

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

STATE OF OHIO, :
 :
Plaintiff-Appellee, : Case No. 25CA7
 :
v. :
 :
DANNY LEE MILLER, : DECISION AND JUDGMENT ENTRY
 :
Defendant-Appellant. :

APPEARANCES:

Steven H. Eckstein, Washington Court House, Ohio, for appellant¹.

Trent Douthett, Jackson County Prosecuting Attorney, Jackson, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 8-26-26
ABELE, J.

{¶1} This is an appeal from a Jackson County Common Pleas Court judgment of conviction and sentence. Danny Miller, defendant below and appellant herein, raises the following assignment of error for review:

"THE TRIAL COURT ERRED BY ACCEPTING A PLEA OF GUILTY THAT WAS NOT MADE KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY."

{¶2} In October 2024, a Jackson County Grand Jury returned an indictment that charged appellant with one count of

¹ Different counsel represented appellant during the trial court proceedings.

aggravated possession of drugs in violation of R.C. 2925.11(A), a second-degree felony. Appellant entered a not guilty plea.

{¶3} At appellant's February 6, 2025 change of plea hearing, the trial court conducted a Crim.R. 11 colloquy, advised appellant of his rights and the effects of his decision to plead guilty, reviewed the facts and charges, the signed plea form, and asked appellant if any drugs, alcohol, or mind-altering substances influenced him. Appellee reviewed the charge and stated that on November 22, 2023, appellant knowingly possessed approximately 71.79 grams of methamphetamine. Appellant indicated that he understood the allegations in the indictment.

{¶4} The trial court advised appellant of the constitutional rights he waived with his plea, including (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 appellee to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination.

{¶5} The trial court also explained the maximum penalties and informed appellant that the court "will select the minimum term between a range between two to eight years," and "after the court picks the minimum sentence, the court will select the maximum sentence, which is fifty percent of the minimum." The court further noted that his plea could affect his current community control term, which he served for a prior misdemeanor.

Appellant indicated that he understood the advisements and the implications of his plea. The court then noted, "Alright, the court finds Mr. Miller has signed a waiver of his right to a trial by jury, as well as an entry of guilty plea (court signing entry)." Appellant acknowledged that he read and signed the agreement, his satisfaction with counsel's advice, and that he wished to enter a guilty plea.

{¶6} At appellant's March 27, 2025 sentencing hearing, the trial court provided appellant the right of allocution, considered the record, oral statements, the R.C. 2911.11 purposes and principles of sentencing, and the R.C. 2911.12 seriousness and recidivism factors. The court noted appellant's willingness to cooperate in another case, but specified that recidivism factors included appellant's prior criminal history and that he had not responded favorably to sanctions previously imposed. Thus, the court sentenced appellant to (1) serve a minimum 5-year to an indefinite maximum 7 ½ -year prison term, (2) serve a minimum 18-month to maximum 3-year postrelease control term, and (3) pay costs. This appeal followed.

I.

{¶7} In his sole assignment of error, appellant asserts that he did not enter a knowing, intelligent, and voluntary plea. Specifically, appellant contends that the trial court did not properly inform him of the maximum sentence because it

"nonsensically stated the maximum Reagan-Tokes sentence for the F2 drug plea would be 'fifty percent of the minimum sentence.' " Thus, appellant argues, because he agreed to "nonsensical information," he did not enter a knowing, intelligent, and voluntary plea. Appellee, however, points out that the trial court used language from the Ohio Revised Code, and appellant signed a guilty plea after a full colloquy.

{¶8} "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." Crim.R. 11, *State v. Dangler*, 2020-Ohio-2765, ¶ 10, citing *Parke v. Raley*, 506 U.S. 20, 28-29 (1992). Thus, if a defendant did not enter a plea knowingly, intelligently, and voluntarily, enforcement of that plea is unconstitutional. *Id.*; *State v. Leib*, 2024-Ohio-1081, ¶ 13 (4th Dist.). In general, appellate courts apply a de novo standard of review when evaluating a plea's compliance with Crim.R. 11(C). *State v. Nero*, 56 Ohio St.3d 106, 108-109 (1990). Moreover, evidence of a written waiver form signed by the accused constitutes strong proof of a valid waiver. *State v. Clark*, 38 Ohio St.3d 252, 261 (1988); *State v. Collins*, 2024-Ohio-2891, ¶ 8 (4th Dist.).

