

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 116322
	:	
v.	:	
	:	
MICHAEL BURTON,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, VACATED IN PART,
AND REMANDED
RELEASED AND JOURNALIZED: October 22, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-25-703271-A and CR-25-707731-A

Appearances:

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

Mary Catherine Corrigan, *for appellant*.

DEENA R. CALABRESE, J.:

{¶ 1} Defendant-appellant Michael Burton (“Burton”) appeals his sentence and plea, asserting that the trial court erred when it imposed a three-year license suspension, when it imposed a felony sentence that is contrary to law, and when it

did not adequately advise him of the requirements of Tier III sex offender registration. For the reasons that follow, Burton’s three-year license suspension is vacated and his plea and the remainder of his sentence are affirmed.

I. Relevant Facts and Procedural History

{¶ 2} This appeal stems from Burton’s indictments after two separate incidents. In the first incident (the “traffic offense case”), Burton was indicted after he led law enforcement on an eight-mile-long motorcycle chase at speeds that exceeded 80 m.p.h.¹ Burton then failed a field sobriety test and refused to take a breath test. On July 2, 2025, Burton was indicted in a three-count indictment with the following charges:

1. Failure to comply with an order or signal of a police officer, a third-degree felony, in violation of R.C. 2921.331(B);
2. Operating a vehicle under the influence of alcohol or drugs, a first-degree misdemeanor, in violation of R.C. 4511.19(A)(1)(a);
3. Obstructing official business, a second-degree misdemeanor, in violation of R.C. 2921.31(A).

Burton failed to appear for trial in the traffic offense case, and the trial court issued a capias for his arrest.

{¶ 3} In the second incident (the “sexual assault case”), Burton was involved in an encounter with T.S., the victim, where she alleged that he raped her, gave her

¹ The traffic offense case is Cuyahoga C.P. No. CR-25-703271-A.

a black eye, and strangled her all while her six-month-old child was in the room.²

On December 2, 2025, Burton was indicted in a five-count indictment as follows:

1. Rape, a first-degree felony, in violation of R.C. 2907.02(A)(2);
2. Gross sexual imposition, a fourth-degree felony, in violation of R.C. 2907.05(A)(1);
3. Strangulation, a third-degree felony, in violation of R.C. 2903.18(B)(2);
4. Strangulation, a fifth-degree felony, in violation of R.C. 2903.18(B)(3);
5. Assault, a first-degree misdemeanor, in violation of R.C. 2903.13(A).

{¶ 4} On February 26, 2026, Burton entered a guilty plea to amended charges in both cases as part of a negotiated plea agreement. In the traffic offense case, Burton pleaded guilty to Count 1 amended to failure to comply in violation of R.C. 2921.331(B), a fourth-degree felony, and Count 2 amended to having physical control of a vehicle while under the influence of alcohol in violation of R.C. 4511.194(B)(1), a first-degree misdemeanor. Count 3 was dismissed as part of the plea agreement. In the sexual assault case, Burton pleaded guilty to Count 1 amended to sexual battery in violation of R.C. 2907.03(A)(1), a third-degree felony, and Counts 4 and 5 as charged. Counts 2 and 3 were dismissed as part of the plea agreement.

{¶ 5} During the Crim.R. 11 plea colloquy, the trial court stated that Burton's plea would "also require [him] to become a Tier III sex offender, which means [he

² The sexual assault case is Cuyahoga C.P. No. CR-25-707731-A.

would] have to register or verify every 90 days with the county sheriff for the rest of [his] life. And [the trial court] at the time of sentencing [would] go through all of those requirements with [him].” Burton responded by stating, “Yes, sir.”

{¶ 6} The case was referred for a presentence-investigation report. On March 19, 2026, the trial court held a sentencing hearing. T.S. spoke at the sentencing hearing. She stated that during the sexual assault, her six-month-old child was in the room crying because the child heard T.S.’s distress and that T.S. experienced nightmares and panic attacks following the incident. Burton’s fiancée also spoke at the sentencing hearing. In addition, Burton, his fiancée, mother, father, aunt, uncle, and grandmother all submitted written statements for the trial court’s consideration. Trial counsel indicated that prior to the sexual assault, Burton and T.S. engaged in “sexting,” but did not admit the actual text exchange.

