[Cite as *State v. Zook*, 2024-Ohio-4855.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

GIDEON ZOOK,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 23 MO 0016

Criminal Appeal from the
County Court of Monroe County, Ohio
Case Nos. 23-CRB-134ABC; 23-TRD-259

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Katelyn Dickey, Judges.

JUDGMENT:
Plea and Sentence Vacated.
Reversed and Remanded.

Atty. James L. Peters, Monroe County Prosecutor and *Atty. Helen Yonak*, Assistant Prosecutor, for Plaintiff-Appellee

Atty. Charles A.J. Strader, Attorney Charles Strader, LLC, for Defendant-Appellant

Dated: September 6, 2024

WAITE, J.

{¶1} Appellant Gideon Zook appeals a July 26, 2023 judgment entry of the Monroe County Court finding him guilty of endangering a child and operating a horse drawn buggy without the requisite light in accordance with R.C. 4513.114 ("the Flashing Light Act"). Appellant argues that the Flashing Light Act is unconstitutional, as it violates his religious convictions. However, Appellant was prevented from raising this issue below due to erroneous advisements made by the trial court. As a result, Appellant's plea and sentence are vacated, and the matter is reversed and remanded for further proceedings.

Factual and Procedural History

{¶2} We have few facts regarding the underlying incident in this case. We note that the state has attached to its brief a police report containing some of the details of the incident. It is unclear whether this report was actually placed onto the record, here, as it is not attached to any document in the trial court's file and Appellant may not have had access to this report.

{¶3} It appears that on May 29, 2023, Appellant operated a horse drawn buggy carrying his wife (and co-defendant) and their three young children. Despite the enactment of the Flashing Light Act, which requires a battery powered light to be placed on horse drawn buggies, Appellant's buggy did not have any lighting attached. The buggy travelled along State Route 800 between Jerusalem and Malaga, Monroe County. According to the report, around 3:00 p.m. a vehicle struck the buggy, causing all of the buggy's passengers to be ejected. It appears that at least two of the children were injured as a result of this accident.

{¶4} Appellant was given a traffic citation for operating a horse drawn buggy without proper lights in accordance with the Flashing Lights Act, R.C. 4513.114. On June 5, 2023, Appellant was charged in a criminal complaint with three counts of child endangering, misdemeanors of the first degree in violation of R.C. 2919.22(A). Although no explanation is found in the record, these two cases were treated as consolidated. Appellant's wife, Lydia Zook, was also charged with three counts of endangering children. While she was charged in a separate complaint under a separate case number, she appeared at all hearings with Appellant, and her case number has been handwritten on some of Appellant's court documents.

{¶5} On June 14, 2023, Appellant and his wife participated in an initial appearance. During this appearance, Appellant first attempted to indicate he had a religious objection to the Act when he responded to the court's question about whether he understood proceedings by stating "[i]t's a religious thing. We can't - we don't believe in using the light. That's why we didn't have it." (6/14/23 Initial Appearance, p. 10.) The court responded by emphasizing that the failure to place a light on the buggy strongly contributed to the cause of the accident, which placed three children in danger, and may have been the major cause. Appellant acknowledged that some people in the Amish community placed a light on their buggy, but explained that those members "believed differently." (6/14/23 Initial Appearance, p. 12.) Appellant was unrepresented in the trial court, telling the judge that he was proceeding *pro se* because his religion prevented representation by an attorney.

{¶6} Appellant and his wife pleaded no contest to the charges. The court imposed the following sentence: 180 days in jail per count to run concurrently with all but

10 days suspended, $250 fine, and 40 hours of community service. All court costs were waived.

{¶7} Although the record does not contain a copy of any motion seeking to withdraw Appellant's plea, the court filed a judgment entry indicating that Appellant had requested such relief. On June 28, 2023, Appellant and his wife appeared for a hearing on the matter. At this hearing, the court stated:

> But what I'm going to do is, I mean, since both of you have filed a request here of - basically I'll treat it as a Motion to Dismiss the charges, the state probably hasn't had a chance to look at those yet, I'm going to enter a not guilty plea on both of your behalves, on all of these cases, and we'll set it for a pretrial and I'll give the state a chance to respond to what you have filed, okay?