{¶9} Ohio's Crim.R. 11 outlines the procedures that trial courts are to follow when accepting pleas. *Dangler* at ¶ 11. "[T]he rule 'ensures an adequate record on review by requiring

the trial court to personally inform the defendant of his [or her] rights and the consequences of his [or her] plea and determine if the plea is understandingly and voluntarily made.'

" *Id.*, quoting *State v. Stone*, 43 Ohio St.2d 163, 168 (1975).

Our focus on review is not on whether the trial court recited the exact language of Crim.R. 11, but "on whether the dialogue between the court and the defendant demonstrates that the defendant understood the consequences" of the plea. *Id.* at ¶ 12.

{¶10} Appellant's argument concerns nonconstitutional aspects of the plea colloquy pursuant to Crim.R. 11(C)(2)(a), which states:

(2) In felony cases the court ... shall not accept a plea of guilty ... 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.

{¶11} "When a criminal defendant seeks to have [a] conviction reversed on appeal, the traditional rule is that [the defendant] must establish that an error occurred in the trial-court proceedings and that [the defendant] was prejudiced by that error." *Dangler*, 2020-Ohio-2765, at ¶ 13; *State v. Gutierrez*, 2025-Ohio-1884, ¶ 16 (4th Dist.). Thus, "when a

trial court fails to fully cover ... 'nonconstitutional' aspects of the plea colloquy, a defendant must affirmatively show prejudice to invalidate a plea." *Id.* at ¶ 14. "The test for prejudice is 'whether the plea would have otherwise been made.'" *Id.* at ¶ 16, quoting *Nero, supra*, 56 Ohio St.3d at 108. However, the Supreme Court of Ohio has held that "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 in original.) *Id.* at ¶ 15. "Properly understood, the questions to be answered are simply: (1) has the trial court complied with the relevant provision of the rule? (2) if the court has not complied fully with the rule, is the purported failure of a type that excuses a defendant from the burden of demonstrating prejudice? and (3) if a showing of prejudice is required, has the defendant met that burden?" *Id.* at ¶ 17; *Gutierrez, id.*

{¶12} In the case at bar, appellant contends that, due to the trial court's explanation, he did not understand the Reagan-Tokes sentence before he entered his plea. The Reagan Tokes Law "relates to a defendant's maximum penalty." *State v. Clark*, 2024-Ohio-4930, ¶ 10 (4th Dist.). As we explained in *Gutierrez*:

Effective March 22, 2019, the Reagan Tokes Law "implemented a system of indefinite sentencing for non-life felonies of the first and second degree committed on or after the effective date." *Id.* at ¶ 12, citing *State Jones*, 2024-Ohio-2034, ¶ 22 (11th Dist.). If a

court imposing a sentence for a second-degree felony elects or is required to impose a prison term pursuant to R.C. Chapter 2929, "the prison term shall be an indefinite prison term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years and a maximum term that is determined pursuant to [R.C. 2929.144]" R.C. 2929.14(A)(2)(a). There is a presumption that the offender "shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier." R.C. 2967.271(B). A presumptive earned early release date is a date determined under procedures described in R.C. 2967.271(F) "by the reduction, if any, of an offender's minimum prison term by the sentencing court and the crediting of that reduction toward the satisfaction of the minimum term." R.C. 2967.271(A)(2). The department of rehabilitation and correction ("DRC") may rebut the presumption in R.C. 2967.271(B) if it determines, at a hearing, that one or more statutorily enumerated circumstances applies. R.C. 2967.271(C). If DRC rebuts the presumption, it "may maintain the offender's incarceration" after the expiration of the minimum prison term or presumptive earned early release date for a reasonable period, determined and specified by DRC, which "shall not exceed the offender's maximum prison term." R.C. 2967.271(D)(1).

Id. at ¶ 26.

{¶13} As noted above, R.C. 2929.14(A)(2)(a) provides the framework to determine the minimum prison term:

(2)(a) For a felony of the second degree committed on or after March 22, 2019, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender

but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

{¶14} R.C. 2929.144 outlines the calculation for the maximum term:

(B) The court imposing a prison term on an offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree shall determine the maximum prison term that is part of the sentence in accordance with the following:

(1) If the offender is being sentenced for one felony and the felony is a qualifying felony of the first or second degree, the maximum prison term shall be equal to the minimum term imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code *plus fifty per cent of that term.* (Emphasis added).

