[Cite as *State v. Scott*, 2025-Ohio-1244.]

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

STATE OF OHIO,	:	
	:	Case No. 23CA921
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT
	:	ENTRY
PATRICK M. SCOTT,	:	
	:	
Defendant-Appellant.	:	**RELEASED: 04/01/2025**

APPEARANCES:

Jeffery M. Blosser, Columbus, Ohio, for appellant.

Michael A. Davis, Pike County Prosecutor, and Chase Brown, Pike County Assistant Prosecutor, for appellee.

Wilkin, J.

{¶1} In this appeal, Patrick M. Scott ("Scott") appeals his conviction in the Pike County Court for voyeurism, a third-degree misdemeanor, in violation of R.C. 2907.08(A).

{¶2} In his first assignment of error, Scott sets forth three arguments why his no-contest plea was not knowing and voluntary: (1) he was not informed of the effect of entering a no-contest plea, (2) he was not informed of the registration requirements that applied to sexual offenders, and (3) his counsel failed to seek discovery.

{¶3} Scott pleaded no contest to a voyeurism charge and the court found him guilty. Because voyeurism, as charged herein, was a misdemeanor and a petty offense, Crim.R. 11(E) applied to his plea. Applying to less serious

offenses, Crim.R. 11(E) imposes one requirement upon a trial court regarding a plea and that is to ensure the defendant understands "the effect" of the plea that he or she intends to enter before accepting the plea. In this case, the trial court informed Scott of the effect of his no-contest plea before he entered his plea, thereby complying with Crim.R. 11(E). Scott's other two arguments in support of his assertion that his plea was not knowing and voluntary (i.e., the court's failure to inform him of sexual offender registration requirements and his counsel's failure to seek discovery) are simply not cognizable under Crim.R. 11(E). Therefore, we find that Scott's first assignment of error lacks merit.

{¶4} In his second assignment of error, Scott contends that his trial counsel was ineffective for failing to seek discovery prior to Scott entering his plea. We find that Scott has failed to prove that even if his trial counsel had engaged in discovery there is a reasonable probability that the outcome of this case would have changed. Therefore, we find his second assignment of error lacks merit.

{¶5} Accordingly, we overrule both of Scott's assignments of error and affirm his conviction for voyeurism.

FACTS AND PROCEDURAL BACKGROUND

{¶6} On December 21, 2022, the State filed a complaint alleging that from March 2020 through April 30, 2022, Scott committed voyeurism in violation of R.C. 2907.08(A), a third-degree misdemeanor, as well as public indecency in violation of R.C. 2907.09(A)(3) also a third-degree misdemeanor. The complaint

specified that on multiple occasions Scott intentionally or recklessly engaged in masturbation in front of a window in his home when his neighbor was in her yard.

{¶7} On January 4, 2023, the court addressed a group of individuals being arraigned that day, including Scott, and instructed them to enter a plea in their respective cases. The court explained:

> Here are your choices: you can make a guilty plea. That's completely admitting guilt. If you make that plea, your case is done today.
>
> You can plead no contest. That's not admitting guilt, but it's admitting the whatever is written on your charges there are true. But the fact that you plead no contest can't be used against you later if there's a lawsuit out of this whole thing or there's another charge out of this whole thing, the fact that you pled no contest can't be used. If you plead no contest, your case will also be done today, one way or the other.
>
> You can plead not guilty. That's completely denying the charge. Put to issue all the essential elements of the offense. If you make a not guilty plea you're case won't be done today. We'll set it for trial or pretrial hearing at a later date.
>
> You can plead guilty by reason of insanity, but that has to be in writing.

{¶8} The court then addressed Scott. The court informed Scott of the maximum possible penalties that he could receive for both charges. Pertinent to his appeal herein, the court explained that voyeurism was a third-degree misdemeanor that carried a maximum sentence of 60 days in jail and a $500 fine. Scott was also informed that he "could be ordered as a Tier I sex offender to report for 15 years every year." The court then stated "there's something in the file. Looks like a video of the whole thing. This belongs to the prosecutor. Which you are entitled to look at it. We can make copies for you." The court then asked if Scott had any questions; he did not. The court then asked Scott how he wanted to plead. Scott pled not guilty.

