

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
NOBLE COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

TIMOTHY D. McMAHON,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 26 NO 0535

Criminal Appeal from the
Court of Common Pleas of Noble County, Ohio
Case No. 225-2113

BEFORE:

Katelyn Dickey, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:

Affirmed.

Atty. Jordan C. Croucher, Noble County Prosecutor, for Plaintiff-Appellee and

Atty. Edward A. Czopur, for Defendant-Appellant.

Dated: August 17, 2026

DICKEY, J.

{¶1} In this delayed appeal, Appellant, Timothy D. McMahon, appeals his convictions and sentence following his pleas of guilty to one amended count of trafficking in drugs in violation of R.C. 2925.03(A)(2) (prepare for distribution), 2925.03(C)(1)(b), a felony of the third degree, and one amended count of possession of drugs in violation of R.C. 2925.11(A), 2925.11(C)(1)(b), a felony of the third degree. At the plea hearing, the parties agreed to recommend thirty-month sentences for each conviction that would not merge for sentencing purposes and would be imposed to be served consecutively, for an aggregate prison term of sixty months. The trial court imposed the recommended sentence in a journal entry filed on December 18, 2025.

{¶2} Appellant advances two assignments of error. First, Appellant contends he received ineffective assistance of counsel as defense counsel advised Appellant he would receive a thirty-six month sentence because the two convictions would merge at sentencing. Second, Appellant contends his plea was not knowing, voluntary, or intelligent because the trial court did not inform him that his convictions would not merge nor that his sentences would be imposed to run consecutive.

{¶3} Although Appellant was represented by counsel in this appeal, he filed two pro se motions to correct and supplement the assignments of error advanced by his counsel. On July 16, 2026, Appellant filed a pro se motion to appoint substitute counsel, which we granted on July 22, 2026.

{¶4} Finding no reversible error, we affirm the December 18, 2025 journal entry.

FACTS AND PROCEDURAL HISTORY

{¶5} Appellant was indicted on November 3, 2025 for one count of aggravated trafficking in drugs in violation of R.C. 2925.03(A)(2), a felony of the first degree, with a major drug offender specification pursuant to R.C. 2941.1410(A); one count of aggravated possession of drugs in violation of R.C. 2925.11(A), a felony of the first degree, with a major drug offender specification pursuant to R.C. 2941.1410(A); one count of driving in marked lanes or continuous lines of traffic in violation of R.C. 4511.33(A)(1), a minor misdemeanor; and one count of right of way at a stop or yield sign in violation of R.C. 4511.43(A), a minor misdemeanor. According to the state, Appellant could have faced a

mandatory maximum sentence of eleven to sixteen-and-one-half years if convicted of the original first degree felony charges with the accompanying major drug offender specifications.

{¶6} Appellant was arraigned on November 7, 2025 and counsel was appointed. At the final pretrial hearing on December 17, 2025, the parties notified the trial court that they had negotiated a plea resolving all charges in the indictment.

{¶7} At the commencement of the hearing, the state summarized the material terms of the plea agreement as follows: The state would move to amend the trafficking and possession charges from felonies of the first degree, with accompanying major drug offender specifications, to felonies of the third degree, and move to dismiss the remaining minor misdemeanors, in exchange for Appellant's guilty pleas to the amended charges. Further, the parties would jointly recommend a sentence of thirty months on each count, and stipulate the convictions would not merge and the sentences would be imposed to run consecutively, for an aggregate prison term of sixty months. (12/17/25 Hrg. Tr., p. 2-4). The trial court conducted a brief sidebar with counsel during the state's summary of the plea agreement.

{¶8} At the conclusion of the state's summary, the trial court repeated the material terms of the plea agreement. The trial court stated:

So, let me get this straight. The State's request, or the negotiated plea is the State will amend Counts One and Two from aggravated trafficking in drugs, an F1, and aggravated possession of drugs, also an F1, to aggravated trafficking in drugs, F3, and aggravated trafficking in drugs, F3.

And also, I assume that major drug offender specification . . . is gone. So, what the court, I guess, had a question about is running these consecutive if it's the same drugs.

However, counsel stated [presumably at the side bar] that it is actually not the same drugs, there were two different baggies, one was for personal use, one was charged for the trafficking charge, correct?

(*Id.* at p. 4-5). Defense counsel responded, “Your Honor, we would stipulate to that to get the amendment.” The state added, “I would also submit to the court that the weights associated with these are such that the State’s decision would be that these could be separate offenses: one for the possession and one for the trafficking.” (*Id.* at p. 5). The trial court inquired, “[a]nd the one for the possession and the one for the trafficking, the weights both take it up to F3, even if you separate them, right?” Defense counsel confirmed the trial court’s assessment of the respective weights. (*Id.*). Finally, defense counsel added for the first time at the hearing that Appellant was waiving his appellate rights in exchange for the amendment of the felony charges. (*Id.* at p. 6).

