

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 115861
	:	
v.	:	
	:	
DARIUS CARLOS BURKS,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, MODIFIED IN PART, AND
REMANDED

RELEASED AND JOURNALIZED: August 20, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-700587-A

Appearances:

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

Kimberly Kendall Corral, *for appellant*.

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Defendant-appellant Darius Carlos Burks appeals his convictions following a guilty plea, contending that the trial court did not give meaningful review

to his motion to withdraw his guilty plea.¹ He also challenges the trial court’s imposition of mandatory fines, attributing the imposition to his trial counsel’s failure to file an affidavit of indigency prior to sentencing. Finally, Burks challenges the judgment entry of conviction, contending that it fails to properly impose a lawful indefinite sentence under the Reagan Tokes Law, and includes a forfeiture order broader than what was stated on the record.

{¶ 2} Finding some merit to the appeal, we affirm the trial court’s findings of guilt and imposition of the individual prison sentences on each count. We modify the trial court’s forfeiture order by striking the phrase “and all other items seized.” We remand the case for the trial court to issue a corrected judgment entry nunc pro tunc, reflecting this court’s modification and to include the maximum sentence under Reagan Tokes — both of which were properly stated on the record during sentencing. Moreover, the court shall correct Burks’s name in the judgment entry.

I. Procedural History

{¶ 3} In March 2025, the State charged Burks in a superseding indictment with various drug-related offenses, including four first-degree felony counts of trafficking in and possession of drugs (Counts 1-8), and one count of possessing criminal tools (Count 9). Four counts contained a major drug offender specification

¹ The indictment identified Burks as “Darius Carlos Burks.” During the plea hearing Burks stated his name as “Darius Carlos Burks.” (Tr. 13.) The trial court’s judgment entry of conviction, however, reflected the name “Carlos Burks.”

(Counts 3-6), one count contained a one-year firearm specification (Count 7), and three counts contained forfeiture specifications (Counts 7-9).

{¶ 4} In August 2025, the parties reached a plea agreement in which the State agreed to dismiss the major drug offender specifications attendant to Counts 3 and 5 and the firearm specification attendant to Count 7 — the forfeiture specifications remained intact on Count 7. The State further agreed to dismiss all remaining counts. In exchange, Burks agreed to plead guilty to those amended counts, including the forfeiture of property specifically identified in the indictment. Additionally, the parties agreed to a jointly recommended prison sentence of eight years, with no early release.

{¶ 5} The trial court engaged in a thorough and complete Crim.R. 11 plea colloquy with Burks, including an explanation that he would be subject to an indefinite sentence pursuant to the Reagan Tokes Law; thus, the agreed recommended eight-year sentence would include a maximum tail of 12 years. Burks pleaded guilty and the court continued the matter for sentencing.

{¶ 6} Four days prior to sentencing, Burks, pro se, filed motions to withdraw his guilty plea and vacate judgment of convictions. The court continued sentencing due to a conflict, and during that time, Burks's counsel filed a motion to withdraw.

{¶ 7} At the October 29, 2025 sentencing, the trial court addressed Burks's pro se motions and counsel's request. The following exchange occurred:

THE COURT: I note that as of — on September 26th, which was about a month after the change of plea, Mr. Burks filed pro se a motion to withdraw the guilty plea and thereafter — or at the same time also filed a motion to vacate judgment and set aside conviction, which is really premature. There's really no conviction yet. But that's also pro se. And may have actually filed two motions to withdraw. And then a few days later on October 1st you moved, [defense counsel], to withdraw as counsel.

Both of you are here today. Is it fair to say these motions, all of them or some of them, have been withdrawn?

...

[DEFENSE COUNSEL]: [A]fter numerous conversations with Mr. Burks, it is my understanding that he would withdraw his requests to withdraw his plea. I would ask the court to inquire with regards to that matter.

In addition, it is also my understanding that he will inform the court that he is satisfied with my representation and that he wishes to proceed at this sentencing hearing with me as his counsel.

