[Cite as *State v. Hollowell*, 2024-Ohio-4581.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 113210
v.	:	
TAI'YUN HOLLOWELL, ET AL.,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, VACATED IN PART, AND REMANDED
RELEASED AND JOURNALIZED: September 19, 2024

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-669493-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and John Kirkland, Assistant Prosecuting Attorney, *for appellee*.

Buckeye Law Office and P. Andrew Baker, *for appellant*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant, Tai'Yun Hollowell ("Hollowell"), appeals his conviction on three grounds: (1) his plea was not knowingly, intelligently, and voluntarily entered; (2) his sentence is contrary to law; and (3) he was not given

proper advisements at the time of sentencing, as required by statute. Plaintiff-appellee, State of Ohio ("State"), concedes that Hollowell's sentence is contrary to law and the trial court did not administer the proper indefinite-sentence advisements. Upon review, we affirm in part, vacate in part, and remand for resentencing.

I. Facts and Procedural History

{¶ 2} In April 2022, Hollowell was reindicted for offenses committed in October and November 2021 in a seven-count indictment: Counts 1 and 4 charged Hollowell with aggravated robbery, first-degree felonies; Counts 2 and 5 charged him with grand theft, fourth-degree felonies; Count 3 charged Hollowell with identity fraud, a fifth-degree felony; and Counts 6 and 7 charged him with receiving stolen property, fourth-degree felonies. Counts 1, 2, 4, and 5 were each accompanied by one- and three-year firearm specifications.

{¶ 3} At a pretrial held in July 2023, the parties advised the trial court that a plea agreement had been reached. The State explained that Counts 2, 3, and 5 were to be nolled, Counts 1 and 4 were to be amended to strike the three-year firearm specifications, and Counts 6 and 7 were to remain as charged. The State further advised that the Reagan Tokes Law applied to Counts 1 and 4, which were felonies of the first degree. Defense counsel stated:

> Your Honor, I have met with my client numerous times in the county jail. We reviewed the discovery, reviewed the video, audio evidence, discussing possible defenses, and I believe that his — we also discussed his constitutional rights. I believe that his pleas of guilty today will be knowingly, intelligently, and voluntarily done . . . .

(07/25/23, tr. 8.)

{¶ 4} Hollowell's potential sentence was discussed throughout the trial court's plea colloquy:

> THE COURT: So minimally you would be doing a — minimally 4 years.
>
> [DEFENSE COUNSEL]: Five, Your Honor.
>
> [THE STATE]: Five, because of two specs.
>
> [DEFENSE COUNSEL]: Two one-year firearm specifications and then 3 years on the F1.
>
> THE COURT: Five years minimally in prison to maximum of 27 years not including Reagan Tokes tail. Is that what you get as well, [counsel]? I'm looking at 12 and 12 on Counts 1 and 4 and . . . 18 months on [Counts] 6 and 7, so 24 plus 3.
>
> [THE STATE]: That's correct, Your Honor.
>
> THE COURT: That's the maximum you could get, but there will be a 5.5-year tail on Counts 1 and 2.
>
> [DEFENSE COUNSEL]: Just one.
>
> THE COURT: Do I — I'm going to say on each for purposes of this. Do you understand that, sir?
>
> [HOLLOWELL]: Yes, Your Honor.
>
> THE COURT: Okay. Do you understand that Counts 1 and 4 are each felonies of the first degree which are punishable by a possible term of incarceration of 3 to 11 years to 16.5 with the application of the Reagan Tokes tail . . . . Do you understand that?
>
> [HOLLOWELL]: Yes, Your Honor.
>
> THE COURT: Okay. And each count is the same Count 1 and 4. Do you understand that?
>
> [HOLLOWELL]: Yes, Your Honor.

> THE COURT: Okay. And you understand the one-year firearm specs must be served prior to and consecutive with the 3 to 11 to 16.5?
>
> [HOLLOWELL]: Yes, Your Honor.
>
> THE COURT: Okay. And then Count 6 and 7 are receiving stolen property. Each is a felony of the fourth degree. Those are punishable by a possible term of incarceration of 6 to 18 months in prison as well as possible fines of up to $5,000 on Counts 6 and 7. Do you understand that?
>
> [HOLLOWELL]: Yes, Your Honor.
>
> . . .
>
> THE COURT: Okay. Do you understand that these sentences can be run concurrent, meaning to be served at the same time, or consecutive, meaning one to follow the other?
>
> [HOLLOWELL]: Yes, Your Honor.
>
> THE COURT: That's how we were talking about the max number exposure of 27 years.
>
> [HOLLOWELL]: Yes, Your Honor.
>
> THE COURT: Or, like I said, concurrent would be whatever is the highest one they would all be served for that time which the highest one, as I said, could be the 12 to 16.5.
>
> [HOLLOWELL]: Yes, Your Honor.

