

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

STATE OF OHIO,	:	
	:	Case No. 25CA9
Plaintiff-Appellee,	:	
	:	
v.	:	
	:	<u>DECISION AND JUDGMENT</u>
GEORGE HENRY RUFF,	:	<u>ENTRY</u>
	:	
Defendant-Appellant.	:	
	:	RELEASED: 09/24/2026

APPEARANCES:

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

Brigham M. Anderson, Lawrence County Prosecuting Attorney and Andrea M. Kratzenberg, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

Wilkin, J.

{¶1} This is an appeal of a Lawrence County Court of Common Pleas judgment entry in which George Henry Ruff (“Ruff”) pleaded no contest to a sole count of burglary. On appeal, Ruff contends: 1) the trial court erred by accepting a plea of no contest that he claims was not made knowingly, voluntarily, and intelligently; 2) the trial court erred in its sentencing entry by stating post-release control is discretionary when it should have been mandatory in this case; and 3) the sentence under Reagan Tokes was contrary to law when the trial court failed to provide proper notices to him at his sentencing hearing. For the reasons stated, we affirm the judgment of the trial court but remand this cause for the limited purpose of correcting the sentencing entry.

BACKGROUND

{¶2} A Lawrence County grand jury returned an indictment alleging Ruff committed a sole count of burglary, a second-degree felony in violation of R.C. 2911.12(A)(2). On July 19, 2024, the trial court found Ruff was incompetent to stand trial. On January 23, 2025, the trial court found Ruff restored to competency.

{¶3} On March 4, 2025, Ruff entered a plea of no contest to the sole count as charged in the indictment. The trial court found Ruff guilty and sentenced him on the same date to 8-12 years in prison. Ruff submitted a timely notice of appeal, assigning three errors.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED TO THE PREJUDICE OF MR. RUFF BY ACCEPTING A PLEA OF NO CONTEST THAT WAS NOT MADE KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY.

II. THE TRIAL COURT ERRED IN ITS SENTENCING ENTRY BY STATING POST[-]RELEASE CONTROL IS DISCRETIONARY WHEN IT SHOULD BE MANDATORY.

III. THE TRIAL COURT ERRED TO THE PREJUDICE OF MR. RUFF BY FAILING TO COMPLY WITH THE SENTENCING REQUIREMENTS CONTAINED IN R.C. 2929.19(B)(2)(c).

FIRST AND SECOND ASSIGNMENTS OF ERROR

{¶4} For ease of analysis, we address Ruff's first and second assignments of error together, as they are related. In his first assignment of error, Ruff contends that the trial court erred by accepting the plea of no contest that was not knowingly, voluntarily, and intelligently made because he was not notified during the plea hearing that post-release control would be mandatory upon his release from prison. Ruff also asserts in his second assignment of error that the trial court erred in its sentencing entry

because it stated post-release control is discretionary, when it should have been mandatory in this case.

{¶5} In response, the State argues that the plea of no contest is not infirm because Ruff was provided proper notice of post-release control requirements. The State concedes, however, that the sentencing entry in the instant case refers to the post-release control as discretionary, rather than mandatory.

{¶6} Both parties appear to acknowledge that post-release control is mandatory in this case even though the trial court referred to it as “discretionary” in the sentencing entry. Both parties also acknowledge that the proper procedure should this Court affirm the plea is to remand this case to the trial court for a nunc pro tunc entry to reflect the mandatory nature of the post-release control.

A. Law.

1. Standard of Review.

{¶7} “ ‘ “When a defendant enters a plea in a criminal case, the plea must be made 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. Betts*, 2017-Ohio-8595, ¶ 16 (4th Dist.), quoting *State v. Veney*, 2008-Ohio-5200, ¶ 7, quoting *State v. Engle*, 74 Ohio St.3d 525, 527 (1996). We determine whether a guilty plea is knowing, intelligent, and voluntary by applying “ ‘ “a de novo standard of review of the record to ensure that the trial court complied with the constitutional and procedural safeguards.” ’ ” *Id.*, quoting *State v. Leonhart*, 2014-Ohio-5601, ¶ 36 (4th Dist.), quoting *State v. Moore*, 2014-Ohio-3024, ¶ 13 (4th Dist.). “ ‘[A]n appellate court conducts a de novo review, without deference to the trial court's

determination.’ ” *State v. Phoenix*, 2026-Ohio-1408, ¶ 26 (4th Dist.) quoting *State v. Blanton*, 2018-Ohio-1278, ¶ 50 (4th Dist.).

