[Cite as *State v. Penkala*, 2015-Ohio-914.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio	Court of Appeals No. OT-14-028
Appellee	Trial Court Nos. CRB 1400183 A CRB 1400183 B
v.	
Jerome R. Penkala, Jr.	**DECISION AND JUDGMENT**
Appellant	Decided: March 13, 2015

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Joseph H. Gerber, Assistant Prosecuting Attorney, for appellee.

Karin L. Coble, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Jerome Penkala, Jr., appeals from his misdemeanor convictions in the Ottawa County Municipal Court. Because we find that appellant did not enter his no contest pleas knowingly, voluntarily and intelligently, we reverse.

{¶ 2} On May 9, 2014, appellant entered no contest pleas to one count of attempted possession of heroin, a violation of R.C. 2923.02 and 2925.03(A)(2), and one count of unauthorized use of a motor vehicle, a violation of R.C. 2913.03(A). He was found guilty and sentenced to an aggregate sentence of 180 days. Appellant now appeals setting forth the following assignments of error:

I. Appellant's guilty plea was involuntary and unknowing when the trial court failed to inform appellant of the effect of his plea in violation of Crim.R. 11(E).

II. The trial court violated Crim.R. 32(A) by failing to afford appellant the right of allocution.

III. The trial court abused its discretion in sentencing appellant to the maximum term for the offenses.

IV. The trial court abused its discretion when it imposed fines. Alternatively, trial counsel was ineffective for failing to request a hearing on the issue of fines.

{¶ 3} In his first assignment of error, appellant contends the court erred in failing to inform appellant of the effect of his pleas in compliance with Crim.R. 11(E). As a consequence, he did not enter his pleas knowingly, voluntarily, and intelligently. We agree.

{¶ 4} A plea must be made knowingly, voluntarily and intelligently. *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, 881 N.E.2d 1224, ¶ 7. Crim.R. 11(E) states:

"[I]n 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." "To satisfy the requirement of informing a defendant of the effect of a plea, a trial court must inform the defendant of the appropriate language under Crim.R. 11(B)." *State v. Jones*, 116 Ohio St.3d 211, 2007-Ohio-6093, 877 N.E.2d 677, paragraph two of the syllabus. Crim.R. 11(B) states in pertinent part:

> [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.
>
> 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 219. (Emphasis added.)

{¶ 5} Here, it is undisputed that the trial court did not inform appellant of the effect of the plea. On the record, counsel for appellant stated that he had explained to appellant "the degree of the misdemeanor, the possible penalties, the elements of the offenses." He further stated: "[I] would probably waive any further explanation at this

point, Your Honor." With that, the trial judge accepted appellant's no contest pleas and found him guilty.

{¶ 6} As quoted above, Crim.R. 11(E) reads that a court "shall not accept" no contest pleas without first explaining the effect of the pleas. The term "shall" in a statute or rule connotes a mandatory obligation unless other language evidences a clear and unequivocal intent to the contrary. *State ex rel. Cincinnati Enquirer v. Lyons*, 140 Ohio St.3d 7, 2014-Ohio-2354, ¶ 28. As such, we find that Crim.R. 11(E) places an affirmative duty on the trial judge which cannot be waived by defense counsel. The trial court's failure in this case to follow Crim.R. 11(E) forces us to conclude that appellant did not enter his pleas knowingly, voluntarily, and intelligently.

{¶ 7} Moreover, when a trial court completely fails to comply with the effect-of-plea requirement, prejudice does not need to be demonstrated. *State v. Jones*, 2d Dist. Montgomery No. 25688, 2014-Ohio-5574, ¶ 11. Accordingly, appellant's first assignment of error is well-taken.

{¶ 8} In view of our ruling on appellant's first assignment of error, appellant's remaining assignments of error are moot.

{¶ 9} On consideration whereof, this matter is reversed and remanded for further proceedings consistent with this decision and judgment, including the consideration of appellant's request for continued bond. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE