

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

STATE OF OHIO,	:	
	:	Case No. 25CA4136
Plaintiff-Appellee,	:	
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
EDWIN L. PRUDE,	:	
	:	RELEASED: 08/10/2026
Defendant-Appellant.	:	

APPEARANCES:

Brian T. Goldberg, Cincinnati, Ohio, for appellant.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay Willis, Assistant Scioto County Prosecuting Attorney, Portsmouth, Ohio, for appellee.

Wilkin, J.

{¶1} This is an appeal from a Scioto County Court of Common Pleas judgment of conviction entry in which appellant, Edwin L. Prude, pleaded guilty to two counts of obstructing official business as fifth-degree felonies, and one count of failure to comply with an order or signal of a police officer as a third-degree felony. The trial court imposed the jointly-recommended aggregate prison sentence of 57 months. Prude in two assignments of error challenges the validity of his guilty plea and his sentence.

{¶2} In the first assignment of error, Prude maintains that his guilty plea should be vacated because the trial court failed to advise him of the maximum penalty. Prude maintains that the trial court was required to notify him that any prison term imposed for the failure to comply with an order or signal of a police

officer conviction must be served consecutively to any other prison term imposed. We disagree and find that the trial court was not required to include the consecutive sentencing advisement as part of Prude's maximum penalty notification pursuant to Crim.R. 11(C)(2)(a) because a prison term was not the foregone sentence. Therefore, we find that Prude was advised of the maximum penalty and entered his guilty plea knowingly, intelligently and voluntarily.

{¶3} In the second and final assignment of error, Prude argues that the trial court committed plain error when it failed to merge the two obstructing official business offenses as allied offenses of similar import. We disagree. The record demonstrates that Prude stipulated that the two obstructing official business offenses were committed with separate animus. Therefore, there can be no error, let alone plain error, for not merging these two offenses. Accordingly, we affirm Prude's judgment entry of conviction.

FACTS AND PROCEDURAL BACKGROUND

{¶4} In September 2024, Prude did not provide his driver's license and instead fled at a high rate of speed. Prude was later apprehended. Prude's conduct of fleeing resulted in an indictment issued in October 2024, against him charging him with eight counts: (1) Obstructing official business, as a fifth-degree felony; (2) obstructing official business, as a fifth-degree felony; (3) failure to comply with an order or signal of a police officer, as a third-degree felony; (4) improperly handling a firearm in a motor vehicle, as a fourth-degree felony; (5) having weapons while under disability, as a third-degree felony; (6) having weapons while under disability, as a third-degree felony; (7) possessing criminal

tools, as a fifth-degree felony; and (8) possessing criminal tools, as a fifth-degree felony.

{¶5} Prude pled not guilty, and several months later, a superseding indictment was issued on March 19, 2025, adding a firearm specification pursuant to R.C. 2941.141(A) to each of the first three counts: obstructing official business and failure to comply with an order or signal of a police officer.

{¶6} Prude indicated his willingness to plead guilty to several of the offenses not involving the firearm on the condition that any prison term imposed would not be longer than five years. On March 30, 2025, the State and Prude informed the trial court that a plea agreement was reached with Prude pleading guilty to the two counts of obstructing official business and failure to comply with an order or signal of a police officer, and with the State dismissing the firearm specifications and the remaining five counts. Additionally, there is a jointly-recommended sentence of 57 months.

{¶7} A hearing was held on May 30, 2025. The trial court began the hearing by asking Prude if he wished to plead guilty. Prude indicated that he was confused because he had previously requested judicial notice of a statement from the firearm's owner asserting that the firearm belonged to him and that Prude had no knowledge of the firearm, but that he did not believe that statement is part of the record. Prude stressed that the firearm's owner's statement needed to be part of the record. Additionally, Prude was also confused why there were two offenses for obstructing official business, and how the plea agreement constituted a negotiation, if, in his view, all firearm-related charges should have

been dismissed.

{¶8} The trial court reiterated that this was the State's offer and Prude can decline to accept it, and the matter will proceed to a jury trial. Prude indicated that he wished to plead guilty but wanted to understand why there were two charges for obstructing official business, when it was one incident. The trial court explained that "Count 1 says, 'Failure to provide driver's license, instead flee[ing] at a high rate of speed', and Count 2 says, 'Failure to follow orders of law enforcement, resulting in forced compliance.'" The trial court then asked Prude whether he was going to accept the State's offer to dismiss the firearm specifications as to the first three counts and to dismiss counts four through eight in exchange for his plea to the first three counts with a recommended sentence of 57 months. Prude stated that "I'll accept the offer." The trial court took a short recess and then a plea hearing was held.