2. Crim.R. 11

{¶8} “Crim.R. 11(C)(2) governs the acceptance of guilty pleas by the trial court in felony cases and provides that a trial court should not accept a guilty plea without first addressing the defendant personally[.]” *State v. Tolle*, 2022-Ohio-2839, ¶ 8 (4th Dist.) Crim.R. 11(C) provides, in pertinent part:

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally either in-person or by remote contemporaneous video in conformity with Crim.R. 43(A) 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.

The underlying purpose of Crim.R. 11(C) is to convey certain information to a defendant so that they can make a voluntary and intelligent decision regarding whether to plead guilty. *State v. Ballard*, 66 Ohio St.2d 473, 479-480 (1981). “Accordingly, the basis of Crim.R. 11 is to assure that the defendant is informed, and thus enable the judge to determine that the defendant understands that his plea waives his constitutional right to a trial.” *Id.*

{¶9} The trial court must strictly comply with Crim.R. 11(C)(2)(c) during the plea colloquy because the waiver of constitutional rights are involved. *State v. Doucoure*, 2025-Ohio-4770, ¶ 15 (4th Dist.), citing *State v. Collins*, 2019-Ohio-3428, ¶ 7 (4th Dist.). However, “ ‘[w]ith respect to the nonconstitutional notifications required by Crim.R. 11(C)(2)(a) and 11(C)(2)(b), substantial compliance is sufficient.’ ” *State v. Hargis*,

2026-Ohio-726, ¶ 11 (4th Dist.), quoting *State v. Veney*, 2008-Ohio-5200, ¶ 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.*, quoting *Veney* at ¶ 15, quoting *State v. Nero*, 56 Ohio St.3d 106, 108 (1990).

{¶10} When a defendant seeks reversal of his conviction, “the traditional rule is that he must establish that an error occurred in the trial-court proceedings and that he was prejudiced by that error.” *State v. Dangler*, 2020-Ohio-2765 ¶ 13. But the Supreme Court of Ohio has made a “limited exception to the prejudice component of that rule in the criminal-plea context.” *Id.* at ¶ 14. In that instance, there are two exceptions to the prejudice requirement: First, “[w]hen a trial court fails to explain the constitutional rights that a defendant waives by pleading guilty or no contest, we presume that a plea was entered involuntarily and unknowingly, and no showing of prejudice is required.” *Dangler* at ¶ 14, citing *State v. Clark*, 2008-Ohio-3748, ¶ 31 and *Veney* at syllabus. Second, “a trial court’s *complete* failure to comply with a portion of Crim.R. 11(C) eliminates the defendant’s burden to show prejudice.” *Id.* at ¶ 15, citing *State v. Sarkozy*, 2008-Ohio-509, ¶ 22. (Emphasis in original.).

{¶11} “Aside from these two exceptions, the traditional rule continues to apply: a defendant is not entitled to have his plea vacated unless he demonstrates he was prejudiced by a failure of the trial court to comply with the provisions of Crim.R. 11(C).” *Id.* at ¶ 16, citing *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 ¶ 16, quoting *Nero* at 108. “Prejudice must be established ‘ “on the face of the record.” ’ ” *Id.* at ¶ 24, quoting

Hayward v. Summa Health Sys./Akron City Hosp., 2014-Ohio-1913, ¶ 26, quoting *Wagner v. Roche Laboratories*, 85 Ohio St.3d 457, 462 (1999).

{¶12} Further, in an inquiry into whether a defendant has validly entered a plea, “the questions to be answered are simply: (1) has the trial court complied with the relevant portion 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.

B. Analysis

{¶13} Ruff was convicted of second-degree felony burglary. Therefore, pursuant to R.C. 2967.28(B)(3), post-release control is mandatory for up to 3 years, but not less than 18 months. “When the trial court fails to advise a defendant that the sentence includes a mandatory term of post[-]release control, the trial court fails to comply with Crim.R. 11[.]” *State v. Hargis*, 2026-Ohio-726, ¶ 12 (4th Dist.), citing *State v. Sarkozy*, 2008-Ohio-509, ¶ 25-26. The issue here is whether the trial court substantially complied with the notification in Crim.R. 11(C)(2)(a) to inform Ruff of the maximum penalty involved.

