[Cite as *State v. Hogue*, 2020-Ohio-3642.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

SYDNEY J. HOGUE,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 19 MO 0020

Criminal Appeal from the
County Court of Monroe County, Ohio
Case No.
CRB1900093A,B,C,D
BEFORE:
Carol Ann Robb, Gene Donofrio, Cheryl Waite, Judges.

JUDGMENT:
Reversed and Remanded.

Atty. James L.Peters. Prosecutor, Atty. Helen Yonak, Assistant Prosecutor, 101 North Main Street, Room 15, Woodsfield, Ohio 43793. No brief filed for Plaintiff-Appellee and

Atty .Robert T. McDowall, Robert T. McDowall Co., LLC, 415 Wyndclift Place, Youngstown, Ohio 44515 for Defendant-Appellant.

Dated: June 29, 2020

Robb, J.

{¶1} Defendant-Appellant Sydney J. Hogue appeals from her conviction entered in the County Court of Monroe County. Appellant asserts the record fails to indicate she entered her plea knowingly, intelligently and voluntarily. She also argues she was not appointed counsel for sentencing and the record fails to indicate she waived the right to counsel. Accordingly, she asks the court to vacate her convictions and remand the case for further proceedings. For the reasons stated below, her arguments have merit and the matter is remanded to the trial court for further proceedings consistent with this opinion.

Statement of the Case

{¶2} On March 19, 2019 a criminal complaint was filed against Appellant; she was charged with violating R.C. 2919.25(A), first-degree misdemeanor domestic violence, R.C. 2925.11 and R.C. 2923.02, first-degree misdemeanor attempted aggravated possession of drugs; R.C. 2925.11, minor misdemeanor possession of marijuana; and R.C. 2925.141, minor misdemeanor illegal use or possession of marijuana paraphernalia. The victim of the domestic violence charge was Appellant's husband Justin Hogue and their child H.H. On that same day a temporary protection order was issued. 3/19/19 TRO.

{¶3} Events occurring on March 16, 2019 led to the criminal charges. Justin and Appellant were arguing and Appellant was hitting Justin as he was holding their child. Justin recorded the incident. Following the incident, Justin discovered narcotics and paraphernalia in their home that belonged to Appellant.

{¶4} At her arraignment, Appellant entered a not guilty plea, the trial court released her on her own recognizance, and issued a no contact order. 3/20/19 J.E. The matter was then set for pretrial.

{¶5} Counsel was appointed for Appellant and entered an appearance on March 21, 2019. A few days later, a plea offer was made. The state indicated it would amend the domestic violence charge to a fourth-degree misdemeanor and dismiss the possession of marijuana and possession of marijuana paraphernalia charges in exchange for a no contest plea for the fourth-degree misdemeanor domestic violence charge and

attempted aggravated possession charge. For the domestic violence charge, it would recommend a 30-day jail sentence and suspend the remainder. As to the fine, it would recommend a $200 fine. It would recommend 40 hours of community service, a Domestic Abuse Intervention Program with Tri-County Help Center, a drug and alcohol assessment, and no contact with the victim Justin Hogue. 3/25/19 Plea Offer.

{¶6} A plea hearing was held on April 3, 2019. Appellant was represented by counsel at this hearing and entered a no contest plea to all charges as charged in the complaint as part of a diversion program. 4/4/19 Second Nunc Pro Tunc J.E. The trial court specifically indicated it was withholding a finding of guilt. 4/4/19 Second Nunc Pro Tunc J.E.; Tr. 20. At the plea hearing, it was explained that after the assessment for the diversion program and after being in compliance with any recommendations made, a plea to fourth-degree misdemeanor domestic violence and the attempted aggravated drug possession would be entered and the remaining two counts would be dismissed. Tr. 15. Then once she completed the diversion program the attempted aggravated drug possession charge would be dismissed and the only remaining charge would be the fourth-degree domestic violence charge. Tr. 15-16. The trial court ordered Appellant to complete the diversion program with Tri-County Help Center and Crossroads Counseling Center. 4/4/19 Second Nunc Pro Tunc J.E. The court also permitted, with consent of Justin Hogue, supervised visitation with the minor child; the visitation would be supervised by the paternal grandmother. 4/4/19 Second Nunc Pro Tunc J.E. The court then set the matter for a review hearing in May 2019. 4/4/19 Second[1] Nunc Pro Tunc J.E.