{¶9} At a hearing on January 25, 2023, the trial court announced that Scott was going to change his plea on the voyeurism charge and "[i]n exchange for a guilty plea, the State is recommending no jailtime at this point, no fine. You got to pay the court costs. A three-year probationary period under the standard conditions of the court." The State would also drop the public indecency charge. The court further advised Scott that he would be classified as a sex offender because a violation of "R.C. 2907.08 is a Tier I offense."

{¶10} The trial court then engaged in the following colloquy with Scott:

By the Court:	Okay. You understand that by entering into this kind of agreement you're waiving certain rights because we're skipping a trial and we're getting this down now. So, you're waiving your right to trial by jury, to cross examine witnesses at the trial, to subpoena witnesses to testify for you. To remain silent at a trial couldn't be used against you if you didn't say anything.
Mr. Scott:	I understand.
By the Court:	And to be proven guilty beyond a reasonable doubt.
Mr. Scott:	I understand.
By the Court:	Do you understand all that? So, what's you plea to [the voyeurism charge]?
Mr. Bevins (Scott's defense counsel):	Yes.
Mr. Scott:	Yes, sir.
Mr. Bevins:	No contest.
By the Court:	Okay. I got guilty. No contest is good, or?
Mr. Bevins:	Yeah. Waive statement of the facts, your Honor.
By the Court:	Okay. From the plea and the waiver, the Court finds you guilty. Is there anything you want to say?

Mr. Scott: No, your Honor.

Mr. Bevins: Do you want to say anything to this judge?

Mr. Scott: No, sir. I'm sorry.

Mr. Bevins: No. Not a thing. Your honor. Thank you.

By the Court: On the plea the Court finds you guilty. The sentence as outlined previously. And the [public indecency] charge as part of the agreement will be dismissed.

{¶11} Consequently, Scott was subject to three years of probation. The court then moved into a sexual offender classification hearing and found Scott to be a Tier I sex offender." The court explained the registration requirements of being a sexual offender and Scott signed the document acknowledging his status as a sexual offender.

{¶12} It is this conviction that Scott appeals.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT IN FINDING THE PLEA ENTERED TO BE KNOWING AND VOLUNTARY.

II. DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN THAT THERE WAS NO ATTEMPT TO OBTAIN DISCOVERY AND PROVIDE THE SAME TO APPELLANT BEFORE RESOLVING THE CASE.

I. First Assignment of Error

{¶13} In his first assignment of error, Scott maintains that his plea was not knowing and voluntary for three reasons. First, he claims that the trial court failed to notify him of the effect of his no-contest plea. Second, Scott alleges that the court failed to inform him that being found guilty of voyeurism would require

him to register as a Tier I Sex Offender, which would impose certain registration requirements on him. Third, Scott claims that his trial counsel failed to conduct discovery and provide evidence to him. Scott claims these three failures prevented his plea of no contest from being knowing and voluntary.

{¶14} In response, the State argues that the language used to inform defendants of their rights does not have to be exact, but instead needs to be read in a manner that the defendant can understand. The State maintains that as long as the record shows that the court explained the charges and plea options in a manner that the defendant was able to understand, then there are no grounds to vacate the defendant's plea. The only presumption of prejudice is where the Defendant's rights were not read at all.

{¶15} The State further argues that at his arraignment, Scott was read information about possible pleas and the maximum sentence he could receive, including the need to register as a sex offender. He also had the opportunity to ask questions at the arraignment hearing to which he had none. Additionally, when Scott changed his plea to no contest, "he stated his agreement to the deal three times." Therefore, according to the State, "there is no reason to believe [Scott] entered his plea less than knowing and intelligently."

A. Law

1. Standard of Review

{¶16} We conduct a de novo review to determine whether a no-contest plea to a misdemeanor petty offense complied with Crim.R.11(E). *Cleveland v. Greene*, 2024-Ohio-4899, ¶ 4 (8th Dist.). "Under a de novo review, we afford no

deference to the trial court's decision." *Mollett v. Lawrence Cnty. Bd. of Developmental Disabilities*, 2024-Ohio-1434, ¶ 46 (4th Dist.), citing *McNichols v. Gouge Quality Roofing, LLC.*, 2022-Ohio-3294, ¶ 25 (4th Dist.).