{¶ 7} At the sentencing hearing, the trial court read the full requirements for a Tier III sex offender registration. Burton did not ask any questions or make any statements regarding the sex offender registration or his guilty plea. At the trial court’s direction, Burton then signed and dated the Tier III sex offender registration acknowledgement form.

{¶ 8} In the traffic offense case, the trial court imposed a six-month prison sentence and 180 days in the county jail, to run concurrently with each other. The trial court also imposed a three-year driver’s license suspension. In the sexual assault case, the trial court imposed a sentence of 48 months in prison on Count 1, six months in prison on Count 4, and 180 days in the county jail on Count 5. The

sentences on Counts 1 and 4 of the sexual assault case are to run consecutively to each other, the sentence in Count 5 is to run concurrently to Counts 1 and 4, and the sentence in the sexual assault case is to run consecutively to the sentence imposed in the traffic offense case.

{¶ 9} This appeal followed. Burton raises the following three assignments of error for our review:

1. The trial court's sentence on count two (2) of case 703271 was contrary to law.
2. The trial court's sentence was contrary to law in case 707731.
3. The appellant's plea in case 707731 was not knowingly, voluntarily, or intelligently entered and was in violation of the Fourteenth Amendment to the United States Constitution.

II. Law and Analysis

A. License Suspension

{¶ 10} In his first assignment of error, Burton asserts that the trial court erred when it imposed a three-year suspension of his driver's license because violations of R.C. 4511.194 carry a maximum suspension of one year. Burton pleaded guilty to having physical control of a vehicle while under the influence of alcohol or drugs in violation of R.C. 4511.194(B)(1). The State concedes that pursuant to R.C. 4511.194(D), a court may impose a class seven suspension of an offender's driver's license as specified in R.C. 4510.02(A)(7) and that a class seven suspension is a definite period not to exceed one year. After reviewing the statute and the facts of the case, we find that the trial court erred when it imposed a three-

year driver's license suspension. Therefore, Burton's first assignment of error is sustained, the three-year driver's license suspension is vacated, and the case is remanded to the trial court for correction of the record.³

B. R.C. 2929.11 and 2929.12 Sentencing Factors

{¶ 11} In his second assignment of error, Burton asserts that the trial court's sentence in the sexual assault case was contrary to law because the trial court did not consider factors found in R.C. 2929.11 and 2929.12. Burton specifically asserts that the trial court failed to consider the grounds for mitigation as required by R.C. 2929.12(C)(4) because the trial court did not consider his family support system, lack of criminal history, acceptance of responsibility, and telecommunication relationship with T.S. prior to the sexual encounter.

{¶ 12} Pursuant to R.C. 2953.08(G)(2), a reviewing court may increase, reduce, modify, or vacate and remand a felony sentence if this court clearly and convincingly finds either that the record does not support the sentencing court's findings as prescribed under specific statutes or the sentence is "otherwise contrary to law." *State v. Artis*, 2022-Ohio-3819, ¶ 11 (8th Dist.).

{¶ 13} "A sentence is contrary to law if (1) the sentence falls outside the statutory range for the particular degree of offense, or (2) the trial court failed to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11

³ The transcript reflects that Burton pleaded guilty to an amended Count 2 in the traffic offense case. The trial court's entries journalizing the plea and sentencing hearings incorrectly reflect that Burton pleaded guilty to Count 2 as charged, i.e. not amended, in the traffic offense case.

and the sentencing factors set forth in R.C. 2929.12.” *State v. Hinton*, 2015-Ohio-4907, ¶ 10 (8th Dist.), citing *State v. Smith*, 2014-Ohio-1520, ¶ 13-14 (8th Dist.), citing *State v. Holmes*, 2014-Ohio-603, ¶ 10 (8th Dist.), and *State v. Hodges*, 2013-Ohio-5025, ¶ 7 (8th Dist.). In this case, Burton does not assert that his sentence falls outside the statutory range. Therefore, our review is limited to determining whether the trial court failed to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12, and specifically R.C. 2929.12(C)(4).