With that, judge, I would withdraw my motion to withdraw at this time. So I'd ask the court if the court would inquire at least as to his motion, which I did not file.

THE COURT: All right. So Mr. Burks, as mentioned, after the change of plea hearing you filed a couple of motions basically saying you wanted to take back the plea bargain.

Is it a fact, though, that you're withdrawing those motions?

[BURKS]: Yes.

THE COURT: And you're willing to live with the guilty pleas entered at the time of the change of plea to two F1's and the single F4?

[BURKS]: Yes.

THE COURT: All right. And you are good with [defense counsel] continuing to represent you through today?

[BURKS]: Yeah.

(Tr. 42-43.)

{¶ 8} The trial court then proceeded with sentencing, imposing the joint agreed eight-year sentence. The court explained that pursuant to the Reagan Tokes Law, Burks's stated indefinite prison sentence would be eight to 12 years. The court further advised that if Burks was not released by the end of the maximum 12-year term, he would be released from prison at that time. (Tr. 50.)

{¶ 9} When discussing the mandatory fines, defense counsel noted that he did not file an affidavit of indigency prior to sentencing because of the pending motions but verbally requested that the court find Burks indigent regarding the mandatory fines. The trial court ordered Burks to pay the mandatory fines, effectively denying counsel's indigency request. The court stated, "A fine is mandatory. And [defense counsel], considering the enterprise that Mr. Burks was engaged in, it is assumed that over the time he made enough money to cover any fines." (Tr. 51.)

{¶ 10} Burks now appeals, raising three assignments of error.

II. The Appeal

A. Presentence Motion to Withdraw Guilty Plea

{¶ 11} Burks challenges the trial court's decision denying his presentence motion to withdraw his guilty plea. In his first assignment of error, he contends that the trial court abused its discretion in failing to appoint conflict-free counsel, effectively denying his presentence motion to withdraw his guilty plea without a meaningful inquiry. Burks contends in his second assignment of error that the court

abused its discretion by denying his motion without a meaningful hearing or without full and fair consideration.

{¶ 12} Generally, a presentence motion to withdraw a guilty plea pursuant to Crim.R. 32.1 should be “freely and liberally granted.” *State v. Xie*, 62 Ohio St.3d 521, 527 (1992). In this case, however, Burks verbally withdrew his motions to withdraw his guilty plea. He unequivocally answered each of the court’s questions about his decision to withdraw his motion in the affirmative — “yes,” he was withdrawing his motions, “yes,” he was willing to live with the guilty pleas he entered, and “yeah,” he was good with defense counsel. (Tr. 43.)

{¶ 13} We find that Burks had the opportunity to express his concerns about his counsel or move forward with his motions. He did neither; and thus, his arguments on appeal are waived, forfeited, or if any error occurred, it was invited error. *See State ex rel. Kline v. Carroll*, 2002-Ohio-4849, ¶ 27 (“Under [the invited-error] doctrine, a party is not entitled to take advantage of an error that he himself invited or induced the court to make.”); *see also State v. Hicks*, 2018-Ohio-1964, ¶ 18 (8th Dist.) (finding defendant abandoned pro se motion to withdraw his guilty plea by not formally raising it at sentencing); *State v. Samuels*, 2011-Ohio-2631, ¶ 7 (9th Dist.) (finding no error with the trial court’s decision to not hold a hearing on a motion to withdraw where the defendant withdrew the motion); *State v. Lane*, 2020-Ohio-6798 (3d Dist.) (finding defendant abandoned his motion to withdraw his guilty plea when he formally withdrew his motion prior to sentencing).

{¶ 14} The colloquy between the trial court and Burks when discussing Burks's motions demonstrates that he voluntarily withdrew his motions, including his request for new counsel. Accordingly, Burks waived, forfeited, and/or invited the errors he now raises on appeal. His first and second assignments of error are overruled.