{¶7} A review hearing was held in mid May. Appellant's counsel was in attendance, but Appellant failed to appear; counsel requested a continuance, which was granted. 5/15/19 J.E. Days prior to the reset hearing, the court received a fax from Tri-County Counseling indicating that Appellant had an assessment scheduled for May 29, 2019. The review hearing was rescheduled to June 12, 2019. 5/29/19 J.E.

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[1] The original judgment entry indicated Appellant had to complete an assessment with Crossroads and that the supervised visitation with the minor child would be with the maternal grandmother. The first nunc pro tunc entry added the assessment with Tri-County to reflect what was stated at the hearing. The second nunc pro tunc entry added that the visitation with the minor child was to be supervised by the paternal grandmother. This change was also made to reflect what was stated at the hearing.

{¶8} At that June 12, 2019 hearing, Appellant was not present, but was represented by new counsel. 6/12/19 J.E. The trial court ordered a warrant to be issued for Appellant's arrest. The following day, the court received a fax from Tri-County Counseling indicating that Appellant was seen on June 12 at 11:00 a.m. and had a session scheduled for June 19. On June 13, 2019, Appellant's counsel filed a motion to withdraw indicating there was a break-down of communication. 6/13/19 Motion to Withdraw. The motion was granted. 6/13/19 J.E.

{¶9} On July 17, 2019, the trial court received a fax from Tri-County Counseling indicating that Appellant had not contacted the agency. She was seen on June 12, but failed to show up for the following appointment scheduled for June 19, and that she had three prior "no shows." Tri-County Counseling indicated she was suspended from its counseling services.

{¶10} On August 7, 2019 Appellant was apprehended in an adjacent county. Appellant notified the court she had completed rehabilitation in Columbus, Ohio. 8/7/19 J.E. The trial court set the case for sentencing. 8/7/19 J.E. The trial court indicated Appellant would be drug tested and if she passed the test she would be released on a $10,000 bond; however, if she failed the test she would be held without bond. 8/7/19 J.E.

{¶11} The sentencing hearing was held on August 14, 2019. Appellant appeared without counsel. At first, the trial court indicated it would appoint counsel and set the matter for pretrial. Tr. 25. However, the prosecutor advised the court that Appellant had already pled guilty on April 3, 2019, and the matter should proceed to sentencing. Tr. 25-26. The trial court then proceeded to sentencing without appointing counsel. Tr. 26.

{¶12} The state then explained the prior plea; Appellant was going to do a diversion program and some of the charges would be dismissed and the other amended. Tr. 26-27. The state indicated Appellant did not complete any of the terms of the diversion program, however, the state was still willing to dismiss the minor misdemeanor charges of possession of marijuana and possession of marijuana paraphernalia. Tr. 27. The state then recommended 180 days in jail on the domestic violence conviction, with 60 days jail time and the remainder suspended. Tr. 27. For attempted aggravated possession of drugs, the state recommended 180 days in jail with 120 days of jail time and the remainder suspended. Tr. 27. It asked that after she serve 60 days, she be evaluated by

Crossroads Counseling, and to be permitted to enter a residential program if it was deemed appropriate by the assessing program. Tr. 27-28. The state recommended a $250 fine, 40 hours of community service, 2 years of supervised probation and a six-month driver's license suspension. Tr. 28.

{¶13} Appellant was asked and indicated she did not have anything to say prior to a sentence being entered. Tr. 29. The trial court followed the state's recommendation and sentenced Appellant to 180 days on the domestic violence conviction, suspended 120 days, ordered Appellant to serve the 60 days prior to beginning any appropriate residential treatment, 40 hours of community service, 2 years supervised probation, a $100 fine, and court costs. 8/15/19 Second Nunc Pro Tunc J.E. For the conviction for attempted aggravated drug possession, she was sentenced to 180 days with 60 suspended, ordered to be evaluated for residential treatment and if one was appropriate to receive credit towards jail time, $100 fine, and a 6-month driver's license suspension. 8/15/19 Second Nunc Pro Tunc J.E. The judgment entry indicated if the residential treatment was completed any unserved jail time would be suspended. 8/15/19 Second Nunc Pro Tunc J.E. The judgment entry stated Appellant was advised of the right to a jury trial, the requirement of the state to prove each element of the offenses beyond a reasonable doubt, the right to cross-examine and compel witnesses to testify, that she could not be compelled to testify, and that by entering a no contest or guilty plea she was waiving these rights. 8/15/19 Second Nunc Pro Tunc J.E. The court also indicated it advised Appellant of the maximum penalty and indicated the plea was entered into knowingly, intelligently, and voluntarily. 8/15/19 Second[2] Nunc Pro Tunc J.E.

