[Cite as *State v. Price*, 2025-Ohio-2093.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JORDYN N. PRICE,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 24 CO 0038

Criminal Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case No. 2023 CR 514

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.

Atty. Vito J. Abruzzino, Columbiana County Prosecutor and *Atty. Danielle Menning,* Assistant Prosecutor, for Plaintiff-Appellee

Atty. Martin E. Yavorcik, for Defendant-Appellant

Dated: June 9, 2025

WAITE, J.

{¶1} Appellant Jordyn N. Price appeals an October 25, 2024 Columbiana County Court of Common Pleas *nunc pro tunc* judgment entry. Appellant has separately filed appeals (appellate case numbers 24 CO 0036, 24 CO 0037, 24 CO 0039, and 24 CO 0040) in four related cases. The cases arose from separate indictments regarding different offenses committed on different dates, but were consolidated for purposes of global plea and sentencing hearings. However, these cases were never officially consolidated at the trial court and have not been consolidated on appeal. Because the appeals were not consolidated, each will be addressed in separate Opinions. Some information from those other appeals, however, is necessary to reach a decision in each individual case. Each of these appeals raise the same issue: whether the trial court erred by failing to inform Appellant that she faced up to sixty years of incarceration if the individual sentences or the various charges were ordered to run consecutively. As Appellant has not demonstrated that she was prejudiced, her sole assignment is without merit. As such, the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} On September 13, 2023, a secret indictment charged Appellant with a single count of complicity in discharging a firearm at or into a habitation, a felony of the second degree in violation of R.C. 2923.03(A)(2) with a firearm specification in violation of R.C. 2941.145(A).

{¶3} This charge follows an incident where Appellant drove her codefendant (this codefendant is involved in an earlier case) past a house while the codefendant fired shots

into it. This offense was apparently motivated by a fight that occurred at a party. At the time of the incident, Appellant also carried a firearm but did not fire it.

{¶4} The specific facts contained in Appellant's other four appeals are not relevant, here. However, on July 19, 2024, Appellant and the state entered a global plea agreement on the record. It appears that Appellant had previously been represented by different counsel for each of her five cases, but when a global plea deal was discussed, a single attorney agreed to represent her in all five. When the global plea was reached, the trial court combined the five cases for purposes of holding a single plea hearing.

{¶5} At the plea hearing, the state announced its intent to seek an aggregate sentence of ten years of incarceration. Appellant indicated she would ask for a more lenient period of incarceration. Thus, there was no agreed upon sentence.

{¶6} Due to the high number of charges and individual case numbers involved in this matter, the details of the global plea are somewhat difficult to follow, as some charges were amended or dismissed as a result of the global plea. However, as to this case number, Appellant pleaded guilty to all counts as charged within the indictment.

{¶7} At the sentencing hearing, Appellant emphasized that she cooperated with all of the various investigations and admitted ownership of all contraband at the time of its discovery. She stressed her young age (27), and that she was almost six months pregnant at the time of the plea hearing.

{¶8} The confusing nature of the five cases, with some sentences ordered to run concurrently and some consecutively, does make the aggregate total somewhat difficult to discern. Appellant suggested that it "appears to be a total aggregate of 11 ½ to 13 ½ years of incarceration." We have calculated the aggregate total as twelve and one-half

years to fourteen and one-half years of incarceration, which appears to match the state offender database website.

ASSIGNMENT OF ERROR

> The trial court erred by failing to advise Defendant-Appellant, during the consolidated change-of-plea hearing for five cases, of the total maximum penalty she could face, in violation of Criminal Rule 11(C)(2)(a), thereby rendering her plea unknowing, involuntary, and unintelligent.

{¶9} Appellant has filed the identical brief under all case numbers. Even though Appellant received a sentence much lower than the maximum possible on all of the charges included in her plea, she takes issue with the court's failure to inform her that if it were to impose the maximum sentence on all counts in the global plea agreement and run them consecutively, she would face up to sixty years of incarceration, essentially amounting to a life sentence.

{¶10} The state responds that while the court did not inform Appellant of the maximum possible penalty in the aggregate sense, it did inform her of the maximum sentence for each individual offense in the plea. The state emphasizes that by law, a trial court need only substantially comply with advisement of the maximum penalty, as it involves a nonconstitutional right. The state explains that failure to substantially comply is reversible only where the defendant can establish prejudice, which Appellant cannot do in this matter.

{¶11} "When a defendant enters a guilty 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. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996).

{¶12} Crim.R. 11(C) governs the plea process and a trial court's obligation prior to accepting a guilty plea to felony charges, and sets forth the colloquy the court must conduct with the defendant:

> 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.
>
> (b) Informing the defendant of and determining 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) Informing the defendant and determining 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 state 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.