(Cleaned up.) *Id.* at 11-14.

{¶ 5} Hollowell acknowledged that he understood the charges against him and was voluntarily entering pleas and pleaded guilty to Counts 1 and 4 (aggravated robbery with one-year firearm specification), as amended, and Counts 6 and 7 (receiving stolen property), as indicted. The following discussion was then had regarding Hollowell's plea:

> THE COURT: [Defense counsel], as an officer of the court having had numerous confidential conversations with your client, do you believe that the pleas he is entering today are being done in a knowing, intelligent, and voluntary fashion?
>
> [HOLLOWELL]: Yes, Your Honor.
>
> THE COURT: And, counsel, have I satisfied all of the rules — all the requirements of Rule 11 and Senate Bill 2?
>
> [THE STATE]: Yes, Your Honor.
>
> [DEFENSE COUNSEL]: Yes, Your Honor.

(Cleaned up.) *Id.* at 18. The trial court accepted Hollowell's pleas, found him guilty of the charges as pled, and nolled Counts 2, 3, and 5.

{¶ 6} A sentencing hearing was held in August 2023. After reviewing the sentencing memorandums, character letters, presentence-investigation report, and victim-impact statement and hearing from defense counsel, the defendant, the State, and a victim's husband, the trial court sentenced Hollowell as follows:

> THE COURT: I did review the law and the law on consecutive sentences, and it is clear in this case that consecutive sentences are necessary to protect the public, as well as to punish this offender. And it's four car jackings in under 30 days. It's unbelievable in one sense, and it's so serious that consecutive sentences would not be disproportionate to the crime he has committed in this case. Okay? Two [aggravated robberies] with firearms, two [receiving stolen property charges]. I am going to run the aggravated robberies consecutive to each other, and the [receiving stolen property charges] will be concurrent to all the counts. Okay? So on amended Count 1, the court is going to sentence this defendant to 1 year on the firearm spec[ification], which must be served prior to and consecutive with 8 years. And with the application of Reagan Tokes, that would be 8 to 12. Correct?
>
> [DEFENSE COUNSEL]: Yes.

> THE COURT: And the Supreme Court just ruled it constitutional.
>
> [DEFENSE COUNSEL]: Okay.
>
> . . .
>
> [THE COURT:] And on amended Count 4, also the court is going to sentence the defendant to 1 year on the firearm spec[ification], which must be served prior to and consecutive with 8 to 12 on amended Count 4. Count 1 and Count 4 will be consecutive to each other, because, as we know, this defendant committed these multiple offenses as a part of one course of conduct, four car jackings, as I've said, in less than 30 days, and the harm to four female victims was so great or unusual that no single prison term adequately reflects the seriousness of this offender's conduct. And on Count 6 and Count 7, the court will sentence this defendant to 12 months on each, and as I've said, they will be concurrent to each other, as well as the rest of the counts. Counts 2, 3 and 5 were nolled.
>
> . . .
>
> And this sentence will be consecutive to the sentence he already received [in another criminal case], for all the same findings that the court has made, pursuant to R.C. 2929.14(C)(4).

(Cleaned up.) (07/25/23, tr. 40-43.) The trial court then advised that Hollowell would be subject to a period of postrelease control after his sentence was completed and explained the conditions and implications related to his postrelease control supervision. Defense counsel objected to the trial court's imposition of consecutive sentences and, upon defense counsel's request, the trial court advised that appellate counsel would be appointed before concluding the sentencing hearing.

