

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

ANNA MARIE FARONE,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 24 MA 0042

Criminal Appeal from the
County Court #4 of Mahoning County, Ohio
Case No. 2023 CR B 00701

BEFORE:

Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:

Plea Vacated.
Reversed and Remanded.

Atty. Gina DeGenova, Mahoning County Prosecutor and *Atty. Edward A. Czopur*,
Assistant Prosecutor, for Plaintiff-Appellee

Atty. Donald K. Pond, Jr., for Defendant-Appellant

Dated: September 13, 2024

WAITE, J.

{¶1} Appellant Anna Marie Farone appeals an April 3, 2023 judgment entry of Mahoning County Court #4. Appellant argues that her plea is invalid, as the court did not advise her of the effect of her guilty plea. She additionally argues, and the state concedes, that the court failed to afford her the right of allocution. For the reasons provided, Appellant's arguments have merit and her guilty plea is vacated. The matter is remanded for further proceedings consistent with this Opinion.

Factual and Procedural History

{¶2} Due to the nature of the plea agreement in this matter, the facts of the underlying incident are limited. However, the joint plea and sentencing hearing transcripts reveal that Appellant lived with her landlord. Shortly before the incident, Appellant filed a complaint with the local police department alleging that the landlord had raped her. She apparently continued to reside in the house, however, the exact living arrangements are unclear.

{¶3} On December 26, 2023, the landlord obtained a civil protection order against Appellant but did not inform her. Instead, he arrived at the property and provided her with alcohol. He waited until she was intoxicated to call police and inform them that she was inside the residence and could be served with the order.

{¶4} Thereafter, police arrived at the residence. Appellant, drunk and confused, barricaded herself in the kitchen area, locked a door, and placed a chair underneath the door knob. Police told her about the protection order and instructed her to leave, but she refused. When police broke through her barricade and attempted to arrest her, she resisted arrest. She was eventually placed under arrest and charged, on December 27,

2023, with one count of violation of a protection order, a misdemeanor of the first degree in violation of R.C. 2919.27(A), and one count of resisting arrest, a misdemeanor of the second degree in violation of R.C. 2921.33.

{¶15} On April 3, 2024, the court held what it called a joint plea and sentencing hearing. We note, however, the full discussion relative to her plea is contained in approximately one line of the transcript. Appellant pleaded guilty to resisting arrest. The state dismissed the charge regarding violation of a protection order. The court sentenced Appellant to 90 days in jail with 80 days suspended, and credit for seven days served. The court also placed her on twelve months of reporting probation, that was to become nonreporting if she completed her payments for fines, costs, and fees. The trial court granted Appellant’s motion to stay her sentence pending appeal. This timely appeal followed.

ASSIGNMENT OF ERROR NO. 1

The trial court erred in accepting Appellant’s guilty plea and thereby finding her guilty, contrary to Rule 11 of the Ohio Rules of Criminal Procedure.

{¶16} Appellant contends that the trial court failed to advise her that a guilty plea is a complete admission of guilt prior to acceptance of her plea. As she pleaded guilty to a petty misdemeanor offense, this advisement constitutes the sole advisement required at a plea hearing.

{¶17} The crux of this matter is whether the trial court complied with the requirement of Crim.R. 11, which describes the procedures and advisements a court must

make to a criminal defendant before accepting a guilty plea. Critical to a Crim.R. 11 analysis is the type of offense at issue. These offenses are defined within Crim.R. 2:

(B) “Misdemeanor” means an offense defined by law as a misdemeanor.

(C) “Serious offense” means any felony, and any misdemeanor for which the penalty prescribed by law includes confinement for more than six months.

(D) “Petty offense” means a misdemeanor other than a serious offense.

{¶8} It is clear that the charges, here, which are misdemeanors which carry less than a six-month maximum jail term, are petty offenses. Thus, the applicable rules and caselaw are much different than in the felony cases relied on by the state when urging affirmance.

{¶9} Before accepting a guilty plea to a petty offense, there is only one advisement that a trial court is required to make to a criminal defendant: that a plea of guilty is a complete admission of guilt. *State v. Jones*, 2007-Ohio-6093, ¶ 25.