{¶15} Appellant contends that in the case sub judice, the trial court did not comply with Crim.R. 11(C)(2)(a)'s maximum sentence requirement because at the plea hearing, the trial court incorrectly stated the Reagan-Tokes maximum sentence when it stated, "And that after the court picks the minimum sentence, the court will select the maximum sentence, which is fifty percent of the minimum." Appellant argues that he "was caught off guard" by a sentence "that he was told would be only 5 years minimum to two and one-half (50%) maximum and which then turned into a sentence of 5-7.5 years." Appellee, on the other hand, argues that the trial court quoted the statute directly. Both are true.

{¶16} The trial court quoted directly from R.C. 2929.144 and used the phrase “fifty per cent of that term.” However, the court did not state that the maximum sentence is the minimum *plus* fifty per cent of that term. Appellee notes that, although the court failed to indicate that the maximum term would be the minimum term *plus* fifty percent of the minimum term, it cannot be argued that appellant mistook the meaning of the words minimum and maximum. We agree.

{¶17} Appellant cites no cases to support his argument, but we highlight *State v. Rogers*, 2020-Ohio-4102 (12th Dist.). In *Rogers*, although the trial court failed to advise Rogers of the maximum fines or the \$7,500 mandatory fine for one of the three counts to which Rogers pleaded guilty, the court imposed the mandatory \$7,500 fine at sentencing. *Id.* at ¶ 3-6. The Twelfth District reversed the trial court’s judgment and concluded that the \$7,500 fine constituted a mandatory element of the sentence pursuant to R.C. 2925.03(D)(1) and 2929.18(B)(1), and “was therefore a component of the maximum penalty under Crim.R. 11(C)(2)(a).” *Id.* at ¶ 13. Relevant to the case at bar, the *Rogers* court observed:

A criminal sentence consists of several distinct components, including a prison sentence, a fine, sex offender registration and notification requirements and duties, and postrelease control. [footnote omitted] “The upshot of *Sarkozy* and *Dangler* is that 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." [State v.] *Fabian* [2020-Ohio-3926 (12th Dist.)] at ¶ 20. "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)." *Id.*

Rogers at ¶ 19.

{¶18} Unlike *Rogers*, in the case at bar the trial court did not completely fail to comply with Crim.R. 11(C)(2)(a). Rather, the court's advisement could be classified as "incomplete or perhaps inaccurate," which does not constitute a complete failure to comply with Crim.R. 11(C)(2)(a), which requires a showing of prejudice to vacate. *Rogers*.

{¶19} In *Gutierrez, supra*, 2025-Ohio-1884, this court concluded that the trial court did not comply with R.C. 2929.19(B)(2)(c). Thus, we vacated Gutierrez's sentence and remanded for resentencing. The trial court's only mention of indefinite sentences during the plea colloquy consisted of informing Gutierrez that "she would be released after serving the minimum term unless D.R.C. determines she needs to stay longer for bad behavior," and that "she had to be released upon completion of the maximum sentence." *Id.* at ¶ 27. This court concluded that at Gutierrez's sentencing hearing, although the

trial court provided some of the statutorily required information, the court did not provide all the information at that time. *Id.* at ¶ 66. For example, the court did not provide all the information in R.C. 2929.19(B)(2)(c)(ii) about DRC's ability to rebut the presumption regarding release or tell Gutierrez, as required by R.C. 2929.19(B)(2)(c)(iii), that DRC may maintain her incarceration for the length of time it determines is reasonable, subject to the limitation specified in R.C. 2976.271. *Id.* Moreover, we noted that, "[i]t is immaterial whether Guitierrez received the statutory notifications at other times." *Id.* Thus, because the trial court failed to comply with R.C. 2929.19(B)(2)(c), this court concluded that Gutierrez's sentence was contrary to law and plain error. *Id.*

{¶20} However, with respect to the Reagan Tokes Law notifications, we cited our recent decision in *State v. Clark*, 2024-Ohio-4930 (4th Dist.). In *Clark*, the defendant argued that he did not enter a knowing, intelligent, and voluntary plea because the trial court failed to explain the maximum penalty and the indefinite nature of his sentence under the Reagan Tokes Act. *Id.* ¶ 1. We observed that Clark challenged the knowing, intelligent, and voluntary nature of his plea due to the alleged deficient notice, rather than the lawfulness of his sentence. After a review of the record, we noted that Clark verified that

he had signed the plea petition and that, under Part 7, Maximum Penalty, the petition stated a maximum prison term of 8-12 years for Count One and indicated the mandatory nature of the sentence. In addition, the trial court advised Clark of the maximum possible penalty, and he indicated that he understood. *Id.* at ¶ 17.