{¶ 14} R.C. 2929.11(A) states, in part, that

the overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.

R.C. 2929.12(C) states, in relevant part:

The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, *as indicating that the offender’s conduct is less serious than conduct normally constituting the offense*:

...

(4) There are substantial grounds to mitigate the offender’s conduct, although the grounds are not enough to constitute a defense.

(Emphasis added.)

{¶ 15} This court has consistently held that “R.C. 2929.11 and 2929.12 are not fact-finding statutes and, therefore, although the trial court must ‘consider’ the factors, the court is not required to make specific findings on the record regarding

its consideration of those factors, even when imposing a more than minimum sentence.” *State v. Bridges*, 2019-Ohio-1769, ¶ 11 (8th Dist.), citing *State v. Keith*, 2016-Ohio-5234, ¶ 11 (8th Dist.); *State v. Rouse*, 2019-Ohio-708, ¶ 13 (8th Dist.). Further, the trial court’s consideration of R.C. 2929.11 and 2929.12 is presumed unless the defendant affirmatively shows otherwise. *Id.*, citing *State v. Wright*, 2018-Ohio-965, ¶ 16 (8th Dist.). “[A] trial court’s statement in its sentencing journal entry that it considered the required statutory factors is alone sufficient to fulfill its obligations under R.C. 2929.11 and 2929.12.” *Id.*, citing *Wright* at ¶ 16.

{¶ 16} In this case, the trial court stated during the sentencing hearing that it considered R.C. 2929.11 and 2929.12 by stating as follows:

The Court must, and I have, formulated my decision based upon the overriding purposes and principles of felony sentencing, namely to protect the public from future crime by the defendant and others, as well as to punish the offender using minimum sanctions that the Court determines will accomplish those purposes without imposing an unnecessary burden on state and local government resources. To achieve this I have considered the need for incapacitation, deterrence, rehabilitation, and providing restitution. I must and I have also considered the seriousness and the recidivism factors relevant to the offense and offender pursuant to Revised Code 2929.12. I must and I have ensured that the sentence I’m going to impose will not demean the seriousness of the crime, the impact it has had on the victim, and is consistent with similar offenses committed by like offenders.

{¶ 17} In addition, in each case, the trial court’s sentencing order states that “[t]he court considered all required factors of the law. The court finds that prison is consistent with the purpose of R.C. 2929.11.”

{¶ 18} In this case, Burton has not overcome the presumption that the trial court considered the factors set forth in R.C. 2929.11 and 2929.12 in imposing his

sentence. The record reflects that the trial court indicated that it considered the presentence-investigation report as well as the oral and written statements provided by T.S., Burton, Burton's fiancée, and Burton's family members. The trial court also heard the arguments of counsel and Burton's expression of remorse. The trial court indicated at the sentencing hearing that it considered the statutory factors set forth in R.C. 2929.11 and 2929.12, and this is reflected in the trial court's journal entry. It appears that Burton contends that if the trial court had considered the oral and written statements that were presented at the sentencing hearing, that it would have imposed a lighter sentence. We find that this argument lacks merit. Simply because Burton does not agree with the sentence imposed by the trial court does not demonstrate that the trial court failed to consider R.C. 2929.11 and 2929.12 in its determination. For these reasons, we find that Burton has not demonstrated that the trial court failed to consider the required statutory factors. It follows that Burton has not established that his sentence was contrary to law. Therefore, Burton's second assignment of error is overruled.

C. Sex Offender Registration

{¶ 19} In his third assignment of error, Burton asserts that the trial court erred because it failed to fully advise him of the Tier III sex offender registration requirements at the plea hearing.

{¶ 20} “To ensure that a defendant enters a plea knowingly, voluntarily, and intelligently, a trial court must engage in colloquy with the defendant in accordance with Crim.R. 11(C).” *State v. Meadows*, 2022-Ohio-4513, ¶ 18 (8th Dist.), citing

State v. Engle, 74 Ohio St.3d 525, 527 (1996). Crim.R. 11(C)(2) requires that during the plea colloquy, the trial court does the following:

(a) Determin[e] 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) [Inform] the defendant of and determin[e] 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) [Inform] the defendant and determin[e] 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.