B. Imposition of Mandatory Fines

{¶ 15} In his third assignment of error, Burks contends that the trial court erred by imposing mandatory fines after his trial counsel failed to file a timely affidavit of indigency, thereby denying him effective assistance of counsel at sentencing.

{¶ 16} Burks pleaded guilty to two first-degree felonies that required a mandatory fine pursuant to R.C. 2925.03(D). R.C. 2925.03(D)(1) provides, in relevant part:

If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.

{¶ 17} R.C. 2929.18(B)(1) states, in relevant part:

For a first, second, or third degree felony violation of any provision of Chapter 2925, 3719, or 4729 of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section.

{¶ 18} The fine for a first-degree felony drug offense is \$20,000. R.C. 2929.18(A)(3)(a). In this case, the trial court imposed a \$10,000 fine on each count, which represents the mandatory minimum of one-half of the fine for each offense.

{¶ 19} A trial court is required to impose all mandatory fines specified for a particular crime unless the court determines that the defendant is indigent. *State v. Roberts*, 2016-Ohio-7400, ¶ 30 (8th Dist.), citing *State v. Miller*, 2006-Ohio-4752, ¶ 8 (8th Dist.). A defendant seeking to waive the mandatory fine must first submit an affidavit of indigency to the court prior to sentencing, and then the trial court must find that “the offender is an indigent person and is unable to pay the mandatory fines.” *State v. Gipson*, 1998-Ohio-659, ¶ 16; R.C. 2929.18(B)(1).

{¶ 20} In this case, Burks did not file an affidavit of indigency prior to sentencing; accordingly, the trial court was not required to consider whether Burks was unable to pay the mandatory fine. He therefore contends that his counsel was ineffective because had counsel filed the affidavit, a reasonable probability existed that the court would have found him indigent and relieved him of the mandatory fine. We disagree.

{¶ 21} To establish a claim for ineffective assistance of counsel, Burks must show that his trial counsel’s performance was deficient and that the deficient performance was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Bradley*, 42 Ohio St.3d 136 (1989). To establish prejudice, the defendant must demonstrate there is a “reasonable probability that, but for counsel’s

unprofessional errors, the result of the proceeding would have been different.” *Strickland* at 694.

{¶ 22} The failure to file an affidavit alleging that a defendant is indigent and unable to pay a mandatory fine only constitutes ineffective assistance of counsel when the record shows a reasonable probability that the trial court would have found the defendant indigent and unable to pay the fine had the affidavit been filed. *State v. Cruz*, 2018-Ohio-2052, ¶ 25 (8th Dist.), citing *State v. Ledbetter*, 2017-Ohio-4291, ¶ 13 (8th Dist.).

{¶ 23} Ohio law does not prohibit a court from imposing a fine on an “indigent” defendant. *State v. Smith*, 2015-Ohio-2266, ¶ 9 (8th Dist.). And the filing of an affidavit of indigency does not automatically entitle a defendant to a waiver of a mandatory fine. *State v. Knox*, 2013-Ohio-1662, ¶ 36 (8th Dist.). In making its indigency determination, the court must consider both the offender’s present and future ability to pay the fine. R.C. 2929.19(B)(5). Neither statute nor case law prescribes express factors a court must consider or findings a court must make when determining the offender’s present and future ability to pay. *State v. Murray*, 2025-Ohio-5637, ¶ 14 (8th Dist.). Thus, the trial court is not required to make an “affirmative finding that an offender is able to pay a mandatory fine.” *Gipson* at ¶ 18.

{¶ 24} It is undisputed that counsel did not file an affidavit of indigency prior to sentencing. Accordingly, even if counsel’s performance were deemed deficient, Burks would still need to demonstrate prejudice — that a reasonable probability

existed that the trial court would have found him indigent based on his present and future ability to pay and thus waived the mandatory fines.

