**[Cite as *State v. Ogden*, 2025-Ohio-1168.]**

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

| | | |
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| STATE OF OHIO, | : | Case No. 23CA1174 |
| | : | |
| Plaintiff-Appellee, | : | |
| | : | DECISION AND JUDGMENT |
| v. | : | ENTRY |
| | : | |
| BRENDA L. OGDEN, | : | |
| | : | **RELEASED: 03/25/2025** |
| Defendant-Appellant. | : | |

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APPEARANCES:

H. Leon Hewitt, Cincinnati, Ohio, for appellant.

Aaron E. Haslam, Adams County Prosecuting Attorney, West Union, Ohio, for appellee.

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Wilkin, J.

**{¶1}** This is an appeal from an Adams County Court of Common Pleas judgment entry of conviction resulting from appellant, Brenda L. Ogden's ("Ogden") plea to theft from a person in a protected class, a fourth-degree felony. On appeal, Ogden asserts that the trial court erred by sentencing her to jail time as a condition of her community control rather than house arrest. In addition, Ogden claims her guilty plea was infirm because she was misled about the consequences of the plea.

**{¶2}** After reviewing the record, the parties' briefs, and the applicable law, we find the trial court properly ensured Ogden's plea was knowing, voluntary, and intelligent. Further, we find the trial court acted within its discretion by sentencing Ogden to jail time as a community control sanction. However, we find the community control sanction is otherwise contrary to law because the trial court inappropriately sentenced Ogden to

270 days of jail time rather than the permissible 180 days of jail time pursuant to R.C. 2929.16(A)(2). Thus, we affirm the trial court in part as to Ogden's plea and conviction but vacate the judgment entry of sentence and remand for resentencing in the trial court.

## PROCEDURAL HISTORY AND FACTS

**{¶3}** On February 13, 2023, a grand jury returned an indictment charging Ogden with the sole count of theft from a person in a protected class, in violation of R.C. 2913.02(A)(1) and (B)(3), a fourth-degree felony, for thefts occurring between April 30, 2022 and May 7, 2022. The indictment further alleged that the value of the property subject to the theft was approximately $3,100. The alleged victim was Doreen Akers ("Akers").

**{¶4}** In late April and early May of 2022, Akers, who had a fractured right shoulder, hired Ogden, doing business as Southern Ohio Custom Cleaning, to spring clean her home. Akers paid Ogden approximately $600 for the work. Akers had previously hired Ogden to clean her residence in 2021 and they subsequently became "good friends."

**{¶5}** On May 3, 2022, Akers discovered that several items of value were missing from her home such as silver coins, gold, and jewelry of sentimental and significant monetary value, including Akers' wedding rings. Akers then contacted Ogden who stated her employee "Kelly" had left the items in a van. However, when Akers spoke to Kelly, Kelly informed Akers she had witnessed Ogden pawning the jewelry for $650 and then purchasing $500 worth of lottery tickets. Kelly also told Akers that after purchasing

the lottery tickets, Ogden went to two other pawnshops where she pawned a variety of items matching the description of Akers' missing items.

**{¶6}** Akers confronted Ogden by text message. Ogden responded by saying she would like to make it right and she would replace everything. Although initially denying the theft while speaking to detectives, Ogden eventually admitted she had taken the rings and pawned them. Later Akers contacted the Adams County Sheriff's Office to report jewelry had been taken from her residence without her permission the first week of May, 2022.

**{¶7}** The case was set for a two-day jury trial. However, on the morning of the first day of trial, July 31, 2023, Ogden entered a guilty plea to the sole count, and the trial court found her guilty.

**{¶8}** At a hearing on August 17, 2023, the trial court sentenced Ogden to three years of community control, with a stated sentence of 18 months, 270 days of incarceration in the county jail, 160 hours of community service, $960 in jury fees and $3,100 in restitution. Ogden appeals this judgment, assigning two errors.

ASSIGNMENTS OF ERROR

I. BRENDA OGDEN BELIEVED SHE WAS A CANDIDATE FOR HOME INCARCERATION DUE TO HER FRAGILE HEALTH AND SHOULD NOT HAVE BEEN SENTENCED TO JAIL.

II. BRENDA OGDEN BELIEVES SHE WAS DENIED DUE PROCESS UNDER THE LAW BY BEING MISLED INTO TAKING A GUILTY PLEA AND IS NOW SERVING A SENTENCE NOT COMMENSURATE WITH HER CRIME.