{¶ 21} Appellate review of compliance with Crim.R. 11(C) is de novo and considers the totality of the circumstances to determine whether the plea hearing followed the rule. *State v. Foster*, 2024-Ohio-5919, ¶ 8 (8th Dist.), citing *State v. Cardwell*, 2009-Ohio-6827, ¶ 26 (8th Dist.).

{¶ 22} The appellate court reviews the following:

“(1) has the trial court complied with the relevant provision of the rule? (2) if the court has not complied fully with the rule, is the purported failure of a type that excuses a defendant from the burden of demonstrating prejudice? and (3) if a showing of prejudice is required, has the defendant met that burden?”

State v. Ponomarenko, 2024-Ohio-4789, ¶ 15 (8th Dist.), quoting *State v. Dangler*, 2020-Ohio-2765, ¶ 17.

{¶ 23} The focus on review is “whether the dialogue between the court and the defendant demonstrates that the defendant understood the consequences of his [or her] plea.” *Dangler* at ¶ 12, citing *State v. Veney*, 2008-Ohio-5200, ¶ 15-16; *State v. Clark*, 2008-Ohio-3748, ¶ 26; and *State v. Miller*, 2020-Ohio-1420, ¶ 19. A criminal defendant asking an appellate court to reverse a conviction must show that an error occurred in the trial court proceedings and that he or she was prejudiced by that error. *Dangler* at ¶ 13; see *State v. Perry*, 2004-Ohio-297, ¶ 14-15; *State v. Stewart*, 51 Ohio St.2d 86, 92 (1977); Crim.R. 52.

{¶ 24} There are two exceptions to this rule. The first exception is when a trial court fails to explain constitutional rights that a defendant waives by entering a guilty plea, there is a presumption that the plea was entered involuntarily and unknowingly, and a showing of prejudice is not required. *Dangler* at ¶ 14, citing *Clark* at ¶ 31. The second exception is a trial court’s complete failure to comply with a portion of Crim.R. 11(C), in which case the defendant is not required to show prejudice. *Dangler* at ¶ 15; *State v. Sarkozy*, 2008-Ohio-509, ¶ 22.

{¶ 25} Burton’s appellate brief concedes that the language used by the trial court in this case is identical to the language used by the trial court in *Dangler*, 2020-Ohio-2765. The *Dangler* Court found that the defendant could prevail only if he established that he would not have pleaded guilty but for the trial court’s failure to explain the sex-offender-classification scheme more thoroughly, i.e., establishing prejudice. *Dangler* at ¶ 23. The *Dangler* Court also found that “[p]rejudice must be established ““on the face of the record,”” and that challenging the plea for the first

time on appeal does not demonstrate prejudice. *Id.* at ¶ 24, quoting *Hayward v. Summa Health Sys./Akron City Hosp.*, 2014-Ohio-1913, ¶ 26, quoting *Wagner v. Roche Laboratories*, 85 Ohio St.3d 457, 462 (1999). The Court ultimately concluded that “[t]here is nothing in the record indicating that Dangler would not have entered his plea had he been more thoroughly informed of the details of the sex-offender-classification scheme.” *Id.*

{¶ 26} In this case, there is nothing in the record indicating that Burton would not have entered his plea had he been more thoroughly informed of the details of the sex-offender-classification scheme. Burton asserts that trial counsel’s indication at the sentencing hearing that his sex offender registration would have a strong impact on him and his family demonstrates that Burton would not have pleaded guilty if he had known the full consequences of a Tier III registration. We do not agree. At the sentencing hearing, the trial court read the full Tier III sex offender registration requirements. Burton did not ask questions or make any statements regarding the requirements; he simply signed the sex offender registration acknowledgement form. Therefore, Burton’s third assignment of error is overruled.

{¶ 27} For the reasons stated above, Burton’s three-year license suspension is vacated and the felony sentence and plea are affirmed. The case is remanded to the trial court for correction of the record.

It is ordered that appellee and appellant split the 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 conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for correction of the record and for execution of sentence.

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

DEENA R. CALABRESE, JUDGE

MICHELLE J. SHEEHAN, A.J., and
MICHAEL JOHN RYAN, J., CONCUR