{¶17} Generally, "Crim.R. 11 sets forth the procedural requirements to which a trial court must adhere in order for guilty pleas, and resulting waivers of constitutional rights, to be valid." *State v. Marable*, 1995 WL 681133, *1 (10th Dist. Nov. 14, 1995), citing *State v. Caudill*, 48 Ohio St.2d 342 (1976). A trial court's obligation in accepting a plea depends upon the level of offense to which the defendant is pleading. *State v. Watkins,* 2003-Ohio-2419, ¶ 25.

2. Felonies

{¶18} Crim.R. 11(C)(2) applies to felonies and provides that a court

> shall not accept a plea of guilty or no contest without first addressing the defendant personally . . . and doing all 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."

3. Misdemeanors that Are Petty Offenses

{¶19} "The procedure is less elaborate in a misdemeanor case, particularly one such as this which involves a petty offense, i.e., a misdemeanor for which the penalty prescribed by law does not include confinement for more than six months."[1] *State v. Perin*, 2019-Ohio-4817, ¶ 15 (4th Dist.), citing Crim.R. 2(C)-(D). Crim.R. 11(E) provides: "In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty."

{¶20} Construing Crim.R. 11(E), "the Supreme Court of Ohio has stated: 'In accepting a plea to a misdemeanor involving a petty offense, a trial court is required to inform the defendant *only* of the effect of the specific plea being entered.' " (Emphasis added) *Perin* at ¶ 15, quoting *Jones*, 2007-Ohio-6093, at paragraph one of the syllabus. In other words, "[i]f a misdemeanor case involves a petty offense, '[t]he plain language of [Crim.R.] 11(E) requires a trial court to do *one* thing before accepting a plea * * *[:] "inform[ ] the defendant of the effect of the plea * * *." ' " (Emphasis added, brackets sic.) *Twinsburg v. Milano*, 2018-Ohio-1367, ¶ 8 (9th Dist.), quoting *State v. Higby*, 2011-Ohio-4996, ¶ 4 (9th Dist.), quoting *Jones* at paragraph one of the syllabus.

{¶21} Therefore, for misdemeanor petty offenses, "[u]nlike the provisions applicable to more serious offenses, Crim. R. 11(E) does *not require* the trial

[1] Alternatively, a misdemeanor can be a "serious offense." A misdemeanor is a "serious offense" if "the penalty prescribed by law includes confinement for more than six months." Crim.R. 2(C). Misdemeanors involving serious offenses are addressed in Crim.R. 11(D).

court to personally address the defendant and determine that the defendant understands the nature of the charge and is entering the plea voluntarily." (Emphasis added.) *State v. Hill*, 2018-Ohio-1345, ¶ 8 (3rd Dist.), citing *State v. Wright*, 2015-Ohio-3919, ¶ 17 (2d Dist.); *Higby* at ¶ 6. Crim.R. 11(E) also *does not require* a court to inform the defendant of "the maximum penalty, the right to a jury trial, or other rights." (Emphasis added.) *Greene*, 2024-Ohio-4899, at ¶ 4, citing *State v. Jones*, 2007-Ohio-6093, ¶ 22.

{¶22} " 'To satisfy the requirement of informing a defendant of the effect of a plea [as required by Crim.R. 11(E)], a trial court must inform the defendant of the appropriate language under Crim.R. 11(B).' " *State v. Dick*, 2018-Ohio-2207, ¶ 29 (4th Dist.), quoting *Jones at* paragraph two of the syllabus. Thus, the court shall not accept a no-contest plea without first informing the defendant that "[t]he plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding." Crim.R. 11(B)(2).

{¶23} While strict compliance with Crim.R. 11(E) is favored, substantial compliance is sufficient if a nonconstitutional right is at issue. *State v. Walton*, 2014-Ohio-618, ¶ 19 (4th Dist.), citing *State v. Griggs*, 2004-Ohio-4415, ¶ 12. " 'Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.' " *State v. Veney*, 2008-Ohio-5200, ¶ 15, quoting *State v. Nero*, 56

Ohio St.3d 106, 108 (1990). *See also State v. Adams*, 2016-Ohio-2757, ¶ 11 (4th Dist.).

