[Cite as *State v. McCarthy*, 2026-Ohio-4317.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio Appellee v. Ernest McCarthy Appellant	Court of Appeals No. L-26-00064 Trial Court No. CR0202501477 **DECISION AND JUDGMENT** Decided: October 30, 2026

* * * * *

Julia R. Bates, Prosecuting Attorney, and
Randy L. Meyer, Assistant Prosecuting Attorney, for appellee.

Joseph C. Patituce, for appellant.

* * * * *

DUHART, J.

{¶ 1} Appellant, Ernest McCarthy appeals the March 9, 2026 judgment of the Lucas County Common Pleas Court. The state of Ohio has filed a concession of error. For the reason that follows, we reverse and remand.

Assignments of Error

> Assignment of Error I: [McCarthy] did not enter a constitutionally valid knowing, intelligent, or voluntary plea when the trial court failed to orally inform [McCarthy] of all his rights set forth in Crim.R. 11(C)(2)(c).
>
> Assignment of Error II: [McCarthy's] sentence is contrary to law when the trial court imposed an aggregate maximum prison term not authorized by R.C. 2929.144(B)(2) and failed to give the notice required [by] R.C. 2929.19(B)(2)(c).

Background

{¶ 2} On November 6, 2025, McCarthy was indicted on nine counts of pandering obscenity involving a minor or impaired person in violation of R.C. 2907.321(A)(1) and (C)(Counts 1 - 9), all felonies of the second degree; four counts of pandering sexually-oriented matter involving a minor or impaired person in violation of R.C. 2907.322(A)(1) and (C)(Counts 10 - 13), all felonies of the second degree; and seven counts of illegal use of a minor or impaired person in nudity-oriented material or performance in violation of R.C. 2907.323(A)(1) and (B)(Counts 14 - 20), all felonies of the second degree. McCarthy initially entered pleas of not guilty to all counts.

{¶ 3} On February 12, 2026, McCarthy withdrew his pleas of not guilty and entered pleas of guilty to Counts 1 - 15. The State agreed to nolle the remaining counts at sentencing. After finding that McCarthy made a knowing, intelligent, and voluntary waiver of his rights under Crim.R. 11, the trial court accepted McCarthy's plea and found him guilty of each count to which he entered a plea of guilty.

{¶ 4} McCarthy was then sentenced on February 26, 2026, to a minimum prison term of two years and a maximum term of three years on each count. The trial court

ordered Counts 1 - 10 to be run consecutively to each other and Counts 11 - 15 to be run concurrently to each other and to Counts 1 - 10. The trial court stated that the cumulative sentence would be 20 years to a maximum of 24 years. McCarthy appealed.

Analysis

{¶ 5} In his first assignment of error, McCarthy argues that his plea was not made knowingly, intelligently and voluntarily as the trial court failed to inform him of all his constitutional rights set forth in Crim.R. 11(C)(2)(c).

{¶ 6} "A defendant's decision to enter a guilty plea must be knowing, intelligent and voluntary." *State v. Gowdy*, 2025-Ohio-5575, ¶ 18, citing *State v. Dangler*, 2020-Ohio-2765, ¶ 10. "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. If the plea was not made knowingly, intelligently, and voluntarily, enforcement of that plea is unconstitutional." (Citations omitted.) *State v. Hills*, 2026-Ohio-959, ¶ 8 (6th Dist.). Crim.R. 11(C) sets forth the procedures a trial court must follow when accepting pleas 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, citing *State v. Stone*, 43 Ohio St.2d 163, 168 (1975). Specifically, Crim.R. 11(C)(2) requires a trial court to address a defendant personally and:

> (a) Determin[e] 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.

> (b) Inform[] the defendant of and determin[e] that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.
> (c) Inform[] the defendant and determin[e] that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the [S]tate to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶ 7} When an appellant seeks to vacate his plea on the basis that the plea was not entered in a knowing, intelligent, and voluntary manner due to the trial court's failure to comply with Crim.R. 11, the questions to consider are: "(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[n appellant] from the burden of demonstrating prejudice? and (3) if a showing of prejudice is required, has the [appellant] met that burden?" *Dangler* at ¶ 17. Generally, an appellant must show prejudice to have his plea vacated unless the trial court fails to explain a constitutional right in Crim.R. 11(C)(2)(c) or completely fails to comply with any portion of Crim.R. 11(C). *State v. Lucas*, 2025-Ohio-5303, ¶ 13 (6th Dist.), quoting *State v. Johnson*, 2023-Ohio-2008, ¶ 14 (6th Dist.). "The test for prejudice is '"'whether the plea would have otherwise been made.'"'" *Id*, quoting *Johnson* at ¶ 17. We generally conduct a de novo review to determine whether the trial court complied with Crim.R. 11 when accepting a plea. *Hills* at ¶ 7, quoting *State v. Acosta*, 2023-Ohio-737, ¶ 18 (6th Dist.).

{¶ 8} Here, McCarthy contends that the trial court did not explain a constitutional right in Crim.R. 11(C)(2)(c) because it failed to inform him that, with his plea, he was waiving his right to have the State prove his guilt beyond a reasonable doubt at trial. The

State agrees and has conceded this was error. We have reviewed the plea transcript and concur that the trial court entirely failed to orally inform McCarthy of his right to require the State to prove his guilt beyond a reasonable doubt. As the trial court failed to inform McCarthy of a constitutional right under Crim.R. 11(C)(2)(c), McCarthy was not required to show prejudice.

{¶ 9} For the reason discussed above, McCarthy's plea is invalid as it was not made knowingly, intelligently, and voluntarily. Accordingly, we find McCarthy's first assignment of error well-taken. and remand this matter back to the trial court. Further, this finding moots McCarthy's second assignment of error.

Conclusion

{¶ 10} The judgment of the Lucas County Court of Common Pleas is reversed and remanded to the trial court. Pursuant to App.R. 24, the State is hereby ordered to pay the costs incurred on appeal.

Judgment reversed and remanded.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, P.J.

JUDGE

Christine E. Mayle, J

JUDGE

Myron C. Duhart, J
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.