[Cite as *State v. Durst*, 2026-Ohio-4361.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. JOHN DURST IV Appellant	C.A. No. 31853 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR-2025-02-0506

DECISION AND JOURNAL ENTRY

Dated: November 4, 2026

FLAGG LANZINGER, Presiding Judge.

{¶1} Defendant-Appellant John E. Durst, IV appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} In February 2025, the grand jury indicted Durst on one count of strangulation, a felony of the second degree, one count of abduction, a felony of the third degree, and one count of domestic violence, a misdemeanor of the first degree. After the strangulation charge was amended to a felony of the third degree, Durst pleaded guilty to the indictment. The trial court sentenced him to a total of six years in prison.

{¶3} Durst has appealed, raising three assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

JOHN'S PLEA WAS NOT KNOWINGLY, INTELLIGENTLY, OR VOLUNTARILY MADE.

{¶4} Durst argues in his first assignment of error that his plea was not knowingly, intelligently, or voluntarily entered because the trial court failed to inquire whether Durst understood post-release control.

{¶5} "Because a no-contest or guilty plea involves a waiver of constitutional rights, a defendant's decision to enter a plea must be knowing, intelligent, and voluntary." *State v. Dangler*, 2020-Ohio-2765, ¶ 10. "If the plea was not made knowingly, intelligently, and voluntarily, enforcement of that plea is unconstitutional." *Id.*

{¶6} "Ohio's Crim.R. 11 outlines the procedures that trial courts are to follow when accepting pleas. . . . [T]he rule 'ensures an adequate record on review by requiring the trial court to personally inform the defendant of his rights and the consequences of his plea and determine if the plea is understandingly and voluntarily made.'" *Id.* at ¶ 11, quoting *State v. Stone*, 43 Ohio St.2d 163, 168 (1975).

{¶7} Crim.R. 11(C)(2) provides:

> 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.

{¶8} The Supreme Court has clarified how appellate courts are to review a plea to determine if the plea was knowing, intelligent and voluntary. "Generally, '[w]hen a criminal defendant seeks to have his conviction reversed on appeal, the traditional rule is that he must establish that an error occurred in the trial-court proceedings and that he was prejudiced by that error.'" *State v. Simbo*, 2023-Ohio-4404, ¶ 9 (9th Dist.), quoting *Dangler*, 2020-Ohio-2765, at ¶ 13. "However, with respect to reviewing a plea, there are two exceptions to this rule." *Simbo* at ¶ 9, citing *Dangler* at ¶ 16. "When a trial court fails to explain the constitutional rights [set forth in Crim.R. 11(C)(2)(c)] that a defendant waives by pleading guilty or no contest, we presume that the plea was entered involuntarily and unknowingly, and no showing of prejudice is required." *Simbo* at ¶ 9, quoting *Dangler* at ¶ 14*; see also State v. Fontanez*, 2026-Ohio-3281, ¶ 25. "In addition, 'a trial court's *complete* failure to comply with a portion of Crim.R. 11(C) eliminates the defendant's burden to show prejudice.'" (Emphasis in original.) *Simbo* at ¶ 9, quoting *Dangler* at ¶ 15*; see also Fontanez* at ¶ 26. "Aside from these two exceptions, the traditional rule continues to apply: a defendant is not entitled to have his plea vacated unless he demonstrates he was prejudiced by a failure of the trial court to comply with the provisions of Crim.R. 11(C)." *Dangler* at ¶ 16. "The test for prejudice is whether the plea would have otherwise been made." (Internal quotations and citation omitted.) *Id*.

{¶9} "This analysis can be summarized as a review of the following questions: '(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?'" *Simbo* at ¶ 10, quoting *Dangler* at ¶ 17.

{¶10} Here, the transcript of the plea hearing reflects that the trial court spent multiple paragraphs explaining to Durst the details of what post-release control is and the consequences of violating it. Durst has made no argument that the information conveyed to him was inaccurate. Instead, he asserts that his plea was not knowingly, voluntarily, and intelligently entered because the trial court failed to specifically ask whether Durst understood the information about post-release control provided to him. Durst cites no law to support that the same was required of the trial court. Further, the record does not evidence any confusion or lack of understanding on Durst's part. *See State v. Genung*, 2026-Ohio-430, ¶ 21 (9th Dist.). Moreover, prior to accepting Durst's plea, the trial court gave Durst an additional opportunity to ask questions, which Durst declined. Durst has not shown that the trial court erred in concluding he understood the information provided to him about post-release control. Thus, Durst has failed to demonstrate that the trial court failed to fully comply with the portion of Crim.R. 11(C)(2)(a) that he challenges.