Although Crim.R. 11(E) does not require the trial court to engage in a lengthy inquiry when a plea is accepted to a misdemeanor charge involving a petty offense, the rule does require that certain information be given on the “effect of the plea.” Whether orally or in writing, a trial court

must inform the defendant of the appropriate language under Crim.R. 11(B) before accepting a plea.

Id. at ¶ 51.

{¶10} In every case seeking to vacate a plea, our analysis begins by determining whether the trial court made any attempt at providing the required advisement. If the advisement is only partially given, the analysis turns to whether the court substantially complied with Crim.R. 11(E). If the court partially complied, we must determine whether the defendant is required to demonstrate prejudice.

{¶11} The state is correct that the advisement that a guilty plea is a complete admission of guilt need only be provided orally or in written form, not both. However, the Second and the Eleventh Districts have held that where the record does not contain evidence that the defendant was advised of the effect of a guilty plea, through a written plea agreement or some other method, before the court accepts the defendant's plea, the record fails to demonstrate compliance on the part of the trial court. *State v. Dumas*, 2024-Ohio-2731, ¶ 10 (2d Dist.); *State v. Sauceman*, 2021-Ohio-172, ¶ 17 (11th Dist.). In *Dumas*, the Second District agreed that the following language within a written plea would ordinarily be sufficient to explain the effect of the plea:

I have been informed by the Court of the effect of a plea of guilty, no contest and not guilty. I understand that a plea of guilty is a complete admission of my guilt. * * * I understand that when a plea of guilty or no contest is accepted by Court, the Court may proceed with sentencing.

Id. at ¶ 10. However, the court held that the record was devoid of any evidence that the defendant reviewed and signed the written plea agreement prior to the court’s acceptance of the plea at the hearing. Thus, the record failed to show the appellant had been sufficiently informed of the effect of his plea prior to the court’s acceptance of that plea.

{¶12} In *Sauceman*, the Eleventh District similarly determined that the record was devoid of any evidence that the appellant had been advised of the effect of his plea prior to the court’s acceptance. As this requirement is the sole advisement a trial court must make in these cases, the *Sauceman* court held that such failure, alone, provides the grounds for reversible error. *Id.* at ¶ 17.

{¶13} At oral argument, the state confirmed this record does not indicate whether Appellant signed her written plea agreement form before, or after, her plea hearing. Thus, there is no evidence that the trial court advised Appellant of the effect of her guilty plea before it accepted the plea at the hearing. The written plea agreement reflects only that it was executed the same day as the hearing, but not whether signing took place before or after that hearing. There is no reference to a written plea agreement at the hearing. In fact, the only mention of the word “plea” is a one-line sentence stating that Appellant intended to plead guilty. There is no statement that trial counsel reviewed the written plea agreement with Appellant. The plea hearing is completely silent on the issue.

{¶14} Turning to whether Appellant must demonstrate some prejudice as a result of this failure, there is a great difference between the manner in which the law treats felony offenses as opposed to petty offenses. In regard to the former, a trial court must, by law, provide several advisements before accepting a guilty plea from a criminal defendant. In

contrast, the law in petty offenses requires that a court must only inform a criminal defendant who intends to plead guilty that a guilty plea is a complete admission of guilt.

{¶15} A seminal case in this matter is *State v. Sarkozy*, 2008-Ohio-509. While *Sarkozy* addressed a felony plea agreement, its holding that no prejudice is required where a trial court fails to substantially comply with Crim.R. 11 has been applied to petty offense cases by several Ohio appellate districts.

{¶16} As earlier discussed, in *Dumas*, the Second District presumed prejudice in a situation where the trial court failed to advise a petty offender of the effect of a guilty plea prior to accepting a plea, but did not provide an analysis. The district recently addressed this issue in more depth in *State v. McGlinch*, 2019-Ohio-1380 (2d Dist.). In *McGlinch*, the court held that:

The Ohio Supreme Court has not expressly reconsidered whether a defendant must show prejudice when a trial court completely fails to notify the defendant of the effect of his or her plea, as required by Crim.R. 11 or Traf.R. 10. Nevertheless, it has implicitly done so by repeatedly stating, since *Griggs* and *Jones*, that when a trial court fails to substantially comply with the requirements regarding nonconstitutional rights, a showing of prejudice is required when the trial court has partially complied with the Rule, but not when the trial court has completely failed to comply; the supreme court's more recent holdings have not limited its revised standard to Civ.R. 11(C)(2)(a) only.