{¶9} At the start of the hearing following the recess, the trial court asked Prude:

So, sir, if we proceed in this fashion, you'll be entering pleas of guilty to Count 1 and 2 of the indictment, which are each charged Obstruction of Official Business, and each are felonies of the fifth degree, and Count 3 Failure to Comply with Order or Signal of a Police Officer, which is a felony of the third degree. Do you understand the charges that you'd be pleading guilty to?

{¶10} Prude responded affirmatively. The trial court then proceeded with a plea colloquy as required pursuant to Crim.R. 11(C) by first asking Prude if he signed the guilty plea form, which he indicated that he did. The trial court then advised Prude of the constitutional rights he waives by pleading guilty, and the trial court also advised him of the maximum prison term of 12 months for each of

the obstructing official business offenses including a maximum fine of \$2,500, and the maximum prison term of 36 months for the failure to comply offense and the maximum fine of \$10,000. Prude stated that he understood the maximum penalties.

{¶11} Before asking Prude to enter his plea, the trial court asked him: “Having gone over these items, do you still wish your signature to remain on this document?” Prude responded affirmatively. Prude pled guilty to the first three counts in the indictment without the firearm specifications. The trial court accepted Prude’s guilty pleas and proceeded directly to sentencing.

{¶12} Prude’s attorney and the State both requested that the trial court accept the jointly-recommended sentence of 57 months. Prude declined to address the trial court as to sentencing. The trial court granted the State’s request to dismiss the three firearm specifications and the remaining five counts. The trial court then imposed the jointly-recommended sentence:

At this time, sir, I am going to adopt that joint recommendation. As to Count 1 of the indictment, Obstructing Official Business, I’m going to sentence you to a 12 month term. As to Count 2 Obstruction of Official Business, I’m going to sentence you to a 9 month term. As to Count 3 Failure to Comply with Order or Signal of a Police Officer, I am going to sentence you to a 36 month term. I am going to order, pursuant to my earlier findings, those sentences to run consecutive to each other, or one after another, for a net intended sentence of 57 months, or 4 years, 9 months as an intended sentence.

{¶13} It is from this judgment of conviction entry that Prude appeals.

ASSIGNMENTS OF ERROR

- I. THE TRIAL COURT ERRED TO THE PREJUDICE OF MR. PRUDE BY ACCEPTING A PLEA OF GUILTY THAT WAS NOT MADE KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY.

II. THE TRIAL COURT COMMITTED PLAIN ERROR BY
FAILING TO MERGE ALLIED OFFENSES OF SIMILAR
IMPORT AT THE TIME OF SENTENCING.

FIRST ASSIGNMENT OF ERROR

{¶14} In the first assignment of error, Prude argues that the trial court erred to his prejudice by accepting his guilty plea because it was not entered into knowingly, intelligently, and voluntarily. Specifically, Prude maintains that he was not advised of the maximum penalty, which includes that a prison sentence for the failure to comply with an order or signal of a police officer must run consecutive to any other prison term imposed. Prude acknowledges that, prior to the guilty plea colloquy, there was a discussion between him and the court wherein the court advised him that “the fleeing and eluding charge is required to be run consecutively by statute.” And emphasized that “It’s required to be consecutive.”

{¶15} Prude, however, contends that this notification occurred prior to the plea hearing and was “insufficient” to notify him of the mandatory consecutive sentence. Moreover, the discussion prior to the plea colloquy was confusing because the court switched to advising him about the mandatory consecutive sentences associated with the firearm specifications. In conclusion, Prude argues that the trial court failed to inform him that any prison sentence imposed for the failure to comply must run consecutive to any prison sentence. Thus, he maintains that this “resulted in a complete failure to comply with Criminal Rule 11, and Mr. Prude need not show prejudice.” Prude requests that we vacate his guilty plea.

{¶16} The State disagrees with Prude’s recount of the record and asserts that the record clearly indicates that the parties and the court reached an understanding and agreed that the State would dismiss the remaining counts and specifications and that the jointly recommended sentence would be 57 months, which stipulates that consecutive sentences must be imposed. And the record demonstrates Prude understood that – in which he stated he understood the agreement. And the trial court imposed the jointly-recommended sentence. Therefore, Prude cannot demonstrate an abuse of discretion by the trial court in accepting his plea or that he suffered any prejudice from the imposed sentence that is authorized by law.