{¶24} Moreover, "failure to comply with nonconstitutional rights will not invalidate a plea unless the defendant thereby suffered prejudice." *Walton* at ¶ 19, citing *Griggs* at ¶ 12. To demonstrate prejudice, "the defendant must show that the plea would otherwise not have been entered." *Id*., citing *Veney* at ¶ 15.

B. Analysis

1. Effect of a No-Contest Plea

{¶25} Scott first complains that the trial court failed to inform him of the effect of his no-contest plea. We disagree.

{¶26} Scott was convicted of third-degree misdemeanor voyeurism, which carries a maximum 60-day jail term. *See* R.C. 2929.24(A)(3). Therefore, Scott's conviction is not only a misdemeanor, but is a petty offense as well. Consequently, under Crim.R. 11(E), to accept Scott's plea, the trial court *only* needed to inform him of the effect of his no-contest plea. *Perin*, at ¶ 15, citing *Jones*, 2007-Ohio-6093, at paragraph one of the syllabus.

{¶27} We agree that the trial court did not explain the effect of a no-contest plea to Scott at the change of plea hearing. However, three weeks prior, at Scott's arraignment, the court explained:

> You can plead no contest. That's not admitting guilt, but it's admitting the whatever is written on your charges there are true. But the fact that you plead no contest can't be used against you later if there's a lawsuit out of this whole thing or there's another charge out of this whole thing, the fact that you pled no contest can't be used.

{¶28} This explanation comports with Crim.R. 11(B)(2), which describes the effect of a no-contest plea. The fact that this explanation occurred at Scott's arraignment, and not at his change of plea hearing, does not diminish its effectiveness, because "Crim.R. 11(E) requires that a trial court inform the defendant of the effect of the plea *before* accepting a no-contest or guilty plea. It does not, however, require that this information be necessarily given at the same hearing." *Jones* at ¶ 20, fn. 3. Scott was informed of the effect of a no-contest plea at his arraignment, which was *prior* to his change of plea.

{¶29} Therefore, we find that the trial court complied with Crim.R. 11(E) regarding its obligation to explain to Scott the effect of his no-contest plea.

2. Classification as Sexual Offender and Lack of Discovery

{¶30} Scott also argues that his plea was not knowing and voluntary because he was not informed of the sexual offender registration requirements and because his trial counsel did not conduct discovery. As we discussed infra, for a misdemeanor offense that is also a petty offense, a trial court's only obligation regarding a plea is to ensure that the defendant understands the effect of his or her plea. In such a case, the law imposes no obligation upon the court to inform the defendant of potential penalties (e.g., sex offender registration requirements) or to determine whether the defendant is entering the plea voluntarily (e.g., whether the plea is voluntary because of insufficient discovery). Therefore, we reject Scott's argument that his plea was not knowing and voluntary for those alleged failures.

{¶31} Accordingly, because we find that the trial court complied with Crim.R.11(E) requirements before accepting Scott's no contest plea, we overrule Scott's first assignment of error.

II. Second Assignment of Error

{¶32} In his second assignment of error, Scott argues that his counsel was ineffective for not testing the strength of the State's case by obtaining discovery from the State. Scott alleges his counsel was appointed one day before Scott pleaded no contest to voyeurism; thus, his counsel did not review discovery nor investigate any valid defenses before "rushing [Scott] into a plea deal." Scott alleges that this failure prejudiced him.

{¶33} In response, the State maintains that an ineffective assistance of counsel claim is waived by the accused pleading no contest, unless counsel's ineffectiveness causes the defendant's plea to be less than knowing, intelligent, and voluntary.

{¶34} Alternatively, the State argues that a successful claim for ineffective assistance of counsel must establish that counsel's representation was deficient and prejudicial. Further, Scott has failed to point to any evidence that would have changed the outcome in this case.

A. Law

1. Standard of Review

{¶35} To prove ineffective assistance of counsel, a petitioner "must show (1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable

probability that, but for counsel's errors, the proceeding's result would have been different." *State v. Short*, 2011-Ohio-3641, ¶ 113 (4th Dist.), citing *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984). "Failure to establish either element is fatal to the claim." *State v. Jones*, 2008-Ohio-968, ¶ 14 (4th Dist.).

