IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-160468 TRIAL NO. B-0606366
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
DANIEL R. TAYLOR,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Daniel R. Taylor was indicted in Hamilton County for several drug offenses in 2006. Taylor entered into a jointly recommended plea agreement. Taylor pleaded guilty to three counts: count one, trafficking in cocaine under R.C. 2925.03(A)(2); count two, possession of cocaine under R.C. 2925.11(A); and count five, failure to comply with an order or signal of a police officer under R.C. 2921.331(B)—all third degree felonies that carried a potential prison term of between one and five years imprisonment. The plea agreement specified that Taylor would be sentenced to concurrent terms of one year on counts one and two, and one year on count five, to be served consecutively with the terms on counts one and two, for a total of two years' imprisonment. The plea agreement also specified, however, that he would be sentenced to a total of 10 years in prison if he failed to appear for sentencing. On November 3, 2006, the trial court accepted Taylor's plea and found him guilty, and set the matter for sentencing on November 29.

Taylor missed his sentencing hearing because he had been arrested on drug trafficking charges in Indiana. Taylor was released from prison in Indiana after serving approximately 10 years. Thereafter, he returned to Hamilton County to be sentenced on the charges to which he pleaded guilty in 2006.

Notably, since Taylor's plea and findings of guilt, the statutes for the drug offenses and the failure to comply offense had changed by the time he was sentenced in 2016. The trial court could no longer sentence Taylor to the agreed ten years' imprisonment. *See* R.C. 2925.03(C)(4)(c), 2921.331(C)(5), and 2929.14. At his 2016 sentencing hearing, the trial court merged count two with count one, and ordered Taylor to serve the maximum prison term of 18 months for count one and the maximum prison term of 36 months for count five. The prison term for count five was to be served consecutively to the term for count one. Although the trial court sentenced Taylor to serve the maximum prison sentence that it could impose, which was 54 months, Taylor received less than half of the total prison sentence that he had agreed to serve in 2006 in the event he failed to appear for sentencing.

In a single assignment of error, Taylor asserts that the trial court erred to his prejudice by accepting his guilty plea when the court failed to determine that he understood the maximum penalties involved. Essentially, Taylor asserts that his plea was not made knowingly and voluntarily because the trial court failed to inform him that any prison sentence imposed for failure to comply with an order or signal of a police officer would have to be served consecutively to the prison term imposed for the drug conviction.

Taylor pleaded guilty to failure to comply with order or signal of a police officer in violation of R.C. 2921.331(B). Because the offense was elevated to a third degree felony under R.C. 2921.331(C)(5) for causing a substantial risk of serious physical harm to persons or property, Taylor was statutorily required to serve his

sentence for the offense consecutively to the sentence imposed for the drug offense. R.C. 2921.331(D). Here, the trial court did not notify Taylor that a sentence for failure to comply would have to be served consecutively to his drug offense sentence. He complains that this failure renders his plea involuntary. Taylor asks us to overturn our decision in *State v. Clark*, 1st Dist. Hamilton No. C-010532, 2002-Ohio-3135, in which we held that the failure to notify a defendant that any prison sentence for failure to comply involving R.C. 2921.331(B) must be served consecutively was not error. *See also State v. Lough*, 11th Dist. Trumbull No. 2015-T-0093, 2016-Ohio-3513, ¶ 24-26 (holding that consecutive sentence findings are not required where R.C. 2921.331(D) is implicated). We decline to do so.

Crim.R.11(C)(2)(a) requires the court to notify the defendant of the maximum penalty for each charge and how a guilty plea would impact his eligibility for community-control sanctions. That was done here. Taylor entered into an agreed plea in 2006 and was notified of the maximum penalties for the three counts. Thus, the court's failure to inform him of the consecutive sentence requirement does not render his plea involuntary. *See Clark* at ¶ 8.

Taylor's first assignment of error is overruled, and we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., MOCK and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on December 2, 2016
per order of the court _____.

Presiding Judge