(6/28/23 Arraignment, p. 9)

{¶8} The judge was referencing a letter written by Appellant and sent to the court. This letter contains no legal arguments or citations, but in it Appellant requests to have his charges dismissed pursuant to a provision in what is apparently a religious code of conduct.

{¶9} On July 26, 2023, the court held a "Change of Plea and Sentencing" hearing. The state indicated that a potential plea agreement had been reached in which Appellant agreed to plead guilty to the Flashing Light Act violation and one count of child endangering, in exchange for the dismissal of the remaining two counts of child endangering against him, and the dismissal of all charges against his wife, with prejudice.

While it is clear from the record that the court believed Appellant was inartfully attempting to raise a constitutional challenge to the Flashing Light Act, the court advised Appellant that his sole means of pursuing such a challenge would be to plead no contest and then attack the constitutionality of the Act on appeal. The trial court claimed it had no ability to rule on any constitutional challenge. Based on the trial court's advice, Appellant pleaded no contest, reserving his right to appeal.

{¶10} The court sentenced Appellant to 90 days of jail, which was suspended, a $150 fine, and 40 hours of community service. It is from this entry that Appellant timely appeals. We note that Appellant now has the assistance of counsel on appeal.

ASSIGNMENT OF ERROR NO. 4

> Ohio Revised Code 4513.114 is unconstitutional, as written, as it fails to permit the Defendant/Appellant to exercise religious freedom, as the statute does not provide for the least restrictive means in order to protect the public.

{¶11} Appellant attacks his conviction on a number of grounds, including constitutional. At no time does Appellant seek to withdraw his plea in this matter as invalidly entered. Our review of the matter, however, reveals that Appellant's constitutional arguments were not properly raised at the trial court. Ordinarily, this would result in waiver of those arguments in this Court, however, it is apparent that Appellant's plea was induced by the erroneous information given him by the trial court. Thus, his plea was not validly entered or accepted in this case.

{¶12} This matter has a confusing and somewhat disturbing procedural history. It began with Appellant and his wife pleading no contest at their initial appearance.

Appellant tried to indicate at the arraignment that he chose to proceed *pro se* because of his religious beliefs. The following discussion ensued regarding Appellant's ability to obtain legal representation.

MR. ZOOK: Well, we couldn't fight it anyway.

THE COURT: Why?

MR. ZOOK: We can't hire a lawyer.

THE COURT: Why?

MR. ZOOK: It's - we don't - it's just one of our religious things.

THE COURT: I've had an Amish client before.

Maybe it's a different group.

If you could hire an attorney, would you plead not guilty? And you don't have to have an attorney to plead not guilty. You could plead not guilty and defend yourself at a trial.

MR. ZOOK: (No Audible Response).

MRS. ZOOK: (No Audible Response).

THE COURT: You're the one that has to make the decision. I can't make the decision for you, how you proceed, okay?

MR. ZOOK: We'll just go with No Contest, and just be at your mercy.

(6/14/23 Initial Appearance, p. 8.)

{¶13} Again, Appellant and his wife had no legal representation throughout the entirety of the trial court proceedings. Both Appellant and his wife entered initial pleas of no contest at the arraignment.

{¶14} On June 14, 2023, the trial court filed a judgment entry granting Appellant's motion to vacate his plea. Again, as no written motion appears in this record, it is unclear on what basis the court vacated the plea. Regardless, at the time he was allowed to withdraw his plea, Appellant and his wife filed a handwritten letter, which the trial court converted into a motion to dismiss.