{¶14} In the case sub judice, the trial court stated, “[i]n addition to those penalties, this charge is also subject to a period of post[-]release control of up to three years, but not less than 18 months. Do you understand that?”, to which Ruff responded, “Yes Sir, Your Honor.” The trial court also informed Ruff of the potential consequences for violating post-release control immediately after this exchange, beginning the exchange with the phrase, “[w]hen placed on post-release control.” During the sentencing, which

was held immediately after the plea, the trial court informed the defendant, “[T]herefore, the [c]ourt will sentence you to a minimum definite sentence of eight years['] incarceration in the appropriate penal institution to a maximum indefinite sentence of 12 years['] incarceration in the appropriate penal institution, up to three years, but not less than 18 months on post[-]release control”

{¶15} Ruff contends that the language used by the trial court was “insufficient” to notify him of the mandatory nature of the post-release control. Specifically, he asserts that “[b]eing subject to post[-]release control can easily be interpreted as being possible but not mandated.” In so doing, Ruff cites two cases, *State v. Bradford*, 2024-Ohio-2669, ¶ 9 (4th Dist.), and *State v. Sarkozy*, 2008-Ohio-509, ¶ 22-25. In *Bradford*, the trial court did not advise the defendant that the post-release control was mandatory at the plea hearing, and at the sentencing hearing the trial court specifically stated that the post-release control was “optional.” *Bradford* at ¶ 10. Thus, we reversed the judgment of the trial court since the plea was not knowing, voluntary, and intelligent. *Id.* at ¶ 10-12.

{¶16} In *State v. Sarkozy*, the Supreme Court of Ohio reversed the judgment of the trial court based on the trial court’s failure to advise the defendant that post-release control was mandatory. 2008-Ohio-509, ¶ 22-25. In *Sarkozy*, the Supreme Court of Ohio disagreed with the court of appeals’ finding of substantial compliance with Crim.R. 11, finding “there was no compliance with Crim.R. 11.” *Id.* at ¶ 22. There, the trial court did not simply fail to notify the defendant of whether post-release control was mandatory or discretionary. *Id.* “Rather, the trial court failed to mention post-release control *at all* during the plea colloquy.” *Id.* (Emphasis added.). Therefore, because the trial court

completely failed to mention post-release control at all, the court concluded, “[a] complete failure to comply with the rule does not implicate an analysis of prejudice.” *Id.*

{¶17} First, we would note, “[t]he trial court is not required to use the term ‘mandatory’ if the words used convey the same meaning or the trial court uses equivalent terms such as ‘will,’ ‘shall,’ ‘must,’ or ‘required.’ ” *Hargis* at ¶ 13. *See State v. Rucker*, 2016-Ohio-5111, ¶ 6 (1st Dist.) (court’s statement that “you’ll be on a period of supervision” was sufficient to notify defendant of the mandatory nature of his post-release control). Similarly, courts have held that sentencing entry language stating that “post[-]release *is part of* this sentence” conveyed that post-release control would be mandatory. *State v. Tolbert*, 2017-Ohio-9159, ¶ 27 (8th Dist.) (Emphasis added.).

{¶18} In the case sub judice, the trial court used the phrase “is also subject to.” In this context, “subject” is defined as “to cause to undergo some action, agent, or operation.” *Black’s Law Dictionary* (12th Ed. 2024). Thus, before the plea, the trial court advised Ruff that he would be caused to undergo post-release control and, after the plea—at the sentencing hearing later that same day—stated that “the [c]ourt *will* sentence you to . . . up to three years, but not less than 18 months on post[-]release control.” (Emphasis added.) “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.” *Bradford* at ¶ 8, citing *Dangler* at ¶ 12 and *Veney* at ¶ 15-16. We therefore find that the trial court complied with the relevant portion of Crim.R. 11(2)(a) as it pertains to mandatory post-release control.

{¶19} Second, even if the trial court did not fully comply with the rule by omitting the word “mandatory” during the plea colloquy, or if the phrase “subject to” was arguably ambiguous, the court’s advisement was not a “complete failure” because, during the plea portion of the hearing, it informed Ruff that the sentence included the proper term of post-release control. Further, at the same hearing, during sentencing, the trial court clearly stated that the sentence “will” include post-release control. Thus, Ruff must show prejudice—that he would not have otherwise pleaded no contest to the offense. Here, Ruff does not show, or argue, “prejudice.”