{¶11} To the extent that Durst argues that the trial court failed to advise Durst as to post-release control at the time of sentencing, his argument is outside the scope of his stated assignment of error and will not be addressed.

{¶12} Durst's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

JOHN RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN ENTERING HIS PLEA.

{¶13} Durst asserts in his second assignment of error that his trial counsel was ineffective in failing to advise him that he would receive the maximum sentence if he pleaded guilty.

{¶14} The standard for reviewing an ineffective assistance claim was established in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on a claim of ineffective assistance of counsel, a criminal defendant must show that "counsel's performance fell below an objective

standard of reasonableness and that prejudice arose from counsel's performance." *State v. Reynolds*, 80 Ohio St.3d 670, 674 (1998), citing *Strickland* at 687. "A defendant who pleads guilty waives the right to raise issues related to ineffective assistance of counsel on appeal unless they resulted in an involuntary plea." *State v. Herman*, 2024-Ohio-541, ¶ 4 (9th Dist.).

> When the *Strickland* test is applied to guilty pleas, the defendant must first show that counsel's performance was deficient. Next, the defendant must show that there is a reasonable probability that but for counsel's errors, he would not have pleaded guilty. [T]he mere fact that, if not for the alleged ineffective assistance, the defendant would not have entered the guilty plea, is not sufficient to establish the necessary connection between the ineffective assistance and the plea; instead, the ineffective assistance will only be found to have affected the validity of the plea when it precluded the defendant from entering the plea knowingly and voluntarily.

State v. Mills, 2019-Ohio-2205, ¶ 10 (9th Dist.), quoting *State v. Bravo*, 2017-Ohio-272, ¶ 9 (9th Dist.), quoting *State v. Gegia*, 2004-Ohio-2124, ¶ 17 (9th Dist.).

{¶15} Here, Durst's argument is conclusory. He simply states that he was not advised that he was going to receive the maximum sentence and that if he had been he would not have pleaded guilty. There are no citations to the record to support his claim nor are there citations to authority to support his specific contention. "[A]n appellant bears the burden of formulating an argument on appeal and supporting that argument with citations to the record and legal authority." (Internal quotations omitted.) *Kresevic v. Kimmel*, 2026-Ohio-3095, ¶ 14 (9th Dist.), quoting *State v. Watson*, 2009-Ohio-330, ¶ 5 (9th Dist.), citing App.R. 16(A)(7). Moreover, there is no way that Durst's trial counsel would have known what sentence the trial court would impose; in fact, at sentencing, Durst's trial counsel argued that Durst should not be sent to prison at all. Thus, Durst has failed to meet his burden to demonstrate error on appeal.

{¶16} Durst's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

JOHN WAS SENTENCED CONTRARY TO LAW.

{¶17} Durst asserts that his sentence was contrary to law because the trial court demonstrated bias by sentencing Durst to the maximum sentence and because the trial court failed to properly consider the sentencing factors in R.C. 2929.12 at the sentencing hearing.

{¶18} First, we note that the trial court ordered a presentence investigation report ("PSI") and a psychosexual evaluation. Both were discussed at the sentencing hearing. Only the PSI is in this Court's record. "It is the appellant's responsibility to ensure that the record on appeal contains all matters necessary to allow this Court to resolve the issues on appeal." *State v.* Carmel, 2017-Ohio-7589, ¶ 9 (9th Dist.), quoting *State v. Farnsworth*, 2016-Ohio-7919, ¶ 16 (9th Dist.). "This Court has consistently held that, where the appellant has failed to provide a complete record to facilitate appellate review, we are compelled to presume regularity in the proceedings below and affirm the trial court's judgment." *Carmel* at ¶ 9, quoting *Farnsworth* at ¶ 16. "Without the presentence investigation report and the psychosexual evaluation in the record, we cannot properly review [Durst's] sentence." *Carmel* at ¶ 9.