{¶15} Appellant's letter cites no law and provides no legal argument. Instead, the letter provides in full:

> In Article I Section 9
>
> Rights of Conscience
>
> All men have a natural and indefeasible right to worship Almighty God according to the dictates of there (sic) own conscience be permitted.
>
> In order to lead a life according to the way our parents taught us and in obedience to the Church Counsel, we can not (sic) abide by the new "flashing light" law with a free conscience[.]

> We understand that case "#TRD2300259," "#CRB2300134ABC," and "#CRB2300133ABC," were brought upon us because of the new "flashing light" law, which interferes with our conscience.
>
> We humbly beg to have these charges dismissed.

(6/26/23 Letter.)

{¶16} In essence, in his letter Appellant vaguely raised an objection to the law based on his religious beliefs, but provided no legal authority. Nor does Appellant flesh out the basis for his religious exception in this letter. While it appears the trial court grappled with Appellant's request, instead of attempting to flesh out Appellant's claims, legal or religious, the trial court, instead, informed Appellant that a constitutional challenge to the law in question can only be raised to a court of appeals and the trial court was unable to rule on such an objection. Based on this information, Appellant agreed to plead no contest and defer raising his religious objection to the constitutionality of the Act in his appeal following conviction.

{¶17} At Appellant's initial appearance, the court entered into the following colloquy with Appellant:

> THE COURT: And you understand that they're charging you for child endangerment because you don't have the light - you didn't have the light that's required by law on the buggy.
>
> MR. ZOOK: Yes. I understand that.

THE COURT: I just want to make sure you understand why you're here.

MR. ZOOK: It's a religious thing, so...

THE COURT: What's that?

MR. ZOOK: *It's a religious thing. We can't - we don't believe in using the light. That's why we didn't have it.*

THE COURT: I understand that. But you can't just say I don't believe in the laws.

We could all say that for a whole bunch of laws and just say I'm not going to follow them.

MR. ZOOK: Yeah.

THE COURT: *And the only way you can do anything about that is, to fight this charge, and go make that argument in the Court of Appeals or to the Ohio Supreme Court that it violates somehow your religious freedoms. That's not what I can really deal with here, okay? I can't say that this is unconstitutional. I guess I could, but that's not really my place, okay?* (Emphasis added.)

(6/14/23 Initial Appearance, pp. 9-10.)

{¶18} Later, after the trial court permitted Appellant and his wife to withdraw their initial pleas, the court conducted proceedings at which Appellant entered a second plea. In reviewing the proposed plea agreement with Appellant, the court stated:

> I'm not trying to make you do anything. I'm just telling you that is an option [entering a plea agreement] that's on the table, if you want to do that.
>
> But that I will – and I will say the same thing I've said many times in here -- there's been people advocating on your behalf to say hey, Judge, you just need to exempt them from this light law, and just ignore it.
>
> I cannot and will not do that, okay?
>
> *What I need is someone to make a legal argument in this Court by a lawyer or you two. I can't just say here's what I'm going to do. If you plead No Contest to it, the case is done. I'm going to enter a finding of guilt, and if you want to challenge that law, you need to do that in the Court of Appeals, okay?*
>
> But I've had multiple people trying to convince me I should just dismiss it. That's -- I can only do what I'm allowed to do.

(7/28/23 Hrg., pp. 7-8.)

{¶19} The trial court continued in this vein by then advising:

> *In my personal opinion, a case like this should probably be up in the Court of Appeals. If you want to challenge the Constitutionality of that*

> *statute in regard to the light on your buggy, that should be done in the Court of Appeals. Not here, okay?*
>
> But someone needs to make a legal argument somewhere or we're just going to all be stuck in the mud and nothing is going to change and these tickets are going to keep going and going and going and going. (Emphasis added.)

(7/28/23 Hrg., pp. 8-9.)

{¶20} In response, Appellant expressed that he was conflicted. While it was important for him to challenge the traffic offense, he also sought to challenge the child endangering charge. He asked the court if such a challenge was still possible if he entered a plea of no contest and then filed an appeal. The court responded that all charges could be appealed as they were "tied together." (Hr., p. 11.)