{¶ 7} On August 28, 2023, the trial court issued a decision imposing the following sentence:

> The court imposes a mandatory prison term of 2 years on the firearm specifications to be served prior to and consecutive to a minimum

> prison term/aggregate prison term of 18 years and a maximum prison term of 24 years on the underlying offenses. The total stated prison term is 18 years to 26 years at the Lorain Correctional Institution. The court sentences on each count as follows: Count 1: S.B. 201 sentence imposed F1, 1-year mandatory prison on the firearm specifications to be served prior to and consecutive to a minimum prison term of 8 years and a maximum 12 years on the base charge; a mandatory minimum 2 years, up to a maximum of 5 years post-release control. Count 4: F1, 1-year mandatory prison on the firearm specification to be served prior to and consecutive to a prison term of 8 years on the base charge, S.B. 201 sentence imposed — minimum prison term of 8 years and a maximum 12 years on the base charge; a mandatory minimum 2 years, up to a maximum of 5 years post release control. Count 6: F4, 12 months; a mandatory minimum 2 years, up to a maximum of 5 years post-release control. Count 7: F4, 12 months; a mandatory minimum 2 years, up to a maximum of 5 years post-release control. Count 1 and Count 4 are consecutive. Count 6 and Count 7 are concurrent to each other and concurrent to Count 1 and Count 4. Sentence consecutive to [Hollowell's other criminal case].

(Cleaned up.) (Journal Entry, 08/29/23).[1]

{¶ 8} Following the assignment of appellate counsel, Hollowell appealed the August 29, 2023 decision and raised three assignments of error for this court's review.

> **<u>Assignment of Error 1</u>**
>
> [Hollowell's] convictions must be reversed as his plea was not knowingly, intelligently, and voluntarily made.
>
> **<u>Assignment of Error 2</u>**
>
> [Hollowell's] sentence must be reversed as it is contrary to law.

---

[1] The trial court subsequently issued three nunc pro tunc entries correcting the sentencing entry. The first corrected the case number associated with Hollowell's other criminal case. (Nunc Pro Tunc Entry, 09/05/23.) The second appears to be a duplicate of the first. (Nunc Pro Tunc Entry, 12/15/23.) The third modified the maximum prison term on the underlying offenses from 24 years to 22 years and the total stated prison term from 18 to 26 years to 18 to 22 years. (Nunc Pro Tunc Entry, 12/19/23).

Assignment of Error 3

> [Hollowell] must be resentenced so that the court may give proper advisements as to R.C. 2929.144 as required by R.C. 2929.14(B)(2)(c).

II. Law and Analysis

A. Hollowell's Plea

{¶ 9} In his first assignment of error, Hollowell argues that his conviction must be reversed because his plea was not knowingly, intelligently, and voluntarily made pursuant to Crim.R. 11(C).

{¶ 10} In considering whether a guilty plea was entered knowingly, intelligently, and voluntarily, an appellate court conducts a de novo review of the record and examines the totality of the circumstances to determine whether the trial court complied with the rule and adequately advised the defendant of his constitutional and nonconstitutional rights. *State v. Spock*, 2014-Ohio-606, ¶ 7, 9 (8th Dist.).

{¶ 11} A defendant's plea must be entered knowingly, intelligently, and voluntarily for the plea to be constitutional under the United States and Ohio Constitutions. *State v. Engle*, 74 Ohio St.3d 525, 527 (1996). "Ohio Crim.R. 11(C) was adopted in order to facilitate a more accurate determination of the voluntariness of a defendant's plea by ensuring an adequate record for review." *State v. Nero*, 56 Ohio St.3d 106, 107 (1990). The purpose of Crim.R. 11(C) is to require the trial court to convey certain information to a defendant so that he or she can make a voluntary and intelligent decision regarding whether to plead guilty or no contest. *State v. Poage*, 2022-Ohio-467, ¶ 9 (8th Dist.), citing *State v. Ballard*, 66 Ohio St.2d 473,

479-480 (1981). Under Crim.R. 11(C)(2), a trial court shall not accept a guilty plea in a felony case 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 . . ., 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.

In reviewing a trial court's colloquy to ensure that a defendant's plea was knowingly, voluntarily, and intelligently entered, the focus is on whether the dialogue between the court and the defendant demonstrated that the defendant understood the consequences of his plea. *State v. Dangler*, 2020-Ohio-2765, ¶ 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.

{¶ 12} "When 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." *Id.* at ¶ 13, citing *State v. Perry*, 2004-Ohio-297, ¶ 14-15, and *State v. Stewart*, 51 Ohio St.2d 86, 93

(1977); Crim.R. 52. A limited exception exists when the trial court fails to explain the constitutional rights waived by the defendant when pleading guilty as outlined in Crim.R. 11(C)(2)(c). *Id.* at ¶ 14, citing *Clark* at ¶ 31, and *Veney* at syllabus. A trial court's *complete* failure to comply with a portion of Crim.R. 11(C) also eliminates the defendant's burden to show prejudice. *Id.* at ¶ 15, citing *State v. Sarkozy*, 2008-Ohio-509, ¶ 22.