{¶19} Moreover, even if this Court did not presume regularity with respect to Durst's argument that his sentence was contrary to law because the trial court was biased in sentencing Durst, we would conclude the argument was without merit. "The Ohio Supreme Court has held that a criminal trial before a biased judge is fundamentally unfair and denies a defendant due process of law. [J]udicial rulings alone[,] however, almost never constitute a valid basis for a bias or partiality motion." (Internal quotations and citations omitted.) *State v. Stephens*, 2024-Ohio-4740, ¶ 11 (9th Dist.). "A sentencing court has discretion in choosing an appropriate sentence, but it may not consider improper factors." *Id.* at ¶ 13. "A judge is presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions." *Id.* at 11, quoting *In re Disqualification of George*, 2003-Ohio-5489, ¶ 5.

{¶20} Here, Durst argues that the trial court imposed a maximum sentence because Durst engaged in a lifestyle with which the trial court disagreed. Durst has failed to demonstrate that the trial court was biased or that his sentence was contrary to law.

{¶21} Towards the end of the sentencing hearing, the trial court did hear from Durst, who met the victim on a website for BDSM relationships. Durst described himself as the dominant in the relationship. The trial court asked Durst many questions over the course of his testimony at the hearing to flesh out the details of his relationship and what had happened. The trial court specifically stated that it was "trying to understand the difference between a couple who engages in that type of relationship where one is in charge and the other is submissive and someone who's just beating someone up." The trial court asked Durst whether it was "possible that someone who might be enticed by the idea of a relationship of a dominant and submissive may also be someone who isn't interested in just being beaten up?" Durst responded affirmatively. The trial court also indicated that its discussion with Durst helped the trial court decide what sentence to impose.

{¶22} However, the trial court did not only have Durst's statements before it. The trial court also heard from a police officer with the Cuyahoga Falls Police Department, the victim, and the victim's sister. The police officer of 20 years, described this case as "one of the more severe cases of domestic violence that [she had] seen." That officer asked for Durst to receive the maximum prison sentence. The victim's sister described the mental, physical, and emotional impact Durst's crimes had on the victim. The victim herself provided detailed statements about her experience. She described how Durst terrorized her over a period of days, leading to nearly 100 documented injuries, including a black eye, extensive bruising on various parts of her body, a rash on her face, petechia in her eyes, a swollen neck, and missing chunks of hair. After the assault, the victim was diagnosed with anxiety and PTSD and has attended therapy and support groups.

{¶23} In addition, the trial court had the PSI to consider, which disclosed Durst's criminal record, including, inter alia, a conviction for felonious assault.

{¶24} Overall, Durst has not demonstrated that the trial court's sentence was based upon the trial court's disagreement with Durst's lifestyle. Instead, the record is replete with evidence which tends to support the presumption that the trial judge was unbiased and followed the law. *See Stephens*, 2024-Ohio-4740, at ¶ 11 (9th Dist.).

{¶25} Finally, as to Durst's argument that the trial court failed to properly consider the R.C. 2929.12 factors, we are unable to review it for another reason, namely, such a review is precluded by R.C. 2953.08. *See State v. Boyd*, 2025-Ohio-2811, ¶ 46 (9th Dist.). "R.C. 2953.08 'does not provide a basis for an appellate court to modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12.'" *Boyd* at ¶ 44, quoting *State v. Jones*, 2020-Ohio-6729, ¶ 39. Thus, "this Court may not review an argument that (1) the record does not support the imposition of a prison sanction, or (2) the trial court failed to properly consider the factors set forth in R.C. 2929.11 and 2929.12." *Boyd* at ¶ 46, quoting *State v. Belton*, 2025-Ohio-1173, ¶ 6 (9th Dist.).

{¶26} Durst's third assignment of error is overruled.

III.

{¶27} Durst's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JILL FLAGG LANZINGER
FOR THE COURT

SUTTON, J.
STEVENSON, J.
CONCUR.

APPEARANCES:

WESLEY C. BUCHANAN, Attorney at Law, for Appellant.

ELLIOT KOLKOVICH, Prosecuting Attorney, and AMANDA R. FILIPPI, Assistant Prosecuting Attorney, for Appellee.