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[2]The two August 14, 2019 and one August 15, 2019 orders are very similar. The first nunc pro tunc order added the court cost to the sentence for domestic violence. It also moved the order about being evaluated by Awakenings for residential treatment and residential treatment counting toward jail time to the sentence for attempted aggravated drug possession. In the first entry that order was a part of the sentence for the domestic violence conviction. The second nunc pro tunc judgment entry moved the order that the Appellant would be evaluated for residential treatment after serving 60 days in jail to the sentence for domestic violence, but kept the remainder about credit for time served in a residential program to the sentence for aggravated drug possession. In addition to that change, the second nunc pro tunc judgment entry changed the sentence for domestic violence to 180 days with 120 days suspended. It has previously incorrectly stated 180 days with 60 days suspended. Similarly, it changed the sentence for attempted aggravated drug possession to 180 days with 60 days suspended. It had previously stated 180 days with 120 suspended. The six-month driver's license suspension was also moved from the domestic violence conviction to the attempted aggravated drug possession conviction. The changes were made to reflect the sentence imposed at the hearing.

{¶14} Appellant timely appealed her convictions. The assignments of error will be addressed out of order; the second assignment of error addressing the plea will be addressed first and the first assignment of error addressing sentencing with be addressed second.

Second Assignment of Error

"Appellant's plea and her waiver of her rights was not procured in a knowing, intelligently and voluntary manner and is therefore invalid."

{¶15} Appellant begins this assignment by arguing neither a no contest or guilty plea were ever properly entered. She asserts she did not enter a no contest plea at the April 3, 2019 hearing and she did not enter a guilty plea at the August 14, 2019 hearing.

{¶16} Appellant is correct that a guilty plea was not entered at the August 14, 2019 hearing. Admittedly, the judgment entries from the August 14, 2019 hearing state Appellant entered a guilty plea on that day. The first paragraph of the judgment reads, "This matter came before the Court 08/14/2019. The Defendant appeared without counsel. The court, having been advised that the Defendant would enter a plea of no contest or guilty, advised the Defendant of the following prior to accepting the tendered plea." 8/14/19 J.E.; 8/14/19 Nunc Pro Tunc; 8/15/19 Second Nunc Pro Tunc. The judgment entries also state the trial court advised Appellant of the right to a jury trial, the requirement of the state to prove each element of the offenses beyond a reasonable doubt, the right to cross-examine and compel witnesses to testify, that she could not be compelled to testify, and that by entering a no contest or guilty plea she was waiving these rights. 8/14/19 J.E.; 8/14/19 Nunc Pro Tunc J.E.; 8/15/19 Second Nunc Pro Tunc J.E. It indicated Appellant was advised of the maximum penalty and a guilty plea is a complete admission of guilt. 8/15/19 Second Nunc Pro Tunc J.E. The original judgment entry was signed by Appellant and under her signature it stated, "Defendant hereby entered the plea noted above after having been advised of all information shown on the face of this form." 8/14/19 J.E.

{¶17} However, the record does not indicate that those advisements occurred at the hearing or that Appellant entered a guilty plea at that hearing. The record includes the transcript from the August 14, 2019 hearing. The following colloquy occurred between the state and the court at that hearing:

The Court: You need to put all of your personal information, your contact information, your financial information on there.

I am going to go ahead and appoint counsel today to represent you. And we're going to set your case for a pretrial next Wednesday.

[The State]: Your Honor, she's already pled guilty and it should be set for sentencing.

The Court: Oh, she pled guilty, I'm sorry.

[The State]: She pled a long time ago. April 19th.

The Court: Oh, okay. Thank you for reminding me.

I guess when I see a whole bunch of discovery in here, I'm thinking this has to still be a pending case.

Okay.

[The State]: April 3rd, I'm sorry.

The Court: April 3rd, all right. I see the entry.

Okay. Well based on that, again, thanks for keeping things on track here, Helen, does the state have a recommendation as to sentencing?