Law and analysis

{¶17} “ ‘When a defendant enters a plea in a criminal case, the plea must be knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution.’ ” *State v. Veney*, 2008-Ohio-5200, ¶ 7, quoting *State v. Engle*, 74 Ohio St.3d 525, 527 (1996). To determine whether a guilty plea was entered “knowingly, intelligently, and voluntarily, an appellate court examines the totality of the circumstances through a de novo review of the record to ensure that the trial court complied with constitutional and procedural safeguards.” *State v. Willison*, 2019-Ohio-220, ¶ 11 (4th Dist.), citing *State v. Cooper*, 2011-Ohio-6890, ¶ 35 (4th Dist.).

{¶18} “Crim.R. 11(C) governs the process that a trial court must use before accepting a felony plea of guilty[.]” *Veney* at ¶ 8. The trial court must

address the defendant and strictly comply with the provisions in Crim.R.

11(C)(2)(c) in which the court advises a defendant of all of the constitutional rights he waives by pleading guilty. *Id.* at syllabus; Crim.R. 11(C)(2).

{¶19} Strict compliance is not the standard with regard to the nonconstitutional notifications. Rather, “with respect to the nonconstitutional notifications required by Crim.R. 11(C)(2)(a) and 11(C)(2)(b), substantial compliance is sufficient.” *Veney*, 2008-Ohio-5200, at ¶ 14, citing *State v. Stewart*, 51 Ohio St.2d 86 (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 (1990). Moreover,

“ ‘[A] defendant who challenges his [or her] guilty plea on the basis that it was not knowingly, intelligently, and voluntarily made’ is generally not entitled to have [the] plea vacated unless [the defendant] demonstrates that he [or she] was prejudiced by the failure of the trial court to comply with the provisions of Crim.R. 11.” *Id.*, quoting *State v. Nero*, 56 Ohio St.3d 106, 108 (1990). “The test for prejudice is ‘ “whether the plea would have otherwise been made.” ’ ” *Id.* at ¶ 20, quoting *Dangler* at ¶ 16, quoting *Nero* at 108. “And prejudice must be established ‘ “ ‘on the face of the record.’ ” ’ ” *Id.*, quoting *Dangler* at ¶ 24, quoting *Hayward v. Summa Health Sys./Akron City Hosp.*, 2014-Ohio-1913, ¶ 26, quoting *Wagner v. Roche Laboratories*, 1999-Ohio-309, ¶ 21.

State v. Jones, 2026-Ohio-1952, ¶ 8 (4th Dist.).

{¶20} At issue here, is the notification in Crim.R. 11(C)(2)(a) which provides that the trial court must determine “that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved[.]”

{¶21} Prude argues that the trial court failed to notify him of the maximum penalty because the maximum sentence for the failure to comply with an order or signal of a police officer mandates that any prison sentence for this offense must be served consecutively to any prison term. Prude pleaded guilty to a violation of R.C. 2921.331(B), which states that

No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.

And pursuant to R.C. 2921.331(D):

If an offender is sentenced to a prison term for a violation of division (B) of this section, the offender shall serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender.

{¶22} Prude, in support of his request to vacate his plea, cites to cases from the First District, Eighth District, and Ninth District Court of Appeals. The First District in *State v. Cook*, vacated Cook's guilty plea, finding that he was not accurately informed of the maximum sentence because

the failure to advise a defendant that a guilty plea to a failure to comply charge carries a mandatory consecutive sentence under R.C. 2921.331(D) violates Crim.R. 11(C). This is the case because a defendant who does not understand that a mandatory prison term will be added to any other term of incarceration cannot understand the maximum sentence created by a guilty plea. See *Norman*, 2009-Ohio-4044, at ¶ 12.

Here, the trial court entirely failed to advise Cook of the mandatory consecutive sentence that attached to his failure to comply guilty plea, and thus he was not accurately informed of the maximum sentence he faced. Neither the plea form Cook executed nor the trial court at sentencing notified Cook that his guilty plea to the failure to comply charge carried a mandatory consecutive sentence. As a result, based on the record before us, Cook was not able to fully comprehend the sentencing consequences created by his guilty plea.

2024-Ohio-4771, ¶ 38 (1st Dist.).

{¶23} The Ninth District in *State v. Tancak*, also vacated Tancak’s guilty plea

[b]ecause the court wholly neglected to inform Mr. Tancak of the mandatory consecutive nature of his sentence for failure to comply with an order or signal of a police officer, the court not only failed to substantially comply with Crim.R. 11, but it also failed to partially comply. Therefore, no prejudice analysis is required.

2022-Ohio-880, ¶ 13 (9th Dist.).

{¶24} Finally, in *State v. Norman*, the Eighth District concluded that the trial court

did not inform Norman that any sentence for a violation of R.C. 2921.331 would have to be served consecutively to sentences imposed on the other counts to which Norman pleaded guilty. This constituted a lack of substantial compliance with Crim.R. 11(C)(2)(a) and requires a reversal of Norman’s guilty plea.

2009-Ohio-4044, ¶ 13 (8th Dist.).

{¶25} The Supreme Court of Ohio in *State v. Johnson*, however, held that “[f]ailure to inform a defendant who pleads guilty to more than one offense that the court may order him to serve any sentences imposed consecutively, rather than concurrently, is not a violation of Crim.R. 11(C)(2), and does not render the plea involuntary.” 40 Ohio St.3d 130 (1988), syllabus. In reaching this holding, the Supreme Court emphasized that

the decision of whether the criminal defendant is to serve the sentences for all his crimes consecutively or concurrently is a matter of sentencing discretion, the exercise of which is committed to the trial court. The exercise of such discretion can only occur after the defendant has been found guilty, whether by jury trial or by entry and acceptance of a plea.

Id. at 133-134.

{¶26} This seems to be the reasoning behind the Second District Court of Appeals' decision to decline to adopt "the proposition that a guilty plea to failure to comply (R.C. 2921.331(D)) is involuntary if the defendant is not told that the statute requires a consecutive sentence." *State v. Shade*, 2022-Ohio-3845, ¶ 13 (2d Dist.), citing *State v. Bailey*, 2004-Ohio-273, ¶ 16 (2d Dist.). The Second District emphasized that its "reasoning was simple: Crim. R. 11(C) does not require that a defendant be told that his sentences may be imposed consecutively." *Id.*

{¶27} And that is why the Second District in *Shade* rejected a similar argument as presented here by Prude. The Court explained that

The holdings of cases like *Norman* and *Milhoan*, though, only apply "when the imposition of consecutive sentences is a foregone conclusion at the time the plea is entered and accepted, that is, only in cases where 'a mandatory, consecutive prison term was a guaranteed consequence of appellant's guilty plea.' " *Milhoan* at ¶ 35, quoting *Norman* at ¶ 9. There is nothing that requires the court to advise as to "the potential for consecutive mandatory sentencing." *Id.*

Shade's receiving a prison sentence, let alone a consecutive one, was not a "foregone conclusion" when he entered into his plea agreement.

{¶28} Similarly, here, it was not a "foregone conclusion" that Prude would receive a prison term for his failure to comply conviction, which in turn would mandate that it be served consecutively to any other prison term.

{¶29} First, it is well-settled law that "[t]rial courts 'are not bound by a jointly recommended sentence.' " *State v. Graham*, 2020-Ohio-1063, ¶ 12 (3d Dist.), quoting *State v. Underwood*, 2010-Ohio-1, ¶ 28. "A trial court 'has full discretion to impose any sentence within the authorized statutory range[.]' "

State v. Mallory, 2026-Ohio-1688, ¶ 43 (4th Dist.), quoting *State v. Chapman*, 2022-Ohio-2853, ¶ 76 (4th Dist.).

{¶30} And in the matter at bar, the trial court advised Prude “*if* I adopt this joint recommendation, by proceeding with sentencing in this fashion that you’d be waiving your right to appeal the sentence that I give you?” (Emphasis added). The trial court’s discretion on whether to accept the jointly-recommended sentence was emphasized when both the State and Prude’s counsel requested that it be adopted.

{¶31} Second, Prude’s plea form, on each of the three charges, indicated that a prison term was not mandatory. Furthermore, it also advised Prude that “If this Court is not required by law to impose a prison sanction, it may impose community control sanctions or non-prison sanctions upon me.” Therefore, community control was an available sentencing option because both obstructing official business offenses were fifth-degree felonies and the failure to comply offense, in violation of R.C. 2921.331(B), was a third-degree felony. See R.C. 2929.13(B)(1)(b) & 2929.13(C). Simply because the trial court imposed the jointly-recommended sentence after considering the applicable statutory provisions and finding that Prude was not amenable to community control, does not negate the fact that a prison term was not the only available sentence within the court’s discretion.

{¶32} Therefore, we find that the trial court complied with the requirements of Crim.R. 11(C)(2)(a) when it advised Prude that each obstructing official business offense carried a maximum prison term of 12 months and that the

failure to comply offense carried a maximum prison term of 36 months.

Because a prison term was not mandatory for any of the offenses, the trial court was not required to notify Prude that any prison term imposed for the failure to comply offense must be served consecutively with any other prison term.

{¶33} Accordingly, we overrule Prude's first assignment of error and affirm the judgment of conviction entry.