{¶9} There is no written plea agreement. However, the only requirement for a valid plea in Ohio is that “the underlying agreement upon which the plea is based shall be stated on the record in open court.” Crim.R. 11(F).

{¶10} With the material terms having been summarized on the record, first by the state and then the trial court, the state moved to amend the felony charges from first-degree to third-degree felonies. Appellant waived his right to a grand jury indictment on the amended felonies and stipulated to amendment of the charges by a judgment entry. (Hrg. Tr., p. 7).

{¶11} The trial court conducted a plea colloquy with Appellant, reviewing the nature of the charges, the possible maximum penalties (36 months for each count), and all of the constitutional and non-constitutional rights waived by Appellant pursuant to the plea. While reviewing post-release control, the trial court paused and encouraged Appellant to ask questions if he was confused about any aspect of the colloquy. Specifically, the trial court stated, “[i]f you have any questions, ask, alright, because I want to make sure you understand.” Appellant responded, “[y]es, ma’am.” (*Id.* at p. 16). The trial court continued, “[b]ut you seem like you understand. I just don’t want you to be afraid to ask because I know it can be confusing.” (*Id.* at p. 17).

{¶12} During the explanation of the consequences of a post-release control violation, the trial court defined the term “consecutive” to mean “back to back.” (*Id.*). As the colloquy continued the trial court again encouraged Appellant to ask questions in the event he did not understand any aspect of the plea agreement. (*Id.* at p. 20).

{¶13} Next, the trial court reviewed Appellant’s waiver of his constitutional and non-constitutional rights. With respect to Appellant’s waiver of his constitutional rights, the following exchange occurred during the plea colloquy:

THE COURT: If you enter this plea, you’re going to be waiving or giving up certain rights. I’m going to go over those rights with you, make sure you understand them, make sure you understand you’ll be waiving or giving them up.

You have the right to a jury trial. You have the right to confront witnesses against you. You have the right to subpoena witnesses to come in this courtroom and testify on your behalf. And you also have the right to require the State of Ohio to prove your guilt beyond a reasonable doubt at a trial at which you cannot be compelled to testify against yourself.

Do you understand those rights?

THE DEFENDANT: Yes, ma’am.

THE COURT: Do you understand if you plead guilty you’re going to be waiving or giving them up.

THE DEFENDANT: Yes, ma’am.

(*Id.* at p. 21-22).

{¶14} The parties conceded there was a factual basis for the plea, which was summarized by the state as follows:

Pursuant to a report from Deputy Baker on September 23rd, 2025, Deputy Baker observed a silver Pontiac sedan merge onto the Exit 25 ramp and while doing so completely cross the white fog line with both passenger

side tires creating a marked lanes violation; that it also failed to come to a stop before entering into the intersection at the bottom of the exit.

A traffic [stop] was initiated, some criminal indicators had been observed. K9 Cora would've been deployed. There would've been an alert and indication to the odor of illegal narcotics. Parties were detained at that time.

It appeared that there were -- looks like several baggies and I believe scales that would've been indicative of packaging of narcotics intended for distribution.

There was a significant quantity of methamphetamine that was recovered. It was submitted to the lab; was in fact found to contain methamphetamine. Would've been packaged separately. One of the bags did appear -- and so it was double bagged and was sort of cordoned off separate from the other one which would've appeared consistent with the trafficking. I believe it was packaged with the baggies that would've been for trafficking.

There was also a significant quantity of methamphetamine in more of like a cellophane type wrap that would've appeared more consistent with someone for personal use.

The weights of both of those items would have been at a level that would be sufficient for a felony of the third degree both for possession and for trafficking.

. . .

This would've been in [Appellant's] vehicle. I believe there was essentially some indications that he was aware of that substance in his vehicle and associated items that he was traveling with.

There was another passenger in the vehicle.

. . .

There was an interview and at a minimum [Appellant] identified that the narcotics were in the vehicle and he was aware of both the narcotics and the items intended for distribution and he would've been the one transporting them as it pertains to Count One.

And then as I said, the other one was also in his vehicle. I believe it was in the trunk area which would've been -- presumably the owner of the vehicle would be the one that had access to the trunk. That's where the items were generally located.

(*Id.* at p. 23-25). Both defense counsel and Appellant stipulated to accuracy of the foregoing facts.

{¶15} Prior to accepting Appellant's plea, the trial court provided the following admonition:

I'm about to accept your pleas, make a finding of guilt. Once I do that it will be difficult if not impossible for you to withdraw your guilty pleas to Count One and Two, plead not guilty and proceed to a trial. So, I give everyone one last chance at this juncture. Do you wish for the court to accept your pleas of guilty?

(*Id.* at p. 25). Appellant responded, "[y]es, ma'am." (*Id.*). Throughout the colloquy, Appellant acknowledged he understood everything that was reviewed during the hearing and he was satisfied with the representation of his counsel. Appellant subsequently entered his guilty pleas.