Tr. 25-26.

{¶18} Furthermore, the transcript is devoid of any evidence that plea advisements were given at that hearing. Following the above discussion, the trial court asked for a sentencing recommendation and proceeded directly to sentencing. At that hearing,

Appellant did not state at any point she was entering a guilty plea. Rather, the colloquy appears to indicate that the state believed Appellant entered a guilty plea on April 3, 2019. Accordingly, given the record, Appellant is correct that a guilty plea was not entered on August 14, 2019.

{¶19} As for the no contest plea, similar to the argument made regarding a guilty plea, Appellant asserts a no contest plea was never entered. Appellant is incorrect in that statement. The record clearly indicates a no contest plea was entered on April 3, 2019.

{¶20} The following colloquy occurred at the April 3, 2019 plea hearing:

> The Court: Does that meet with your understanding, [Defense Counsel], at least to the most substantive terms of the agreement?
>
> [Defense Counsel]: Yes, Your Honor.
>
> The Court: Okay. So it will be a no contest plea to all counts today, with the understanding that Ms. Hogue, after you complete the assessment, and you're in compliance with any recommendations they make, they, being Crossroads, or some other similar entity that does that type of counseling –
>
> The Defendant: Okay.
>
> The Court: - we can come back here, and eventually it will just be a plea to counts A and B that will be amended to a fourth degree misdemeanor, Domestic Violence. The other two counts will be dismissed outright.
>
> [Proseuctor]: And so will the drugs.
>
> The Court: Pardon?
>
> [Prosecutor]: And so will the drugs. It will be dismissed outright, if she completes.

The Court: Oh, everything.

[Prosecutor]: Except for the Domestic Violence.

The Court: Except for the M-4 Domestic Violence.

[Prosecutor]: Right.

[Defense Counsel]: So diversion to an M-4, and then diversion to a dismissal.

The Court: Gotcha.

* * *

The Court: Okay. And Ms. Hogue, I know you have probably spoke with your attorney, but today – and I want to make sure you fully understand – today you're entering a plea of no contest on all of these charges?

The Defendant: Yes.

Tr. 14-16, 19.

{¶21} Likewise, the judgment entry following the hearing indicated a no contest plea was entered on April 3, 2019. 4/4/19 Second Nunc Pro Tunc Entry.

{¶22} Consequently, the record is clear that a no contest plea was entered on April 3, 2019. However, that plea was not entered in compliance with Crim.R. 11.

{¶23} Crim.R. 11(E) is applicable to pleas involving misdemeanors. That rule provides, the court shall not accept a guilty or no contest plea "without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty." Crim.R. 11(E). The Ohio Supreme Court has indicated that the "[e]ffect of a plea for purposes of Crim.R.

11" for a no contest plea as "not an admission of guilt but is an admission of the truth of the facts alleged in the complaint, and that the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding." *State v. Jones,* 116 Ohio St.3d 211, 2007–Ohio–6093, 877 N.E.2d 677, ¶ 23, citing Crim.R. 11(B)(2). Under the plain language of the rule, the trial court was required "to do one thing before accepting a plea of guilty or no contest in a petty offense case, 'inform[ ] the defendant of the effect of the plea[.]'" *State v. Ybarra*, 6th Dist. Wood No. WD-19-006, 2019-Ohio-4824, ¶ 29, quoting *Jones*, 2007-Ohio-6093 at paragraph one of the syllabus.

{¶24} In accepting the no contest plea, the trial court failed to comply with Crim.R. 11(E). The trial court did not in any manner inform Appellant of the effect of the no contest plea, either orally or in writing, prior the entrance of the plea at the April 3, 2019 hearing. The First Appellate District has stated that when a trial court accepts a guilty plea without first informing the defendant of the effect of the plea as required by Crim.R. 11(E) and there is no compliance with the rule, the error will be considered prejudicial even if the defendant is represented by counsel. *State v. Hays,* 2 Ohio App.3d 376, 442 N.E.2d 127 (1st Dist.1982). *See also*, *State v. Oklata*, 156 Ohio App.3d 123, 2004-Ohio-569, 804 N.E.2d 1024, ¶ 23 (7th Dist.) (Traf.R. 10(D) case).

{¶25} Therefore, this assignment of error has merit. A no contest plea was entered, however, that plea was not entered in compliance with Crim.R. 11(E). Thus, there is a basis to vacate the no contest plea.