{¶21} Contrary to the trial court's advice to Appellant, "[a] constitutional issue not raised at trial 'need not be heard for the first time on appeal.' " *Matter of K.J.*, 2018-Ohio-471 (10th Dist.); citing *State v. Douglas*, 2009-Ohio-6659, ¶ 61 (10th Dist.); *State v. Awan*, 22 Ohio St.3d 120 (1986), syllabus; *In re Dailey*, 2005-Ohio-2196, ¶ 25 (10th Dist.) ("[w]hen a constitutional issue is not raised before the trial court, it will not be addressed in the first instance by the court of appeals.") Hence, in order to challenge the constitutionality of a law, the issue must be raised and preserved in the trial court.

{¶22} The trial court erroneously advised Appellant that constitutional challenges are reserved for the court of appeals and that the correct mechanism to attack a constitutional issue is by pleading no contest and raising the constitutional challenge on

appeal. Hence, the trial court did provide erroneous information to Appellant. The question becomes whether Appellant based his plea on the court's incorrect advice.

{¶23} Appellant ultimately decided to enter a no contest plea, with the knowledge that he would be found guilty. While caselaw involving the exact issue of incorrect information provided by the court is sparse, there are cases arising out of the Eighth District that provide some guidance. In *State v. Wilson*, 2017-Ohio-8871 (8th Dist.) the court invalidated a plea where it was entered based on a defendant's mistaken belief that he could appeal the trial court's decision on a motion in limine. The *Wilson* court heavily relied on the fact that the trial judge allowed the defendant to enter the plea knowing the defendant had an incorrect understanding of the law and neither the court nor the state made any effort to instruct him otherwise. *Id.* at ¶ 12. While the state complained that neither the prosecutor nor the court made any affirmative statements to induce the defendant's incorrect belief, the Eighth District ultimately held that both the prosecutor and judge knew of the defendant's mistaken belief but took no action to correct it. *Id.* at ¶ 14. Accordingly, the *Wilson* Court reversed the appellant's conviction, vacated his plea, and remanded the matter for further proceedings.

{¶24} In reaching its decision, *Wilson* relied on two other Eighth District cases, *State v. Williams*, 2017-Ohio-2650 (8th Dist.) and *State v. Ealom*, 2009-Ohio-1365 (8th Dist.). In *Ealom,* the appellant asked the court about judicial release and the court led him to believe he would be eligible. However, he was not. In reaching its decision, the *Ealom* court heavily relied on the fact that the appellant inquired about judicial release and indicated to the court that it was an important concern. *Id.* at ¶ 26. The court ultimately held that where a defendant inquires or requests clarification regarding some

aspect of the plea and misinformation is provided, the resulting plea is not entered knowingly, intelligently, and voluntarily. *Id.* at ¶ 27.

{¶25} In a second case involving another plea bargain where a defendant expressly requested clarification as to judicial release and the court erroneously informed him that he would be eligible, the plea was also vacated. *State v. Williams*, 2017-Ohio-2650 (8th Dist.). The *Williams* court stated "it is well settled that a guilty plea may be invalidated where the defendant is given misinformation regarding judicial release." *Id.* at ¶ 15, citing *Ealom, supra*; *State v. Bush*, 2002-Ohio-6146 (3d Dist.); *State v. Horch*, 2003-Ohio-5135 (3d Dist.); *State v. Florence*, 2004-Ohio-1956 (3d Dist.). In finding that the appellant's plea was based on incorrect information, the court vacated the plea and remanded the matter for further proceedings.

{¶26} While *Williams* and *Ealom* involved judicial release, and *Wilson* involved a motion in limine, these cases collectively stand for the proposition that where a defendant requests information or clarification regarding some aspect of his plea and is given incorrect information and this information has induced the plea, any resulting plea is not entered into knowingly, intelligently, and voluntarily.

{¶27} The instant matter involves the state's proposed plea agreement in which Appellant would agree to enter a no contest plea to one count of child endangering and to the traffic offense in exchange for a dismissal of the remaining two counts of child endangering, and in exchange for dismissal of the charges facing his wife in full.