{¶20} The State points out a Supreme Court of Ohio’s case released later in the same year as *Sarkozy*. In *State v. Clark*, the Supreme Court of Ohio explained:

When the trial judge does not *substantially* comply with Crim.R. 11 in regard to a nonconstitutional right, reviewing courts must determine whether the trial court *partially* complied or *failed* to comply with the rule. If the trial judge partially complied, e.g., by mentioning mandatory postrelease control without explaining it, the plea may be vacated only if the defendant demonstrates a prejudicial effect. The test for prejudice is “whether the plea would have otherwise been made.” If the trial judge completely failed to comply with the rule, e.g., by not informing the defendant of a mandatory period of postrelease control, the plea must be vacated.

State v. Clark, 2008-Ohio-3748, ¶ 32. (Citations omitted.) (Emphasis in original.). In *Clark*, the trial court partially complied with Crim.R. 11, but provided misinformation. *Id.* at ¶ 40. Also in *Clark*, although the court of appeals discussed prejudice in its opinion, it did not reach a conclusion on the issue, so the Supreme Court of Ohio remanded the case for a full determination of prejudice. *Id.* at ¶ 40.

{¶21} We find that Ruff has not shown how he was prejudiced by the language of the trial court, and we cannot determine how he has been prejudiced from the face of the record. Thus, we find that the trial court substantially complied with notifying Ruff of

the mandatory nature of the post-release control, and further find Ruff has shown no prejudice. Therefore, we conclude that Ruff knowingly, voluntarily, and intelligently entered his no-contest plea and overrule his first assignment of error.

{¶22} However, the sentencing entry must be consistent with what occurred at the sentencing hearing. Once the trial court orally provides all the required advisements regarding post-release control at the sentencing hearing, it must then incorporate those advisements into the sentencing entry. *State v. Bates*, 2022-Ohio-475, ¶ 12, citing *State v. Grimes*, 2017-Ohio-2927, ¶ 8, *overruled on other grounds by State v. Harper*, 2020-Ohio-2913. In the instant case, the entry states, “As part of this sentence, the defendant is advised that upon the completion of the prison term, the defendant could be subject to a discretionary period of supervision” of post-release control of “up to three (3) years but not less than eighteen (18) months.” Here, the words “could be subject to a discretionary period” is clearly inconsistent with the trial court’s statements at the sentencing hearing that the defendant “is also subject to a period.” Thus, this matter must be remanded for the limited purpose of issuing a nunc pro tunc entry reflecting the mandatory duration of post-release control, to reflect what occurred at the sentencing hearing. See *State v. Allen*, 2020-Ohio-5155, ¶ 32-33 (10th Dist.) (where entry does not include mandatory nature of post-release control, but the record otherwise reflects notification of a mandatory period of post-release control, the appropriate disposition is modification of the trial court's sentencing entry or a remand for the limited purpose of issuing a nunc pro tunc entry); *State v. Persinger*, 2018-Ohio-1076, ¶ 15-18 (5th Dist.) (matter remanded for limited purpose of issuing a nunc pro tunc entry reflecting the mandatory duration of post-release control).

{¶23} Appellant's first assignment of error is therefore overruled. However, his second assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

{¶24} In his third assignment of error, Ruff avers his sentence was contrary to law because the trial court failed to provide proper notices pursuant to R.C. 2929.19(B)(2)(c) at his sentencing hearing. The State contends that the notices given by the trial court were sufficient.

A. Law.

{¶25} "R.C. 2953.08(A)(4) authorizes a defendant who pleads guilty to a felony to appeal as a matter of right the sentence imposed upon the defendant on the ground that it is 'contrary to law.' " *State v. Gutierrez*, 2025-Ohio-1884, ¶ 63 (4th Dist.). R.C. 2953.08(G)(2) states:

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶26} Because Ruff did not object to the trial court's notifications at sentencing, he has forfeited this issue, absent plain error. See *State v. Knott*, 2025-Ohio-5745,

¶ 136 (4th Dist.), citing *State v. Price*, 2024-Ohio-1641, ¶ 7 (4th Dist.), citing *State v. Whitaker*, 2022-Ohio-2840, ¶ 166 (errors in sentencing that defendant fails to object to are reviewed for plain error). “A party asserting plain error must demonstrate that an obvious error occurred and that there is a reasonable probability it resulted in prejudice, meaning it affected the outcome of the proceeding.” *State v. Gutierrez*, 2025-Ohio-1884, ¶ 64 (4th Dist.), citing *State v. Knuff*, 2024-Ohio-902, ¶ 117.