{¶21} This court observed that other appellate courts have concluded that the failure to give the R.C. 2929.19(B)(2)(c) notifications at the plea hearing does not invalidate a guilty plea. ¶ 21. Those advisements involve non-life felony indefinite prison term notifications regarding Ohio Department of Rehabilitation and Corrections (ODRC) determinations concerning the maximum sentence and rebuttable presumptions. Other appellate courts have concluded that these advisements are required only at the sentencing hearing, not at the plea hearing. *Id.* Although appellant challenges the maximum sentence notification, not the indefinite nature and ODRC protocols, we find *Clark* instructive.

{¶22} In the case sub judice, the following exchange occurred at the plea hearing:

COURT: Okay. Count 1 is a felony of the second degree, that means you're pleading to an offense that carries both a minimum and maximum term, do you understand that?

APPELLANT: Yes, sir.

COURT: You understand the court will select the minimum

term between a range between two and eight years?

APPELLANT: Yes, sir.

COURT: And that after the court picks the minimum sentence, the court will select the maximum sentence, which is fifty percent of the minimum?

APPELLANT: Yes, sir.

COURT: You understand, it's presumed you would be released at the end of your minimum sentence?

APPELLANT: Yes, sir.

{¶23} The trial court went on to explain "bad time," and decisions within ODRC's control, and that appellant may be eligible for an earned reduction of his minimum prison term, "between five to fifteen percent" for "exceptional adjustment in prison." The court further explained that if ODRC intends to "give you that reduction, they must notify this court and the court will hold a hearing whether or not to grant you that reduction." Appellant indicated that he understood. The court also asked if appellant understood that there is a presumption that appellant would be awarded that reduction unless the court made certain findings denying the reduction. Finally, the court explained that "whatever the minimum term the court selects in this case that term is mandatory," and "there could be a fine up to \$15,000" with "half of it \$7,500 would be a mandatory minimum term." Appellant again indicated that he understood.

{¶24} Appellant's signed plea agreement states:

Regan [sic.] Tokes F2: Count(s) One is/are a felony of the second degree subject to Regan [sic.] Tokes Sentencing. The judge can select a term of Rehabilitation and Correction of: 2, 3, 4, 5, 6, 7, or 8 years, and that number will be the minimum term. The maximum term will be the minimum term selected by the Court from the range of possible terms plus 50% of the minimum term selected. The Maximum term for a qualifying F2 cannot exceed 12 years. See R.C. 2929.144(B)(1). I understand I will be released at the end of my minimum term. This presumption is rebuttable if the Ohio Department of Corrections keeps me longer for bad behavior in prison following an administrative hearing.

{¶25} Thus, although at the plea hearing the trial court improperly omitted the word "plus," in the court's maximum penalty advisements, the plea agreement contained the proper advisement. Moreover, at the last pretrial hearing, one day preceding appellant's change of plea hearing, the trial court informed appellant, "this is a felony of the second degree, you could be facing an eight to twelve year sentence . . . and the eight years would be mandatory."

{¶26} Consequently, after our review of the record we believe that the dialogue between the trial court and appellant demonstrates that appellant understood the consequences of his plea. *Dangler* at ¶ 12. Although the trial court inadvertently omitted the word "plus" from the indefinite sentence maximum discussion at the plea hearing, the court did properly instruct appellant that he faced a maximum of 8 to 12 years in prison, and the plea agreement reflected the proper language.

Therefore, we conclude that appellant did enter a knowing, intelligent, and voluntary guilty plea.

{¶27} Accordingly, for all the foregoing reasons, we overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT 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 Jackson 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 set forth in 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.

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

For the Court

BY: _____
Peter B. Abele, 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.