{¶36} "In Ohio a properly licensed attorney is presumed competent." *State v. Ruble*, 2017-Ohio-7259, ¶ 47 (4th Dist.), citing *State v. Gondor*, 2006-Ohio-6679, ¶ 62. Therefore, Scott has the burden of proving that his trial counsel was ineffective. *Id*.

{¶37} " 'In order to overcome this presumption, the petitioner must submit sufficient operative facts or evidentiary documents that demonstrate that the petitioner was prejudiced by the ineffective assistance.' " *State v. Avery*, 2024-Ohio-3094, ¶ 17 (4th Dist.), quoting *Gondor* at ¶ 62. "To demonstrate prejudice, [Scott] 'must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *Id*., quoting *Strickland* at 694.

{¶38} However, " '[a] plea of guilty or no contest waives any prejudice a defendant suffers arising out of his counsel's alleged ineffective assistance, except with respect to a claim that the particular failure alleged impaired the defendant's knowing and intelligent waiver of his right to a trial. (Citations omitted).' " (Brackets sic.) *State v. Smith*, 2024-Ohio-3066, ¶ 17 (7th Dist.), citing *State v. Armstrong*, 2017-Ohio-625, ¶ 14 (11th Dist.), quoting *State v. Bregitzer*, 2012-Ohio-5586, ¶ 17 (11th Dist.).

{¶39} By pleading no contest, a defendant waives his or her right to assert an ineffective assistance of counsel claim except to the extent that it prevented his plea from being knowing, voluntary, and intelligent. *State v. Hurt*, 2006-Ohio-990, ¶ 26 (2d Dist.), citing *State v. Barnett*, 73 Ohio App.3d 244, 248 (2d Dist. 1991); *State v. Ward*, 2003-Ohio-6764, ¶ 10 (6th Dist.).

2. Discovery

{¶40} "The reasonableness of counsel's determination concerning the extent, method and scope of any criminal discovery necessarily depends upon the particular facts and circumstances of each case." *State v. Allen*, 2003-Ohio-1114, ¶ 7 (10th Dist.), citing *State v. Wilson*, 1992 WL 309378 (8th Dist. Oct. 22, 1992). However, even if a counsel's decision to not conduct discovery is deficient, the defendant must still show that failure resulted in prejudice. *Id*. at ¶ 10. Where a defendant fails to show how he or she was prejudiced by the alleged insufficient discovery and there is nothing in the record to show how the outcome would have been different if discovery had been conducted, the ineffective assistance of counsel claim fails. *Id*.

B. Analysis

{¶41} Scott alleges that his counsel's failure to conduct discovery was prejudicial, but he waived any such claim by pleading no contest. *Allen* at ¶ 7. However, he subsequently also alleged it caused his plea to be less than knowing. Therefore, arguably, Scott has not waived his right to challenge his trial counsel's effectiveness.

{¶42} Even if Scott did not waive his ineffective assistance of counsel claim, he fails to show prejudice. Scott has been convicted of voyeurism for masturbating in front of a window in his house when his female neighbor was outside. Scott pled no contest, which means that he *admitted to the facts alleged*, but agreed to permit the court to determine the legality of his actions. In addition to the admitted facts, the complaint alleged that there was a recording of Scott's conduct, and the court at Scott's arraignment told him that it appeared that there was a video in the record. Beyond the admitted facts and the video, Scott fails to proffer what additional evidence would have had a reasonable probability of changing the outcome of this case, and we doubt such evidence exists. Thus, at best it is speculative that there would be any evidence that created a meaningful probability that Scott would have decided to take the case to trial as opposed to pleading no contest. "[S]peculation, without more, is insufficient to render a plea involuntary." *State v. Goldwin*, 2024-Ohio-4487, ¶ 26 (8th Dist.).

{¶43} Consequently, we find that Scott's ineffective assistance of counsel claim lacks merit. Accordingly, we overrule Scott's second assignment of error.

CONCLUSION

{¶44} Having overruled both of Scott's assignments of error, we affirm the trial court's judgment entry of conviction.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County 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.

Smith, P.J., and Hess, 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.