{¶27} “ ‘A sentence is contrary to law if a trial court sentences an offender to an indefinite prison term under the Reagan Tokes Law and fails to advise the offender of all the notifications set forth in R.C. 2929.19(B)(2)(c) at the sentencing hearing.’ ” *Knott* at ¶ 136 quoting *Price* at ¶ 7, citing *State v. Long*, 2021-Ohio-2672, ¶ 27-29 (4th Dist.), *rev'd on other grounds In re Cases Held for the Decision in State v. Maddox*, 2022-Ohio-1352, ¶ 1. However, although trial courts are required to provide Reagan Tokes Law notifications to defendants during the sentencing hearing, there is no statutory requirement that those five notifications also be incorporated into the sentencing entry, as long as the minimum and maximum terms in which defendants are being sentenced under the Reagan Tokes Law are included in the sentencing entry. *State v. Miller*, 2025-Ohio-1920, ¶ 81 (4th Dist.), citing *State v. Rasheed*, 2024-Ohio-3424, ¶ 95-102 (2d Dist.), citing R.C. 2929.144(C); *see also*, *State v. McIntosh*, 2023-Ohio-4022, ¶ 67 (12th Dist.) (the Reagan Tokes notifications required by R.C. 2929.19(B)(2)(c) must be given at a sentencing hearing, but do not need to be restated in a sentencing entry, as no statute requires that the notifications be restated in a sentencing entry.).

B. Analysis

{¶28} The notifications that must be provided to a defendant at a sentencing hearing involving a Reagan Tokes sentence are set forth in R.C. 2929.19(B), which provides:

(2) Subject to division (B)(3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) If the prison term is a non-life felony indefinite prison term, notify the offender of all of the following:

(i) That it is rebuttably presumed that the offender will be released from service of the sentence on the expiration of the minimum prison term imposed as part of the sentence or on the offender's presumptive earned early release date, as defined in section 2967.271 of the Revised Code, whichever is earlier;

(ii) That the department of rehabilitation and correction may rebut the presumption described in division (B)(2)(c)(i) of this section if, at a hearing held under section 2967.271 of the Revised Code, the department makes specified determinations regarding the offender's conduct while confined, the offender's rehabilitation, the offender's threat to society, the offender's restrictive housing, if any, while confined, and the offender's security classification;

(iii) That if, as described in division (B)(2)(c)(ii) of this section, the department at the hearing makes the specified determinations and rebuts the presumption, the department may maintain the offender's incarceration after the expiration of that minimum term or after that presumptive earned early release date for the length of time the department determines to be reasonable, subject to the limitation specified in section 2967.271 of the Revised Code;

(iv) That the department may make the specified determinations and maintain the offender's incarceration under the provisions described in divisions (B)(2)(c)(i) and (ii) of this section more than one time, subject to the limitation specified in section 2967.271 of the Revised Code;

(v) That if the offender has not been released prior to the expiration of the offender's maximum prison term imposed as part of the sentence, the offender must be released upon the expiration of that term.

{¶29} Our review of the record shows that the trial court set forth these notifications at the sentencing hearing. Further, the sentencing entry clearly states the minimum and maximum terms of Ruff's sentence under the Reagan Tokes Law. Therefore, we overrule this assignment of error as it has no merit.

CONCLUSION

{¶30} Based on the foregoing, the first and third assignments of error are overruled; however, the second assignment of error is sustained and the case is remanded for the limited purpose of the trial court entering a nunc pro tunc entry to set forth the mandatory, rather than discretionary, nature of the post-release control.

JUDGMENT AFFIRMED AND CAUSE REMANDED WITH INSTRUCTIONS.

JUDGMENT ENTRY

It is ordered that the **JUDGMENT IS AFFIRMED AND CAUSE REMANDED** and 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 Lawrence 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.

Abele, J. and Hess, 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.