I. FIRST ASSIGNMENT OF ERROR

**{¶9}** In her first assignment of error Ogden claims the trial court erred in sentencing her to jail time as a sanction for her community control sentence rather than

sentencing her to house arrest. Although citing various cases from federal and state due process jurisprudence, with a brief reference to R.C. 2929.11, the crux of Ogden's argument appears to be that her myriad health issues made her "a good candidate for home incarceration due to her fragile health." In response, the State points out that Ogden's sentence is contrary to law for another reason -- because the trial court sentenced Ogden to 270 days of incarceration in the Adams County Jail as a community control sanction rather than the permissible 180 days pursuant to R.C. 2929.16(A)(2).

## A. LAW

### 1. STANDARD OF REVIEW

**{¶10}** Generally, appellate review of felony sentences employs the standard of review set forth in R.C. 2953.08. *State v. Wright,* 2020-Ohio-5195, ¶ 5 (4th Dist.), citing *State v. Prater,* 2019-Ohio-2745, ¶ 11 (4th Dist.). R.C. 2953.08(G) provides, in pertinent part:

> (2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.
>
> The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:
>
> (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

Thus, an appellate court may vacate or modify a sentence only if the court concludes, by clear and convincing evidence, either the record does not support the trial court's findings under certain statutes, or the sentence is otherwise contrary to law.

**{¶11}** "Clear and convincing evidence is that measure or degree of proof . . . which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *State v. Marcum,* 2016-Ohio-1002, ¶ 22 quoting *Cross v. Ledford,* 161 Ohio St. 469 (1954), paragraph three of the syllabus. The statute does not require the trial court to support its findings by clear and convincing evidence; rather, the court of appeals must clearly and convincingly find that the record does not support the trial court's findings. *State v. Seymour,* 2024-Ohio-5186, ¶ 8 (4th Dist.), citing *State v. Spangler,* 2023-Ohio-2003, ¶ 17 (4th Dist.). "In other words, the restriction is on the appellate court, not the trial judge. This is an extremely deferential standard of review." *Id.*, *State v. Spangler*, 2023-Ohio-2003, ¶ 17 (4th Dist.), quoting *State v. Pierce*, 2018-Ohio-4458, ¶ (8th Dist.), quoting *State v. Venes*, 2013-Ohio-1891, ¶ 20-21 (8th Dist.).

**{¶12}** Further, on review, " 'R.C. 2953.08(G)(2)(b) . . . 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.' " (Ellipses sic.) *State v. Allen,* 2021-Ohio-648, ¶ 13 (4th Dist.), quoting *State v. Jones*, 2020-Ohio-6729, ¶ 39. "[A] sentence is generally not contrary to law if the trial court considered the R.C. 2929.11 purposes and principles of sentencing as well as the R.C. 2929.12 seriousness and recidivism factors, properly applied post-release control, and imposed

a sentence within the statutory range." *Allen* at ¶ 14, citing *State v. Perry,* 2017-Ohio-69, ¶ 21 (4th Dist.)

2. COMMUNITY CONTROL SANCTIONS - FELONY

**{¶13}** R.C. 2929.15(A)(1) provides "[i]f in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code."

> Pursuant to R.C. 2929.15, under the appropriate circumstances, such as when a prison term is not required, a court may impose community control sanctions as a sentence for a felony offense. R.C. 2929.16(1)-(6) sets out a non-exhaustive list of residential community control sanctions that include entering a [community-based correctional facility], jail [up to six months], halfway house, etc. R.C. 2929.17(A)-(D) sets out a non-exhaustive list of non-residential community control sanctions that includes a term of day reporting, house arrest with electronic monitoring, community service, drug treatment program, etc.

*State v. Marcum,* 2020-Ohio-3962, ¶ 8-9. Thus, R.C. 2929.17(B) specifically sets forth "house arrest" as a permissible community control sanction, and R.C. 2929.16(A)(2) provides that county jail time is a permissible sanction for the offense if it does not exceed six months in jail.

B. ANALYSIS

**{¶14}** Ogden cites due process principles and R.C. 2929.11 to argue that she should have received house arrest because of her health issues. It should be noted that a review of the record shows Ogden's trial counsel did not request house arrest at the plea or sentencing hearings, and the record contains only scant references to Ogden's health issues. The record shows Ogden filed a post-sentencing request for the

court to place her on house arrest which was denied September 11, 2023. Ogden wants this court to apply R.C. 2929.11 to find house arrest was warranted. However, "[n]othing in R.C. 2953.08(G)(2) permits an appellate court to independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12." *State v. Pierce,* 2024-Ohio-82, ¶ 49 (4th Dist.), citing *State v. Jones,* 2020-Ohio-6729, ¶ 42. Therefore, this court cannot review a felony sentence when appellant's sole contention is that the trial court improperly considered the factors of R.C. 2929.11 or 2929.12 when sentencing. *Id.*