{¶ 13} "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)." *Id.* at ¶ 16, citing *Nero,* 56 Ohio St.3d 106 at 108. This includes instances where the trial court fails to fully cover the "nonconstitutional" aspects of the plea colloquy. *Id.* at 14, citing *Veney* at ¶ 17 (distinguishing the nonconstitutional notifications required by Crim.R. 11(C)(2)(a) and (b) from the constitutional rights notifications required by Crim.R. 11(C)(2)(c)). "The test for prejudice is 'whether the plea would have otherwise been made.'" *Id.* at ¶ 16, quoting *Nero* at ¶ 108. "[T]he questions to be answered are simply: (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?" *Id.* at ¶ 17.

{¶ 14} Hollowell asserts that his plea was not entered knowingly, intelligently, and voluntarily because the trial court failed to properly notify him of

his maximum sentence pursuant Crim.R. 11(C)(2)(a). Hollowell argues that the trial court's discussion of the maximum sentence was confusing because the trial referred to the 27-year base maximum sentence and did not explain "how the minimum sentence could become the maximum sentence."

{¶ 15} This court has held that a trial court complies with Crim.R. 11(C)(2)(a) when it provides an explanation as to how an indefinite sentence under Reagan Tokes would be calculated and informs the defendant of the maximum sentence that could be imposed. *State v. Colvin*, 2024-Ohio-2906, ¶ 16 (8th Dist.), citing *State v. Vitumukiza*, 2022-Ohio-1170, ¶ 16, 19 (8th Dist.).

{¶ 16} Here, the trial court informed Hollowell that he could receive a "maximum of 27 years not including Reagan Tokes tail[s]." The trial court then explained, "That's the maximum you could get, but there will be a 5.5-year tail on Counts 1 and [4]." Defense counsel noted that a "Reagan Tokes tail" could only be applied to one of those two counts; however, the trial court stated, "I'm going to say on each for purposes of this." The trial court then explained that "Counts 1 and 4 are each felonies of the first degree which are punishable by a possible term of incarceration of 3 to 11 years to 16.5 with the application of the Reagan Tokes tail . . . ." The trial court asked Hollowell if he understood and Hollowell replied, "Yes, Your Honor."

{¶ 17} While the trial court did not explain how it reached its "Reagan Tokes tail" calculations, the trial court did inform Hollowell what the potential "tails" could be if he was sentenced to 11 years on Counts 1 and 4, the maximum sentence for each

aggravated robbery charge. The trial court further advised that two 5.5-year "tails" could be added to the 27-year maximum sentence for the underlying charges.[2] Therefore, even if the trial did not fully comply with Crim.R. 11(C)(2)(a), we cannot say that the trial court *completely* failed to comply with the rule, eliminating Hollowell's burden to show prejudice. Nor are we persuaded by Hollowell's argument that prejudice need not be demonstrated. The case cited by Hollowell, *State v. Amin*, 2023-Ohio-3761 (11th Dist.), is clearly distinguishable. In *Amin*, the trial court did not convey any information to the defendant regarding the maximum penalty involved and relied on the prosecutor's deficient statement. *Id.* at ¶ 13. The Eleventh District found the plea to be invalid based on deficiencies in the plea colloquy. As discussed above, the trial court did convey information to Hollowell regarding the maximum penalty involved. Accordingly, the purported failure was not of the type that excuses Hollowell from the burden of demonstrating prejudice.

{¶ 18} On appeal, Hollowell does not establish how he was prejudiced by the trial court's colloquy or argue that his guilty plea would not have been made otherwise. Nor can we say that Hollowell was prejudiced based on the record before us. As noted by defense counsel at the plea hearing and discussed in the following section, the trial court advised Hollowell that he could potentially serve a maximum sentence greater than that prescribed by law. Moreover, both Hollowell and defense

---

[2] While this advisement was erroneous because a "Reagan Tokes tail" could not be applied to both Counts 1 and 4, it ultimately conformed with the sentence imposed by the trial court at the sentencing hearing and in its August 2023 sentencing entry, contrary to Hollowell's claims during oral argument.

counsel advised during the hearing that Hollowell's plea was knowing, intelligent, and voluntary. The State and defense counsel further acknowledged that the trial court complied with Crim.R. 11. Because Hollowell has not met his burden of demonstrating prejudice, we cannot say that his plea was not knowingly, intelligently, and voluntarily entered. Accordingly, Hollowell's first assignment of error is overruled.