Crim.R. 11(C)(2).

{¶13} Trial courts are required to strictly comply with the constitutional components of the colloquy, which are set forth in Crim.R. 11(C)(2)(c); *State v. Veney*, 2008-Ohio-5200, at ¶ 18-21. In contrast, the requirements set forth in Crim.R. 11(C)(2)(a) and (b), which do not involve constitutional rights, require only substantial compliance. *Veney*, ¶ 14-17.

{¶14} Crim.R. 11(C)(2)(a) requires a trial court to "[d]etermine that the defendant is making the plea voluntarily, with understanding of the nature of the charges and the maximum penalty involved[.]" Again, the failure of a trial court to advise a defendant of the aggregate maximum possible penalty involves a nonconstitutional right.

{¶15} The Eighth District described the development of the relevant law within *State v. Berry,* 2023-Ohio-605 (8th Dist.). The *Berry* court addressed the imposition of nonmandatory sentences that were ordered to run consecutively to determine compliance with Crim.R. 11. *Id.* at ¶ 7. While the trial court in that case failed to advise the appellant that the sentences could be ordered to run consecutively for purposes of conveying the maximum possible punishment at the plea hearing, the *Berry* court held that failure to do so is not reversible error in cases where consecutive sentences are not mandatory unless the defendant can demonstrate prejudice. *Id.* at ¶ 21-23.

{¶16} As described in great detail in *Berry,* the law as it pertains to this issue has evolved over the years. In 1988, the Ohio Supreme Court released its Opinion in *State v. Johnson,* 40 Ohio St.3d 130 (1998). The *Johnson* Court was tasked with applying a

version of Crim.R. 11 which instructed a trial court that before it could accept a defendant's guilty plea, it must "determin[e] that [the defendant] is making the plea voluntarily, with understanding of the nature of *the charge* and of the maximum *penalty* involved, and, if applicable, that [the defendant] is not eligible for probation." *Id.* at ¶ 8. Notably, the statute at that time addressed terms in the singular form, i.e. "*the* plea," "the nature of *the charge* and of *the maximum penalty* involved." *Berry* at ¶ 9. The *Johnson* Court interpreted this language to stand for the proposition 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." *Id.* at ¶ 8, citing *Johnson* at syllabus.

{¶17} As explained in *Berry,* in July of 1998, the Ohio Supreme Court acknowledged in a case arising a decade after *Johnson* that:

> Crim.R. 11(C)(2)(a) has been amended since *Johnson* so that a single plea can now apply to multiple charges, see 83 Ohio St.3d xciii, cix (effective July 1, 1998). The relevant portion of Crim.R. 11 now provides that a trial court shall not accept a guilty plea in a felony case without first "[d]etermining 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."

Berry at ¶ 9, citing *State v. Bishop,* 2018-Ohio-5132; Crim.R. 11(C)(2)(a).

{¶18} Although subtle, the *Bishop* Court noted that the key terms were no longer in singular form, as the statute now refers to "the charges" instead of "the nature of the charge," prompting the *Bishop* Court to revisit *Johnson* with a focus on these linguistic changes. *Berry* at ¶ 12. The *Bishop* Court was thus tasked with determining whether in imposing both a prison sentence resulting from a postrelease control violation, and the prison sentence resulting from a new offense, the trial court is required to notify a defendant of the fact that those two sentences must be served consecutively by operation of law. The *Bishop* Court found that the two sentences (the sentence for the violation and the sentence for the new offense) were so entangled as to appear to require application of only one "penalty." Hence, in the interest of full disclosure the Court found that a trial court must inform a criminal defendant of the fact that these offenses are required to be served consecutive to one another.

{¶19} Despite having the opportunity to overrule *Johnson,* the *Bishop* Court declined. As such, Ohio appellate districts have treated *Bishop* as applicable only in instances where consecutive sentences are mandated to be served consecutively, leaving the holding of *Johnson*, that a trial court is not required to inform a defendant that a court may use its discretion to impose nonmandatory consecutive sentences, intact. See *State v. Mack*, 2015-Ohio-1430 (1st Dist.); *State v. Ellis*, 2020-Ohio-1130 (5th Dist.); *State v. Whitman*, 2021-Ohio-4510 (6th Dist.); *State v. Novoa,* 2021-Ohio-3585 (7th Dist.); *Berry supra; State v. Roberts*, 2019-Ohio-4393 (9th Dist.); *State v. Willard*, 2021-Ohio-2552 (11th Dist.).