Id. at ¶ 29.

{¶17} Again, where a plea involves a petty offense, a court need only advise a criminal defendant of the effect of a guilty plea. As there are no other required advisements, if a court fails in this regard, it has completely failed to comply with Crim.R. 11. There can be no question of substantial compliance if there is no record the defendant was clearly informed of the effect of a guilty plea before this plea was accepted by the court.

{¶18} The *Sauceman* court cited *McGlinch* favorably in similarly holding that a trial court's failure to advise a defendant that a guilty plea is a complete admission of guilt in a petty offense creates a presumption of prejudice. *Sauceman* at ¶ 17. The court explained that this advisement is the only one a trial court must provide in these cases, thus, failure to properly make the advisement creates a presumption of prejudicial error. *Id.* at ¶ 17, citing *McGlinch, supra*; *Maple Heights v. Mohammad*, 2019-Ohio-4577, ¶ 16 (8th Dist.); *State v. Smith*, 2016-Ohio-3496, ¶ 12 (9th Dist.).

{¶19} Because the court failed to orally advise Appellant of the effect of her guilty plea at the hearing, and there is no indication that the written plea agreement was executed prior to the court's acceptance of Appellant's plea, the record does not show the court properly provided the advisement and prejudice is presumed. Accordingly, Appellant's first assignment of error has merit and is sustained. Appellant's plea is vacated and the matter is remanded for further proceedings.

ASSIGNMENT OF ERROR NO. 2

The trial court erred by denying Appellant the right of allocution prior to the imposition of sentence, contrary to Rule 32 of Ohio Rules of Criminal Procedure.

{¶20} Appellant argues that the trial court failed to afford her the right of allocution at her sentencing hearing, as neither she nor her counsel were given an opportunity to speak. The state concedes error.

{¶21} Crim.R. 32(A)(1) provides that a sentencing court shall not only give defense counsel an opportunity to speak on behalf of the defendant but shall also “address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.” A trial court must strictly follow the affirmative obligation to offer the right of allocution mandated in Crim.R.32(A)(1). “A Crim.R. 32 inquiry is much more than an empty ritual: it represents a defendant’s last opportunity to plead his case or express remorse.” *State v. Green*, 90 Ohio St.3d 352, 359-360 (2000).

Ordinarily a trial court error is waived by failing to object, which leaves an appellant to invoke the plain error doctrine under Crim.R. 52(B). However, the absolute right to allocution in Crim.R. 32(A)(1) is not forfeited due to a defendant’s mere lack of objection to the court’s error in failing to comply with its affirmative duty under the rule.

State v. Hammonds, 2023-Ohio-2985, ¶ 32 (7th Dist.), *citing State v. Campbell*, 90 Ohio St.3d 320, 325 (2000).

{¶22} A review of the record shows that the trial court failed to address and provide an opportunity to speak to Appellant as required by Crim.R. 32(A)(1). In light of the fact that we have sustained Appellant’s first assignment and the matter must be remanded for an entirely new proceeding, this issue is moot.

Conclusion

{¶23} Appellant argues that her plea is invalid as the court did not advise her of the effect of her guilty plea. Additionally, she argues, and the state concedes, that the court failed to afford her right of allocution. For the reasons provided, Appellant’s first argument has merit and her plea is hereby vacated. Her second assignment, then, is moot. The judgment of the trial court is reversed and remanded for further proceedings consistent with this Opinion.

Robb, P.J. concurs.

Hanni, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's first assignment of error is sustained and her second assignment is moot. It is the final judgment and order of this Court that the judgment of the County Court #4 of Mahoning County, Ohio, is reversed and Appellant's plea is hereby vacated. This cause is remanded to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.