**{¶15}** The record shows at the sentencing hearing the trial court stated it "has considered the principles and purposes of sentencing under Ohio Revised Code Section 2929.11(A)." The trial court acknowledged "this court must and will * * * balance the seriousness and recidivism factors of 2929.12." Further, the August 17, 2023 judgment entry on sentence reiterates that the court considered "the principle and purposes of sentencing under Ohio Revised Code Section 2929.11(A)" and "has balanced the seriousness and recidivism factors of ORC 2929.12." Yet, as the State observes, R.C. 2929.16(A)(2) permits the trial court to sentence an offender to no longer than six months in the county jail. In the instant case, the trial court permissibly selected a sanction of county jail time, but exceeded the parameters of the statute by choosing a 270-day jail sentence as a community control sanction. As a result, the sentence is contrary to law. The sentence must be vacated and the case remanded for resentencing. Ogden's first assignment error is sustained.

## II. SECOND ASSIGNMENT OF ERROR

**{¶16}** In her second assignment of error Ogden asserts "she was misled into believing she would not be sentenced to incarceration prior to her taking a guilty plea." Therefore, it appears Ogden challenges the voluntariness of her plea. In response, the State contends that Ogden's plea was entered into knowingly and voluntarily, and that she understood and acknowledged the nature of the charges against her at the time of the plea.

### A. LAW

#### 1. STANDARD OF REVIEW

**{¶17}** A guilty plea involves a waiver of constitutional rights such that a defendant's decision to enter a plea must be knowing, intelligent, and voluntary. *State v. Earl,* 2024-Ohio-5682, ¶ 8 (4th Dist.), citing *State v. Dangler*, 2020-Ohio-2765, ¶ 10. Therefore, a defendant must knowingly, intelligently, and voluntarily enter a plea, otherwise the plea is unconstitutional. *Earl* at ¶ 8, citing *State v. Leib*, 2024-Ohio-1081, ¶ 13 (4th Dist.). The trial court has a duty to ensure a plea is constitutional by making certain a defendant has a full understanding of what the plea connotes and its consequence. *State v. Littler,* 2023-Ohio-4759, ¶ 13 (4th Dist.), citing *State v. Tolle,* 2022-Ohio-2839, ¶ 13 (4th Dist.) Accordingly, appellate courts typically affirm the acceptance of a guilty plea if the record reveals that the trial court "engaged in a meaningful dialogue with the defendant and explained 'in a manner reasonably intelligible to that defendant'" the consequences of the plea. *State v. Harp*, 2024-Ohio-2120 at ¶ 13, (4thDist.) citing *State v. Ballard*, 66 Ohio St.2d 473, paragraph two of the syllabus.

**{¶18}** Crim.R. 11(C)(2) governs the acceptance of guilty pleas by the trial court in felony cases. *Littler* at ¶ 10. "The purpose of Crim.R. 11(C) is to 'convey to the defendant certain information so that [s]he can make a voluntary and intelligent decision whether to plead guilty.'" *Harp* at ¶ 13, *quoting Tolle* at ¶ 15. The Ohio Supreme Court has explained that the 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." *Dangler* at ¶ 11, citing *State v. Stone*, 43 Ohio St.2d 163, 168 (1975).

**{¶19}** "When appellate courts evaluate whether a defendant knowingly, intelligently, and voluntarily entered into a guilty plea, a court must independently review the record to ensure that the trial court complied with Crim.R. 11 constitutional and procedural safeguards." *Littler* at ¶ 14, citing *State v. Leonhart*, 2014-Ohio-5601, ¶ 36 (4th Dist.), *State v. Eckler*, 2009-Ohio-7064, ¶ 48 (4th Dist.). Crim.R. 11 requires a court to inform a defendant that she is waiving her right to require the State to prove her guilt beyond a reasonable doubt at trial, her privilege against compulsory self-incrimination, her right to jury trial, her right to confront her accusers, and her right of compulsory process of witnesses. Crim.R. 11(C)(2)(c). *See also Littler* at ¶ 11, *State v. Tolle,* 2022-Ohio-2839, ¶ 9 (4th Dist.). Additionally, "the trial court must determine that the defendant understands the nature of the charge, the maximum penalty involved, and the effect of the plea." Crim.R. 11(C)(2)(a). *See also Id.*, quoting *State Montgomery,* 2016-Ohio-5487, ¶ 41.

**{¶20}** Appellate courts apply a de novo standard of review when evaluating a plea's compliance with Crim.R. 11(C). *State v. Estep*, 2024-Ohio-58, ¶ 47 (4th Dist.).

"Moreover, evidence of a written waiver form signed by the accused is strong proof of the validity of the waiver." *Id.* at ¶ 47.