{¶16} Following the change of plea, Appellant and defense counsel waived the preparation of a presentencing investigation report and agreed to proceed directly to sentencing. Prior to counsel's arguments pertaining to sentencing, the state asked the trial court "to make sure that there is an agreement that per the recommendation, there is a stipulation as to that recommendation that those offenses could be run consecutive,

but they do not merge, and that there's a waiver of appellate rights." Defense counsel stipulated to the foregoing material terms of the plea. (*Id.* at p. 27-28).

{¶17} Specifically, the trial court asked defense counsel, "does your client stipulate that these two charges can be run consecutive? Because we're talking about two different bags?" Defense counsel responded, "[w]e do, Your Honor." (*Id.* at p. 27). The trial court continued, "[i]n this case, one would be appropriate for trafficking and had other baggies in it, and then one is just possession." Defense counsel responded, "We are in agreement with that, your Honor." (*Id.*).

{¶18} The state reiterated its recommendation to the trial court for the imposition of thirty months for each amended felony conviction, to be served consecutively, for an aggregate prison term of sixty months. Defense counsel made the same recommendation. (*Id.* at p. 28-29). Appellant was asked if he wished to say anything prior to sentencing. Appellant responded he did not. (*Id.* at p. 29).

{¶19} The trial court imposed the recommended sentence, which was memorialized in a journal entry filed on December 18, 2025. This timely appeal followed.

ASSIGNMENT OF ERROR NO. 1

[APPELLANT] WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION AND THE SIXTH AND FOURTEENTH AMENDMENT[S] OF THE UNITED STATES CONSTITUTION.

{¶20} Appellant argues he "was advised by counsel that he would do three years only, and that the counts would merge for sentencing purposes. That is not what happened." (Appellant's Brf., p. 5).

{¶21} A claim of ineffective assistance of counsel requires a showing of both deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The defendant bears the burden of establishing the ineffective assistance of counsel. *Id.* at 690.

{¶22} Appellant does not provide any support in the record to establish the alleged representations made by defense counsel. We have recognized "[w]here the evidence

supporting a claim of ineffective assistance of . . . counsel is de hors the record, there is nothing to review on direct appeal, and postconviction relief proceedings may be more appropriate to pursue such matters.” *State v. Irwin*, 2007-Ohio-4996, ¶ 49 (7th Dist.), citing *State v. Hartman*, 93 Ohio St.3d 274, 299 (2001). Accordingly, we find Appellant’s first assignment of error cannot be considered on direct appeal.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED TO THE PREJUDICE OF [APPELLANT] BY ACCEPTING A PLEA OF GUILTY THAT WAS NOT MADE KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY.

{¶23} Although the assignment of error alleges the trial court failed to strictly comply with the notice requirements regarding Appellant’s waiver of certain constitutional rights, Appellant argues in the body of his appellate brief:

the guilty plea must be vacated when it is not knowingly, voluntarily, and intelligently made as [Appellant] was unaware that he was agreeing to non merger of the charges and consecutive sentences. [sic] *failed to advise him of constitutional rights he was waiving and this plea is presumed to be involuntary and unknowingly done.* [Defense counsel] advised him that he was not agreeing to merger of the counts and consecutive prison terms.

(Emphasis added). (Appellant’s Brf., p. 8).

{¶24} Appellant’s second assignment of error, like his first assignment of error, is predicated upon defense counsel’s alleged representation that Appellant would receive a thirty-six month sentence. Insofar as there is no evidence of this alleged representation in the record, we find Appellant’s second assignment of error cannot be considered on direct appeal.

{¶25} Finally, Appellant appears to challenge the trial court’s colloquy regarding the waiver of his constitutional rights. “When determining the validity of a plea, we must consider all of the relevant circumstances surrounding it.” *State v. Jackson*, 2026-Ohio-1325, ¶ 21 (7th Dist.), citing *Brady v. United States*, 397 U.S. 742 (1970). Before the

court can accept a guilty plea to a felony charge, it must conduct a colloquy with the defendant to determine that he understands the plea he is entering and the rights he is voluntarily waiving. Crim.R. 11(C)(2). If the plea is not knowing, intelligent, and voluntary, it has been obtained in violation of due process and is void. *State v. Martinez*, 2004-Ohio-6806, ¶ 11 (7th Dist.), citing *Boykin v. Alabama*, 395 U.S. 238, 243 (1969).

{¶26} A trial court must strictly comply with Crim.R. 11(C)(2) pertaining to the waiver of federal constitutional rights. *Martinez* at ¶ 12. These rights include the right against self-incrimination, the right to a jury trial, the right to confront one's accusers, the right to compel witnesses to testify by compulsory process, and the right to proof of guilt beyond a reasonable doubt. Crim.R. 11(C)(2)(c). The trial court specifically identified each of the foregoing constitutional rights during the plea colloquy and Appellant acknowledged his waiver of the same. Accordingly, we find the constitutional waiver argument has no merit.

CONCLUSION

{¶27} For the foregoing reasons, we affirm the December 18, 2025 journal entry.

Robb, J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and cannot be considered on direct appeal. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Noble County, Ohio, is affirmed. Costs to be 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.