{¶ 25} Burks has not set forth any argument or facts that would support the trial court making an indigency finding had an affidavit been filed prior to sentencing. As the State correctly points out, the trial court did not deny Burks's request to waive the mandatory fines because counsel did not file an affidavit of indigency. The record clearly shows that the court denied counsel's verbal request to waive the fine based on the circumstances surrounding the offenses and a finding that Burks was able to pay. The trial court said, "A fine is mandatory. And [defense counsel], considering the enterprise that Mr. Burks was engaged in, it is assumed that over time he made enough money to cover any fines." (Tr. 51.)

{¶ 26} Accordingly, Burks has failed to demonstrate that he was denied effective assistance of counsel. His third assignment of error is overruled.

C. Reagan Tokes Notifications and Forfeiture Order

{¶ 27} Burks contends in this fourth assignment of error that his sentence is contrary to law because the sentencing journal entry fails to properly impose a lawful indefinite sentence under the Reagan Tokes Law by materially misstating the maximum prison term applicable on his qualifying first-degree felony conviction and further includes a forfeiture order broader than that imposed on the record. The State concedes these deficiencies and we agree.

{¶ 28} During sentencing, the trial court ordered forfeiture of the items listed in Count 7 and stipulated to during the change-of-plea hearing, including

digital scales, four firearms, magazines, ammunition, gun boxes, \$10,200 in cash, cell phones, packaging material, surveillance equipment, vault case, gold necklace, and an Apple laptop computer. In addition to listing the specific items in its journal entry, the trial court also included a catch-all phrase of “and all other items seized.” Because the indictment did not include this catch-all phrase and the State did not seek to include additional forfeited items prior to the plea hearing, it was error for the court to include this additional language. *See* R.C. 2981.04 (forfeiture requests in the indictment); *see, e.g., State v. Parker*, 2012-Ohio-4820 (8th Dist.) (error for the court to order forfeiture of items not specified in the indictment or requested by the State). Accordingly, we modify the trial court’s forfeiture order by striking from the judgment entry of conviction the phrase “and all other items seized.”

{¶ 29} The State also concedes that the trial court’s judgment entry of conviction misstates the maximum prison term regarding the indefinite sentence under the Reagan Tokes Law. During sentencing, the trial court properly explained that if Burks was not released prior to the expiration of the 12-year maximum, he would be released at that time. (Tr. 50.) When the trial court issued the judgment entry of conviction, however, the court mistakenly stated the maximum term was eight years — “If, however, Burks has not been released prior to the expiration of the eight-year maximum prison term on Counts [3] and [5] then he must be released upon the expiration of that term.” This is clearly a clerical error that can be corrected nunc pro tunc. *See* Crim.R. 36 (“Clerical 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.”).

{¶ 30} Based on our review of the record, the trial court properly advised Burks during sentencing regarding the scope of the forfeited items and the indefinite-sentence maximum prison term. Accordingly, a limited sentencing hearing is not required; the trial court’s misstatements can be corrected by a nunc pro tunc judgment entry that reflects the sentence the court imposed in open court. *See State v. Qualls*, 2012-Ohio-1111, ¶ 15; *State v. Sandidge*, 2020-Ohio-1629 (8th Dist.).

{¶ 31} Accordingly, we sustain Burks’s assignment of error insofar as it challenges the trial court’s judgment entry of conviction regarding inclusion of the catch-all forfeiture order and the misstatement regarding the maximum prison term under Reagan Tokes; all other aspects of Burks’s sentence remain unaffected.

III. Conclusion

{¶ 32} Judgment affirmed in part, modified in part, and remanded for the trial court to issue a corrected judgment entry, nunc pro tunc, reflecting this court’s modification and to include the lawful indefinite sentence under Reagan Tokes — which reflects the sentence imposed in open court. The trial court shall also correct the judgment entry to reflect Burks’s correct name as “Darius Carlos Burks,” as reflected in the indictment.

It is ordered that appellee recover from appellant costs herein taxed.

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. The defendant's convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE

MARY J. BOYLE, P.J., and
TIMOTHY W. CLARY, J., CONCUR