) language regarding the effect of a no-contest plea to a petty misdemeanor offense makes a prejudice analysis unnecessary for plain error review, *Hoctor*, 2023-Ohio-375, at ¶ 7, appellant's convictions must be reversed.

{¶26} Consequently, we sustain appellant's first assignment of error, remand this matter for further proceedings and his remaining assignments of error are rendered moot.

JUDGMENT REVERSED AND CAUSE REMANDED FOR FURTHER PROCEEDINGS.

JUDGMENT ENTRY

It is ordered that the judgment be reversed and cause remanded for further proceedings. Appellant shall recover from appellee the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Portsmouth Municipal 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 the 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 that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, 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.