[Cite as *State v. Nath*, 2023-Ohio-2301.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 112083
v.	:	
MONTY G. NATH,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED AND REMANDED
RELEASED AND JOURNALIZED: July 6, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-20-648822-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Christine M. Vacha, Assistant Prosecuting Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and John T. Martin, Assistant Public Defender, *for appellant*.

ANITA LASTER MAYS, A.J.:

{¶ 1} Defendant-appellant Monty G. Nath ("Nath") appeals the sentences in this case. We affirm the trial court's judgment and remand for a nunc pro tunc entry addressing costs and fines and the sexual motivation specification.

I. Facts and Procedural History

{¶ 2} On August 30, 2022, pursuant to a negotiated plea agreement, Nath pleaded guilty to amended Count 2 of the indictment, sexual battery, in violation of R.C. 2907.03(A)(3), a third-degree felony, and attempted kidnapping, in violation of R.C. 2923.02 and 2905.01(A)(4), a second-degree felony under amended Count 5. The remaining counts were nolled. On September 20, 2022, the trial court sentenced Nath on the sexual battery count to 30 months in prison and $250 in costs, to be served concurrently with five years on the attempted kidnapping count plus $250 in costs. Nath assigns two errors on appeal.

> I. The defendant has not entered pleas of guilty to each count of conviction.
>
> II. The journal entry incorrectly states that the defendant was fined $250 on each count when, in fact, no fine was imposed and only court costs of $250 were imposed on each count.

II. Discussion

A. Guilty pleas

{¶ 3} Generally, Crim. R. 11 governs pleas and rights upon entering pleas. The purpose of the colloquy is to ensure that a defendant is advised of and understands the defendant's constitutional and nonconstitutional rights, so the defendant has the information needed to enter a plea knowingly, intelligently, and voluntarily. *See*, e.g., *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621; *State v. Ballard*, 66 Ohio St.2d 473, 423 N.E.2d 115 (1981).

{¶ 4} Nath advises that the sufficiency of the plea colloquy is not being contested on appeal. Thus, Nath effectively concedes that his guilty plea to the two

counts of the plea agreement as stated on the record pursuant to Crim.R. 11(F) was knowingly, intelligently, and voluntarily made:[1]

> State: The State will amend Count Two of the indictment to sexual battery, a felony of the third degree. That will be in violation of [R.C.] 2907.03(A)(2).
>
> The defendant will also plead guilty to amended Count Five. The State will amend that count by adding the attempt statute, [R.C.] 2923.02, making that an attempted kidnapping, a felony of the second degree. We would also delete the sexual motivation specification on that count.
>
> If he did plead guilty to those two amended counts, Your Honor, the State would nolle the remaining counts against him. We agree that the defendant has no contact with the victim. He also agrees and understands that he will be required under Count Two to be a Tier III sex offender requiring lifetime registration with verification in person every 90 days.

(Tr. 3-4.) Defense counsel confirmed that the state made a correct statement of the plea agreement.

{¶ 5} The trial court inquired, "Mr. Nath, do you wish to take this plea agreement?" Nath responded, "Yes, your Honor." (Tr. 5.) Nath stated he was 37 years of age, has a master's degree, can read and write, understood the proceedings, and was not under the influence of drugs or alcohol. Nath also responded affirmatively to the trial court's inquiry of whether he understood that "upon entering your *pleas* of guilt you are waiving or giving up" certain rights. (Emphasis added.) (Tr. 5-6.)

{¶ 6} The trial court stated each offense:

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[1] We recite portions of the colloquy for purposes of our analysis.

Court: Do you understand the offenses to which you are pleading guilty, sir? Sexual battery is a felony of the third degree. It is possibly punishable from nine to 36 months in six-month increments. It carries with it a maximum discretionary fine of $10,000.

Do you understand that?

Nath: Yes, your honor.

Court: It does also carry with it a sexual classification as a Tier III sex offender, which will be reviewed with you at the time of sentencing.

Do you understand that?

Nath: Yes, your honor.

Court: You would also be pleading guilty to attempted kidnapping, a felony of the second degree. It is possibly punishable from two to eight years in one-year increments. It carries with it a maximum discretionary fine of $15,000.

Do you understand that?

Nath: Yes, Your Honor.

(Tr. 7-8.)

{¶ 7} The exchange continued:

Court: Do you understand the agreement?

Nath: Yes, your honor.

Court: Is it still your stance to accept the agreement as a result of this plea today?

Nath: Yes, your honor.

(Tr. 8.)

{¶ 8} At the conclusion of the colloquy,

Court: How do you plead, guilty or not guilty?"

Nath: Guilty.

Court: And are you, in fact, guilty, sir?

Nath: Yes, Your Honor.

Court: Let the record reflect the court finds the defendant has knowingly and voluntarily entered his *pleas* with full understanding of his Constitutional and trial rights.

(Emphasis added.) (Tr. 9-10.) Counsel confirmed the Crim.R. 11 compliance on the record.

{¶ 9} Nath contends that the trial court's failure to have Nath plead guilty to each charge separately constitutes reversible error under the Sixth and Fourteenth Amendments to the U.S. Constitution, and the Ohio Constitution, Article I, Sections 5, 10, and 15. Specifically, Nath poses the question "whether a single recitation of the word 'guilty' constitutes a plea of guilty to each of the two amended counts of conviction." Appellant's brief, p. 2.