B. Hollowell's Sentence

{¶ 19} In his second assignment of error, Hollowell argues that the trial court's sentence is contrary to law, constituting plain error. Hollowell asserts that, despite clear statutory language and caselaw on the subject, the trial court failed to "select one [aggravated robbery] count to add the 'Reagan Tokes tail' to" and, instead, "selected both." The State agrees that Hollowell's sentence should include only one Reagan Tokes "tail."

{¶ 20} R.C. 2929.144(B)(2) provides:

> If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that some or all of the prison terms imposed are to be served consecutively, the court shall add all of the minimum terms imposed on the offender . . . for a qualifying felony of the first or second degree that are to be served consecutively and all of the definite terms of the felonies that are not qualifying felonies of the first or second degree that are to be served consecutively*, and the maximum term shall be equal to the total of those terms so added by the court plus fifty percent of the longest minimum term or definite term for the most serious felony being sentenced.*

(Emphasis added.)

{¶ 21} Here, the trial court imposed non-life indefinite sentences on two qualifying felony offenses: a minimum term of eight years and a maximum of 12 years for two aggravated robbery convictions to be served consecutively. The trial court ordered that Hollowell serve a total of two years for the two, one-year firearm specifications prior and consecutive to the 16-year minimum prison term associated with the underlying aggravated robbery offenses. In the August 29, 2023 journal entry, the sentencing decision from which Hollowell appeals, the trial court aggregated the sentences for a "minimum prison term . . . of 18 years and a maximum prison term of 24 years on the underlying offenses" and advised that "the total stated prison term is 18 years to 26 years."[3]

{¶ 22} Based on the plain language of the statute, the maximum term for the qualifying felony offenses is equal to the total aggregate of the minimum and definite terms to be consecutively served (the eight years on Count 1 and eight years on Count 4), plus 50 percent of the longest minimum or definite term for the most serious felony offense (four years, half of the eight-year term imposed for one of the aggravated robbery counts). Thus, the indefinite term on the qualifying non-life felony sentences is 16-20 years. After adding two years for the firearm

---

[3] While the trial court later issued a nunc pro tunc entry in January 2023 to correct the maximum prison term and total stated prison term, the original entry's imposition of two "Reagan Tokes tails" appears to be consistent with trial court's advisements at the sentencing hearing, where 8 to 12 years was imposed on Counts 1 and 4. "Nunc pro tunc orders are appropriate remedies to cure clerical errors but cannot 'reflect . . . what the court might or should have decided.'" *State v. King*, 2023-Ohio-3635, ¶ 6 (8th Dist.), quoting *State ex rel. DeWine v. Burge*, 2011-Ohio-235, ¶ 17, citing *State ex rel. Mayer v. Henson*, 2002-Ohio-6323.

specifications, Hollowell's aggregate sentence is 18 to 22 years. Accordingly, we vacate Hollowell's two sentences for aggravated robbery and remand the matter for resentencing. *See State v. Polk*, 2022-Ohio-706, ¶ 17-18 (8th Dist.).

{¶ 23} Finally, in his third assignment of error, Hollowell claims that the trial court failed to properly give all Reagan Tokes Law advisements prior to imposing an indefinite sentence, as required by R.C. 2929.19(B)(2)(c). Hollowell argues that while he was advised that his prison term could result in earned credit or a lack thereof, he was not given any of the required advisements under R.C. 2929.19(B)(2)(c). The State concedes that the trial court did not administer the proper advisements. Because the sentence is vacated and resentencing will occur, the issue is moot.

III. Conclusion

{¶ 24} We find that the trial court complied with Crim.R. 11 and appellant's plea was knowingly, voluntarily, and intelligently entered. However, because the trial court imposed a sentence contrary to law, the case is remanded for resentencing.

{¶ 25} Judgment affirmed in part, vacated in part, and remanded.

It is ordered that appellant and appellee share 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. Case remanded to trial court for resentencing.

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

____
EMANUELLA D. GROVES, JUDGE

LISA B. FORBES, P.J., and
ANITA LASTER MAYS, J., CONCUR