First Assignment of Error

"Appellant was denied due process of law when she was sentenced to a term of imprisonment where the record fails to show she knowingly, intelligently, and voluntarily waived her right to counsel."

{¶26} Appellant argues the trial court erred when it proceeded to sentencing when she was not represented by counsel and had not waived or executed a waiver of counsel. She argues sentencing in misdemeanor cases is a critical stage to which the right to counsel attaches.

{¶27} The Tenth Appellate District has explained:

> The Sixth Amendment of the United States Constitution and Article I, Section 10 of the Ohio Constitution guarantee criminal defendants the right to counsel. *State v. Clary,* 73 Ohio App.3d 42, 46 (10th Dist.1991). The right to counsel attaches at all "critical stages" of the criminal process. *Dobbins v. Ohio Bur. of Motor Vehicles,* 75 Ohio St.3d 533, 537 (1996). A plea hearing is a critical stage of the criminal process at which the right to counsel applies. *Iowa v. Tovar,* 541 U.S. 77, 81 (2004) ("The entry of a guilty plea, whether to a misdemeanor or a felony charge, ranks as a 'critical stage' at which the right to counsel adheres."); *State v. Perkins,* 2d Dist. No. 22956, 2010–Ohio–2640, ¶ 34. The United States Supreme Court has also held that "sentencing is a critical stage of the criminal proceeding at which [a defendant] is entitled to the effective assistance of counsel." *Gardner v. Florida,* 430 U.S. 349, 358 (1977). *See also State v. Schleiger,* 12th Dist. No. CA2011–11–012, 2013–Ohio–1110, ¶ 11; *State v. Roberson,* 141 Ohio App.3d 626, 629 (6th Dist.2001).
>
> "A defendant may proceed without counsel if the defendant has made a knowing, voluntary, and intelligent waiver of the right to counsel." *State v. Crosky,* 10th Dist. No. 06AP–655, 2008–Ohio–145, citing *State v. Martin,* 103 Ohio St.3d 385, 2004–Ohio–5471, ¶ 24. "Courts indulge in every reasonable presumption against a waiver of a constitutional right, including the right to have the assistance of counsel in a criminal proceeding ." *State v. Haines,* 10th Dist. No. 05AP–55, 2005–Ohio–5707, ¶ 24. *See also State v. Glass,* 10th Dist. No. 10AP–558, 2011–Ohio–6287, ¶ 59 (Klatt, J., dissenting). We undertake a de novo review to determine whether a defendant has made a knowing, voluntary, and intelligent wavier of the right to counsel. *State v. Griffin,* 10th Dist. No. 10AP–902, 2011–Ohio–4250, ¶ 26; *State v. Mootispaw,* 4th Dist. No. 09CA33, 2010–Ohio4772, ¶ 21.

Columbus v. Abrahamson, 10th Dist. Franklin No. 13AP-1077, 2014-Ohio-3930, ¶ 5-6.

{¶28} Furthermore, the Ohio Rules of Criminal Procedure indicate that counsel or a valid waiver is required if confinement is imposed for misdemeanors[3]:

> **(B) Counsel in Petty Offenses.** Where a defendant charged with a petty offense is unable to obtain counsel, the court may assign counsel to represent him. When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon him, unless after being fully advised by the court, he knowingly, intelligently, and voluntarily waives assignment of counsel.
>
> **(C) Waiver of Counsel.** Waiver of counsel shall be in open court and the advice and waiver shall be recorded as provided in Rule 22. In addition, in serious offense cases the waiver shall be in writing.

Crim.R. 44.

{¶29} In this instance, the record is devoid of any indication that Appellant orally or in writing waived the right to counsel at sentencing; there was no statement at the August 14, 2019 sentencing hearing that Appellant was waiving her right to counsel and there was no executed written waiver of counsel.

{¶30} That said, it is not clear that there is a violation of the right to counsel in this instance. The above cited law clearly indicates there is a right to counsel during the sentencing of a felony. That law does not address misdemeanors. However, we do not need to decide if Appellant's right to counsel was violated because there are other issues with sentencing in this instance.

{¶31} As stated above, there was noncompliance with Crim.R. 11(E) during the plea phase. In addition to that error, there was no explanation of circumstances and finding of guilt prior to the trial court sentencing Appellant.