{¶20} To overcome the *Johnson* "rule," Appellant cites to *State v. Sarkozy,* 2008-Ohio-509. *Sarkozy* involved the failure of a trial court to advise a defendant during a Crim.R. 11 hearing that postrelease control would be included within the sentence. As that issue did not arise in this matter *Sarkozy* is inapplicable, here. Appellant also cites to *State v. Mayfield,* 2024-Ohio-5915 (8th Dist.). The *Mayfield* Court addressed the trial court's failure to inform a defendant that a violation of his sex-offender registration requirements could result in a new offense with additional penalties. That issue also is not relevant to the instant case, and has no impact on *Johnson* and its progeny in any way.

{¶21} The parties agree that the trial court informed Appellant of the individual maximum sentences that could be imposed on each count in this case. Significantly, while the trial court did not calculate the actual aggregate sentence if all sentences in every case were run consecutively, it did engage in the following advisement which should have alerted Appellant to the possibility of consecutive sentences:

> THE COURT: . . . Ms. Price, at the outset, too, let me advise you that these offenses -- any prison term or local term of incarceration could be imposed concurrently, meaning at the same time. They could also be imposed consecutively, meaning one after the other.
>
> Do you understand that?
>
> [APPELLANT]: Yes, I do.

(Plea Hearing, p. 39.)

{¶22} Later, the court stated: "[a]nd, again, we have discussed this in other cases, if other cases were -- I guess, that would be correct -- other cases, other offenses are run consecutively, that could impact the calculation of that maximum term of incarceration." (Plea Hrg., p. 40.) This record reveals the court substantially complied with the rule's requirement, shifting the burden to Appellant to demonstrate prejudice. Appellant claims only that "she could have chosen to proceed to trial on one or more of the cases or negotiate further with state." (Appellant's Brf., p. 5.) At no time does she state that she would not have pleaded guilty but for the omission of this information. There is also no indication that the state would have been open to further negotiations.

{¶23} With this in mind, we also note the trial court failed to advise Appellant that her firearm specification was to be served prior to, and consecutive to, the underlying offense. However, because that advisement also concerns a nonconstitutional right, Appellant would again be required to demonstrate prejudice. She has not alleged nor shown that she would not have pleaded guilty but for the trial court's failure, here. *See State v. Phipps,* 2014-Ohio-2905 (10th Dist.) ("Appellant has failed to demonstrate that the trial court's failure to expressly advise him that the firearm specifications in case No. 12CR6254 must be served consecutively to the prison terms imposed in the other three felony matters affected his decision to enter the guilty pleas. Thus, appellant has failed to demonstrate prejudice.").

{¶24} While the best practice would have a trial court advise a criminal defendant of the maximum aggregate sentence at the time the plea was entered, especially in a complex plea agreement like this one, failure to do so is not reversible error where consecutive sentences are not mandatory and the defendant cannot show prejudice.

{¶25} Accordingly, Appellant's sole assignment of error is without merit and is overruled.

Conclusion

{¶26} Appellant argues that the trial court erred by failing to inform her that she faced up to sixty years of incarceration if all of her individual sentences were ordered to run consecutively. As Appellant has not demonstrated prejudice, her sole argument is without merit. As such, the judgment of the trial court is affirmed.

Robb, P.J. concurs.

Hanni, J. concurs; see concurring opinion.

Hanni, J., concurring opinion.

{¶27} I write separately to express my reluctant concurrence. The trial court's failure to inform Appellant that she was facing a total aggregate term of 60 years in prison is concerning. In addition to this omission, the trial court failed to inform Appellant that her firearm specification sentence had to be served prior to, and consecutive to, the sentence for the underlying offense.

{¶28} The sentences for each of the five cases before the court and the consecutive and concurrent sentences involved in each made it confusing and difficult to determine the total number of years Appellant was facing. The court should have more clearly reviewed the possible maximum sentences with Appellant and the total aggregate term she faced if all sentences were run consecutively. The majority concedes as much, holding that "the best practice would have a trial court advise a criminal defendant of the maximum aggregate sentence at the time the plea was entered, especially in a complex plea agreement like this one." (Maj. Op., ¶ 24).

{¶29} However, the trial court substantially complied with Crim. R. 11 and informed Appellant of the maximum sentence for each individual offense to which she was pleading guilty. Moreover, Appellant failed to demonstrate prejudice resulting from these errors. She never stated she would not have entered guilty pleas had she been informed of these omissions.

{¶30} Accordingly, I reluctantly concur in the affirmance of the trial court's judgment.

For the reasons stated in the Opinion rendered herein, Appellant's assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. Costs waived.

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.