{¶28} The trial court informed Appellant multiple times that constitutional challenges could not be raised in the trial court and were reserved for the court of appeals. This is clearly incorrect. While the trial court made several statements attempting to

assure Appellant it did not intend to pressure him to enter a plea and then raise the religious constitutional issue in an appeal, that is exactly what the court did throughout the proceedings. And while Appellant did plead no contest instead of entering a guilty plea, the plea was entered after the judge specifically informed him that the court would enter a finding of guilt. Thus, Appellant's plea here was tantamount to a guilty plea.

{¶29} "[I]t is axiomatic that a court of appeals is a court of review and that we will not and may not consider any evidence not properly before the lower court." *State v. Wilson*, 2015-Ohio-4808, ¶ 8 (7th Dist.), citing *Tinlin v. White*, 1999 WL 1029523 (7th Dist. Nov. 5, 1999). Appellant provided no actual legal arguments regarding the constitutionality of the law. Thus, while Appellant claimed that the law violated his conscience and his religious freedoms, he did not properly raise or preserve the constitutional issue. His vague assertion of some right does not sufficiently allow for the appellate review process. A court of review cannot evaluate arguments that are not raised, or adequately raised, before the trial court. This record does not provide anything for this Court to review, as it is lacking any coherent constitutional argument and is unsupported in any way.

{¶30} The trial court repeatedly and expressly grappled with the complete absence of any legal argument, which was at least in part due to Appellant's status as a *pro se* defendant. As acknowledged by the trial court, Appellant's attempted motion to dismiss contains no law. Certainly, the court was not required to make Appellant's legal arguments for him. However, the record is also devoid of any admonishment by the trial court of the hazards of self-representation prior to accepting Appellant's plea, a plea

induced by the trial court's assurances that the appropriate place to raise the argument Appellant was trying to make was in the court of appeals.

{¶31} Although cases in which constitutional issues are raised for the first time on appeal are ordinarily summarily overruled, it is apparent from this record that Appellant's plea was not validly entered, as it was based on erroneous information provided by the trial court, itself. As the plea was not validly entered, we must order the plea and sentence vacated, and remand the matter to the trial court for further action pursuant to law. Should Appellant choose to pursue a constitutional attack on the law at issue, he must be permitted to raise an actual legal argument so that the trial court is provided with an opportunity to review the question. Accordingly, Appellant's plea and sentence are *sua sponte* vacated and the matter remanded for further proceedings.

ASSIGNMENT OF ERROR NO. 1

> The trial court abused its discretion when it failed to dismiss the three (3) counts of child endangering, when the charging document fails to provide sufficient notice of the charges, thereby divesting the trial court with subject matter jurisdiction.

ASSIGNMENT OF ERROR NO. 2

> The trial court abused its discretion in finding the Defendant/Appellant guilty of child endangerment, when there was no evidence that was presented by the Plaintiff/Appellee in order to support said conviction.

ASSIGNMENT OF ERROR NO. 3

The trial court abused its discretion in finding the Defendant/Appellant guilty of a violation of Ohio Revised Code 4513.114.

{¶32} Based on our determination that the plea in question was not validly entered and must be vacated, and the matter remanded in total, all of Appellant's remaining assignments of error are moot.

Conclusion

{¶33} Appellant seeks to have his convictions for the offenses related to his failure to abide by the Flashing Light Act reversed and the charges dismissed due to his constitutional challenge to the law based on his religious beliefs. For the reasons provided, Appellant's plea and resulting sentence are vacated and the matter is remanded to the trial court for further proceedings.

Robb, P.J. concurs

Dickey, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's fourth assignment of error is sustained and his remaining assignments are moot. It is the final judgment and order of this Court that the judgment of the County Court of Monroe County, Ohio, is reversed and Appellant's plea and resulting sentence are hereby *sua sponte* vacated. This cause is remanded to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.