2. ANALYSIS

**{¶21}** While Ogden does not specifically address the provisions of Crim.R. 11; she argues she was "misled" into believing she would not receive jail time as a community control sanction, apparently claiming that the court did not give her proper notice of the consequences of her plea. Here, Ogden signed a written guilty plea form which is included in the record. Further, a careful review of the plea hearing transcript shows that the trial court copiously complied with Crim.R. 11. The plea agreement was that Ogden would plead guilty, the parties would argue sentence at the sentence hearing, and further that the State would not bring certain additional charges. During the plea hearing, the trial court asked Ogden if she had a chance to speak to defense counsel about everything she had been accused of, and Ogden, replied, "Yes, sir." She was asked the same question a second time, to which she answered in the affirmative. Ogden also responded in the affirmative when asked whether her counsel had answered all her questions to her satisfaction and if she was "satisfied with the overall legal advice and competence" of her counsel.

**{¶22}** More importantly, the trial court properly explained the maximum penalties to Ogden. Additionally, the trial court specifically informed Ogden she could serve local jail time even if she received community control:

> COURT: Do you have any questions about community control or the consequences for violation of community control:
>
> BRENDA OGDEN: No, sir.

> COURT: So, I just wanna make sure, I'm sure your counsel has been very thorough on this, but if you're not sent to, if you're not sentenced to prison, you can still be required to be incarcerated in the locally, in the Adams County Jail as part of the community control sanctions. Do you understand that?
>
> BRENDA OGDEN: Yes, sir.
>
> COURT: Do you have any questions about that?
>
> BRENDA OGDEN: No, sir.
>
> COURT: Alright. So, do you have any questions whatsoever about community control or the consequences for any violations, ma'am?
>
> BRENDA OGDEN: No, sir.

The court also explained to Ogden that the State would not bring other specific charges as part of the plea agreement and then went on to ask:

> COURT: Other than those promises made by the state, as part of this plea agreement, have there been any other promises made to you by any other persons that, uh, you would receive a specific sentence from this court or that the court will be easy or leaning [sic] upon you at the time of sentencing?
>
> BRENDA OGDEN: No, sir.

**{¶23}** While Ogden claims she did not know at the time of the plea a community control sanction could include local jail time, the plea hearing transcript reflects the court specifically told her that was a possibility. The record also shows Ogden had extensive discussions with counsel and was satisfied with her counsel's advice. Further, at the plea hearing the parties agreed they would argue sentencing at the sentencing hearing. In addition, "[a]t the pleading stage, a defendant must know the possible ramifications of his plea, not the future sentencing decision of the trial court." *State v. Milite*, 2020-Ohio-5384, ¶ 19 (11th Dist.), citing *State v. Reed,* 2010-Ohio-1096, ¶ 24 (7th Dist.). A trial court is also not required to "explore every conceivable nuance of the statutory

sentencing scheme to comply with Crim.R. 11(C)(2)(a) and its requirement that a defendant be informed of the maximum penalty involved." *State v. Vera-Lopez,* 2024-Ohio-4971, ¶ 24 (11th Dist.).

**{¶24}** In the instant case, the trial court clearly informed Ogden about the ramifications of the plea. In fact, in some instances, the court asked Ogden to describe herself what her understanding was of various aspects of the plea.

**{¶25}** We would also observe that similar challenges that pleas were not voluntary, knowing, and intelligent because a defendant allegedly did not know community control could carry potential county jail incarceration pursuant to R.C. 2929(16)(2)(a) have been overruled. *See, e.g., Vera-Lopez* (11th Dist.) (where defendant mounted a challenge that he had not been informed of the maximum penalty requirement of Crim.R. 11 because he did not know that he could be sentenced to jail time); *State v. Bowshier,* 2023-Ohio-959 (2d Dist.) (where defendant challenged voluntariness of plea because he claimed he did not know that community control included a possible jail sentence); and *State v. Milite*, 2020-Ohio-5384 (11th Dist.) (defendant's argument on appeal that she was "not pleased she was sentenced to jail time" as a community control sanction did not affect the voluntariness of the plea).

**{¶26}** Therefore, we overrule Ogden's second assignment of error as it lacks merit.

CONCLUSION

**{¶27}** Accordingly, we find that Ogden entered into her plea knowingly, intelligently, and voluntarily; therefore, we affirm the plea and conviction. However,

because we find that the 270-day jail sentence imposed was contrary to law, we reverse the sentence and remand for resentencing only.

**JUDGMENT IS AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED FOR RESENTENCING.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED IN PART AND REVERSED IN PART and the CAUSE IS REMANDED FOR RESENTENCING. Appellant and appellee shall split the costs equally.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the ADAMS COUNTY COURT OF COMMON PLEAS 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.

Smith, P.J., and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**