SECOND ASSIGNMENT OF ERROR

{¶34} Under the second assignment of error, Prude argues that the trial court committed plain error by not merging one of the obstructing official business offenses. Prude acknowledges that the State argued at the hearing that they should not merge because there were two separate victims, law enforcement and other motorists, he nonetheless contends that this is not an element distinction because this "is a sentencing enhancement, but not a necessary element to commit the offense." Therefore, if only considering the elements of the offense, Prude asserts that each offense was not committed separately (no separate animus or motivation), and no separate identifiable harm. The offenses involved one incident of fleeing from law enforcement. Accordingly, the two offenses should have merged.

{¶35} The State first contends that Prude is disregarding that this sentence was a jointly-recommended/negotiated sentence and was authorized by law. Additionally, the record demonstrates that the trial court addressed Prude's confusion regarding the two counts of obstructing official business, explaining that one count stemmed from Prude's failure to provide his driver's

license and instead fleeing, and the other arose from his failure to follow the officer's orders, which resulted in forced compliance. Additionally, the State maintains that Prude conceded the offenses were separate when he agreed to the jointly-recommended sentence, which mandates that he be sentenced on both offenses. Thus, the offenses are not subject to merger.

Law and analysis

{¶36} “The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution affords protections against the imposition of multiple criminal punishments for the same offense.” *State v. Rogers*, 2015-Ohio-2459, ¶ 16, citing *Hudson v. United States*, 522 U.S. 93, 99 (1997). The prohibition against multiple punishments is codified in R.C. 2941.25, which provides:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶37} The Supreme Court of Ohio elaborated that

when determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must ask three questions when the defendant's conduct supports multiple offenses: (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation? An affirmative answer to any of the above will permit separate convictions. The conduct, the animus, and the import must all be considered.

State v. Ruff, 2015-Ohio-995, ¶ 31.

{¶38} “Two or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant’s conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable.” *Id. at paragraph two of the syllabus*. “Offenses are committed separately within the meaning of R.C. 2941.25(B) if one offense is completed before the other offense occurs.” *State v. Fisher*, 2023-Ohio-2088, ¶ 21 (6th Dist.), citing *State v. Turner*, 2011-Ohio-6714, ¶ 24 (2d Dist.).

{¶39} “The defendant bears the burden of establishing his entitlement to the protection, provided by R.C. 2941.25, against multiple punishments for a single criminal act.” *State v. Mughni*, 33 Ohio St.3d 65, 67 (1987). And “when deciding whether to merge multiple offenses at sentencing pursuant to R.C. 2941.25, a court must review the entire record, including arguments and information presented at the sentencing hearing, to determine whether the offenses were committed separately or with a separate animus.” *State v. Washington*, 2013-Ohio-4982, ¶ 24.

{¶40} In the matter at bar, Prude cannot meet his burden in demonstrating that the two obstructing official business offenses should merge, because he stipulated that they were committed separately with separate animus. At the start of the plea hearing, the trial court questioned the State and Prude’s counsel: “Now, Mr. Loesch and Ms. Webb, my understanding, the parties are going - as part of this agreement to stipulate as to separate animus and import as to Counts 1, 2, and 3. Is that correct?” Prude’s counsel answered affirmatively. And, right

after that, Prude informed the trial court that he signed the plea agreement and proceeded to plead guilty to both counts of obstructing official business.

{¶41} Moreover, at the start of the sentencing hearing, Prude's counsel requested that the trial court adopt the jointly-recommended sentence of 57 months in prison, which necessarily required separate prison terms for each obstructing official business conviction. This is because, each obstructing official business offense carries a maximum term of 12 months, and the failure to comply offense carries a maximum term of 36 months. Therefore, if the trial court imposed a prison term to only one of the obstructing official business offenses and the maximum prison term for the failure to comply, the maximum prison term would only amount to 48 months, which is 9 months short of the jointly-recommended sentence of 57 months.

{¶42} With Prude stipulating that the two obstructing official business offenses were committed separately, we cannot find that the trial court committed plain error for failing to merge the two offenses. *See State v. Tall*, 2023-Ohio-1853, ¶ 19 (3d Dist.) ("since Tall stipulated that the offenses are not allied offenses of similar import, the trial court was not obligated to determine whether the offenses merged. . . . Consequently, it was not error, let alone plain error, for the trial court to fail to merge Tall's passing-bad-checks, forgery, and grand-theft-of-a-motor-vehicle convictions.").

{¶43} Accordingly, we overrule Prude's second assignment of error and affirm his sentence.

CONCLUSION

{¶44} Having overruled Prude's two assignments of error, we affirm the trial court's judgment entry of conviction.

JUDGMENT IS AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

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

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

Smith, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.