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[3]Pursuant to Crim.R. 2, the offenses Appellant was charged with are petty offenses. A "petty offense," is "a misdemeanor other than a serious offense," punishable by incarceration of up to 180 days. Crim.R. 2(D). Under the current sentencing scheme, the first-degree misdemeanors Appellant was charged with are punishable by a sentence of more than 180 days.

{¶32} In the April 3, 2019 judgment entries and the April 4, 2019 judgment entry journalizing the no contest plea, the trial court specifically indicated it was withholding its finding of guilt. The trial court also made this statement during the April 3, 2019 plea hearing. Tr. 20. Furthermore, prior to sentencing on August 14, 2019, there was no explanation of circumstances or finding of guilt.

{¶33} R.C. 2937.07 states, "A plea to a misdemeanor offense of 'no contest' or words of similar import shall constitute an admission of the truth of the facts alleged in the complaint and that the judge or magistrate may make a finding of guilty or not guilty from the explanation of the circumstances of the offense." An explanation of circumstances of the offense from the affiant or complainant or their representative is a requirement for guilty and no contest pleas to misdemeanors, other than minor misdemeanors. R.C. 2937.07. Following the explanation of circumstances and a pronouncement of guilt, the trial court then proceeds to sentencing. R.C. 2937.07. An explanation of circumstances is required to support a no contest plea in order to ensure that the trial court does not make a guilty finding in a perfunctory fashion. *State v. Cochrane*, 2017-Ohio-6948, 94 N.E.3d 965, ¶ 16 (11th Dist.). Without an explanation of the circumstances, the trial court could not find Appellant guilty and could not proceed to sentencing.

{¶34} Therefore, this assignment of error additionally has merit. Without an explanation of circumstances or finding of guilt, the trial court was without authority to sentence Appellant.

Moot

{¶35} In Ohio, an appeal from a misdemeanor conviction is moot if the sentence is voluntarily served and there is no collateral disability or loss of civil rights arising from the conviction. *State v. Hobbs*, 6th Dist. Lucas No. L-18-1165, 2019-Ohio-5145, ¶ 8, citing *State v. Golston*, 71 Ohio St.3d 224, 226, 643 N.E.2d 109 (1994). There was no stay requested in this case. Given the record before this court, it is unclear whether Appellant has served her entire sentence; the docket from Monroe County appears to indicate she had already served some of her jail time and was release to a residential program. However, given the charges there is a collateral disability from the convictions. These convictions could later be used as enhancements for future offenses. For instance,

prior domestic violence convictions can enhance what would have been a misdemeanor domestic violence charge to a felony domestic violence charge. R.C. 2919.25.

Conclusion

{¶36} Both assignments of error have merit. The no contest plea was not entered in compliance with Crim.R. 11(E) and the trial court was without authority to sentence Appellant without first hearing an explanation of circumstances and making a finding of guilt. That said, given the record before this court, it is unclear whether Appellant has served her entire sentence; the docket from Monroe County indicates she had already served some of her jail time and was released to a residential program. The trial court's sentencing judgment entry indicated that Appellant would receive credit towards her jail time for time spent at a residential program. 8/16/19 Second Nunc Pro Tunc J.E. The trial court also stated if Appellant completed the program, the remainder of the sentence would be suspended. 8/16/19 Second Nunc Pro Tunc Entry. Therefore, given the errors, the convictions are reversed and the matter is remanded to the trial court with the following instructions. If Appellant has completed her entire sentence and there is no suspended jail time, the trial court is ordered to vacate the convictions. If Appellant has not completed the sentence or if part of the jail time is suspended due to completion of the residential treatment, the trial court is ordered to vacate the sentence and no contest plea. In that instance, the case would proceed with the plea stage of the proceedings.

Donofrio, J., concurs.

Waite, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are sustained and it is the final judgment and order of this Court that the judgment of the County Court of Monroe County, Ohio, is reversed. We hereby remand this matter to the trial court with the following instructions. If Appellant has completed her entire sentence and there is no suspended jail time, the trial court is ordered to vacate the convictions. If Appellant has not completed the sentence or if part of the jail time is suspended due to completion of the residential treatment, the trial court is ordered to vacate the sentence and no contest plea. In that instance, the case would proceed with the plea stage of the proceedings according to law and consistent with this Court's Opinion. Costs waived.

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.