{¶ 10} Nath concedes there is no case law directly addressing the question but suggests *State v. Wheatley*, 2018-Ohio-464, 94 N.E.3d 578 (4th Dist.) and *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, support his position that "'Ohio's felony sentencing scheme is clearly designed to focus the judge's attention on one offense at a time.'" Appellant's brief, p. 2-3, quoting *Saxon* at ¶ 8. And that "'community control sanctions must be imposed on [a] count-by-count basis.'" *Id.*, quoting *Wheatley* at ¶ 44.

{¶ 11} *Saxon* rejected the sentencing package doctrine, "a federal doctrine that requires the court to consider the sanctions imposed on multiple offenses as the

components of a single, comprehensive sentencing plan." (Citations omitted.) *Id.* at ¶ 5. The doctrine also "endowed the federal appellate courts with the authority to vacate and remand an entire sentencing package despite the fact that it includes an unchallenged sentence." *Id.* at ¶ 6.

{¶ 12} Ohio law requires that each offense be considered separately. *Id.* at ¶ 14, citing R.C. 2929.11 through 2929.19. This means that, unlike a sentencing package, the judge imposes a separate term for each offense and does not have authority to impose an omnibus sentence for multiple offenses. *Id.* at ¶ 9.

{¶ 13} In W*heatley*, 2018-Ohio-464, 94 N.E.3d 578 (4th Dist.), the appellate court reversed the trial court's imposition of a collective sentence. *Id.* at ¶ 46. Wheatley pleaded no contest and was found guilty of

> (1) endangering children, in violation of R.C. 2912.22(B)(6); (2) having weapons while under disability, in violation of R.C. 2923.13(A)(4); (3) illegal cultivation of marijuana, in violation of R.C. 2925.04(A); (4) possessing criminal tools, in violation of R.C. 2923.24(A); and (5) receiving stolen property, in violation of R.C. 2913.51(A).

Id. at ¶ 1. Instead of imposing separate sentences for each offense, the trial court imposed a collective five-year community control sentence that the trial court lacked authority to do. *Id.* at ¶ 45, citing *Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, at ¶ 9.

{¶ 14} The following exchange occurred at the sentencing hearing in the instant case that was conducted after receipt of the presentence investigation.

> Court: Mr. Nath, is there anything that you would like to say before the Court announces its sentence?

Nath: Yes, Your Honor. Good morning, everyone. I just wanted to apologize and say sorry for that incident that happened, and sorry for my mistake.

* * *

Court: Sexual battery is a felony of the third degree. The sentence of the Court is $250 in costs, 30 months at the Lorain Correctional Institution.

Attempted kidnapping is a felony of the second degree. The sentence of the Court is $250 in costs, 5 years at the Lorain Correctional Institution.

(Tr. 12, 19.) The trial court informed Nath of the Tier III offender classification designation and of postrelease control.

{¶ 15} The record supports that neither collective sentencing nor the sentencing package doctrine is implicated in this case. The trial court consistently referred to the "pleas" and the "agreement" and properly considered and sentenced for each offense.

{¶ 16} Nath pleaded guilty to the terms of the plea agreement and to the stated offenses. This court finds that the question posed is governed by Crim.R. 11. "The underlying purpose of Crim.R. 11 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. Reyes*, 8th Dist. Cuyahoga No. 110126, 2021-Ohio-3599, ¶ 13, citing *Ballard*, 66 Ohio St.2d at 479-480, 423 N.E.2d 115. Nath does not argue that his plea was not knowingly, intelligently, and voluntarily made.

{¶ 17} The first assignment of error is overruled.

B. Fines

{¶ 18} The parties agree that the journal entry incorrectly reflects that a fine of $250 was imposed on each case and that costs were waived. The trial court stated on the record that $250 for costs applied to each case. No fines were imposed. Pursuant to Crim.R. 36, "[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time." "A nunc pro tunc entry 'is a vehicle used to correct an order issued which fails to reflect the trial court's true action.'" *State v. Chislton*, 8th Dist. Cuyahoga No. 108840, 2021-Ohio-697, ¶ 15, quoting *State v. Hodges*, 1st Dist. Hamilton No. C-990516, 2001 Ohio App. LEXIS 2729 (June 22, 2001).

{¶ 19} We remand the case for the trial court to enter a nunc pro tunc entry reflecting that fines were waived and costs of $250 were imposed on each count.

{¶ 20} The second assignment of error is sustained.

C. Sua sponte nunc pro tunc entries

{¶ 21} This court observes that the sexual motivation specification, R.C. 2941.147, was deleted from the attempted kidnapping count as part of the plea agreement as stated on the record. The plea and sentencing entries incorrectly reflect that Nath pleaded guilty to attempted kidnapping with a sexual motivation specification.

{¶ 22} Sua sponte, we remand the case for the trial court to enter a nunc pro tunc entry reflecting that the sexual motivation specification was deleted from the attempted kidnapping count.

{¶ 23} This court directs that the trial court enter nunc pro tunc entries to correct the clerical errors pursuant to this opinion. *Id.*, citing *id.*; Crim.R. 36.

III. Conclusion

{¶ 24} The trial court's judgment is affirmed. The case is remanded for the trial court to issue nunc pro tunc entries pursuant to this opinion.

It is ordered that costs are divided equally between the parties.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the 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.

ANITA LASTER MAYS, ADMINISTRATIVE JUDGE

KATHLEEN ANN KEOUGH, J., and
LISA B. FORBES, J., CONCUR