

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 12AP-102
 : (M.C. No. 2011 CRB 018053)
 Jordan Crosby, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on September 11, 2012

Richard C. Pfeiffer, Jr., City Attorney, Lara N. Baker, City Prosecutor, and Melanie R. Tobias, for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Municipal Court

KLATT, J.

{¶ 1} Defendant-appellant, Jordan Crosby, appeals from a judgment of conviction and sentence entered by the Franklin County Municipal Court. We affirm that judgment.

I. Factual and Procedural Background

{¶ 2} In August 2011, a Columbus Police Officer filed two complaints in the Franklin County Municipal Court which alleged that appellant violated the terms of a protective order issued against him in violation of R.C. 2919.27 and possessed a fictitious driver's license in violation of Columbus City Code 2141.06. The complaints arose when police found appellant at a bar with a fake driver's license. Appellant's former girlfriend, E.S., who had previously obtained a protective order against appellant, was also present at the bar.

{¶ 3} Appellant entered a not guilty plea to the charges. However, appellant subsequently withdrew that plea and entered a guilty plea to possessing a fictitious driver's license, a first-degree misdemeanor. The trial court accepted appellant's guilty plea and found him guilty, dismissed the charge of violating a protective order, and sentenced him to two years of community control. The trial court ordered appellant to comply with the terms of the pre-existing protective order against him as a condition of his community control.

{¶ 4} Appellant appeals his conviction and sentence and assigns the following errors:

- I. The trial court erred to the prejudice of appellant by failing to properly advise him of the effects and consequences of his guilty plea, as required by Ohio Rule of Criminal Procedure 11(E).
- II. The trial court erred to the prejudice of appellant by sentencing him to conditions of community control that were not directed to the offense of conviction and not supported by the record.

II. Appellant's First Assignment of Error - Did the trial court properly accept appellant's guilty plea?

{¶ 5} In this assignment of error, appellant argues that the trial court did not properly accept his guilty plea because it failed to notify him of the consequences of his guilty plea. Although we agree, appellant does not demonstrate that he was prejudiced as a result of the trial court's failure.

{¶ 6} A trial court's obligations in accepting a guilty plea depend upon the level of offense to which the defendant is pleading. *State v. Jones*, 116 Ohio St.3d 211, 2007-Ohio-6093, ¶ 6. Here, appellant entered a guilty plea to a first-degree misdemeanor, an offense subject to a maximum prison sentence of 180 days. R.C. 2929.24(A)(1). Thus, pursuant to Crim.R. 2, appellant entered a guilty plea to a petty offense. Therefore, the trial court had to comply with the requirements of Crim.R 11(E) before accepting appellant's guilty plea. *Id.* at ¶ 14.

{¶ 7} Crim.R. 11(E) provides that "[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 this requirement, the trial court must inform appellant that his guilty plea is a complete admission of guilt. *Jones* at ¶ 25. The State concedes that the trial court did not inform appellant that his guilty plea is a complete admission of guilt. The State argues, however, that appellant has not demonstrated that he suffered any prejudice as a result of the trial court's failure. We agree.

{¶ 8} The trial court's failure to inform appellant that his guilty plea is a complete admission of guilt will not invalidate a guilty plea unless the appellant can demonstrate that he suffered prejudice as a result. *Jones* at ¶ 52; *State v. Hilderbrand*, 4th Dist. No. 08CA864, 2008-Ohio-6526, ¶ 16. The test for prejudice is whether the plea would have otherwise been made. *Jones* at ¶ 52.

{¶ 9} The Supreme Court of Ohio has concluded that "a defendant who has entered a guilty plea without asserting actual innocence is presumed to understand that he has completely admitted his guilt. In such circumstances, a court's failure to inform the defendant of the effect of his guilty plea as required by Crim.R. 11 is presumed not to be prejudicial." *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, ¶ 19. At his plea hearing, appellant did not claim that he was innocent of the possession of a fictitious driver's license charge. Thus, the trial court's failure to inform him of the effect of his guilty plea is presumed not to be prejudicial. Additionally, appellant does not claim that he would not have entered his guilty plea had he been informed that his plea was a complete admission of guilt or otherwise attempt to demonstrate prejudice. *State v. Davis*, 11th Dist. No. 2011-L-023, 2012-Ohio-527, ¶ 19. For these reasons, we conclude that the trial court's failure to inform appellant of the effect of his guilty plea did not prejudice appellant. Accordingly, we overrule appellant's first assignment of error.

III. Appellant's Second Assignment of Error - Conditions of Community Control

{¶ 10} Appellant contends in this assignment of error that the trial court imposed an improper condition of community control. Specifically, he contends the trial court could not order him to strictly comply with the pre-existing protective order that requires him to stay away from E.S.

{¶ 11} R.C. 2929.25(A)(1) authorizes a trial court to impose community control sanctions for a defendant being sentenced for a misdemeanor. That statute also allows the trial court to impose any other conditions of community control "that the court considers appropriate." R.C. 2929.25(A)(1)(a). The trial court has broad discretion to impose "other conditions" on an offender as part of his community control sanctions, and its decision to impose such conditions is normally reviewed for an abuse of discretion. *State v. Preston-Glenn*, 10th Dist. No. 09AP-92, 2009-Ohio-6771, ¶ 40; *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, ¶ 10.

{¶ 12} Although a trial court has broad discretion to impose community control conditions, that discretion is not unlimited. *Preston-Glenn* at ¶ 41, citing *State v. Stewart*, 10th Dist. No. 04AP-761, 2005-Ohio-987, ¶ 7. The conditions imposed must not be so overbroad as to impinge upon the offender's liberty, and must reasonably relate to the goals of community control; namely, rehabilitation, administering justice, and ensuring good behavior. *Id.*, citing *Talty* at ¶ 13. In determining whether a condition advances these goals, courts should consider whether the condition (1) reasonably relates to rehabilitating the offender; (2) has some relationship to the offense; and (3) relates to future criminality and serves the ends of community control. *State v. Jones*, 49 Ohio St.3d 51, 53 (1990).

{¶ 13} As a condition of community control, the trial court ordered appellant to comply with the protective order previously issued to keep him away from E.S. Appellant, stressing the fact that he was only convicted of possessing a fake driver's license and not for violating a protective order, contends that this condition does not satisfy the test established in *Jones*.

{¶ 14} Appellant, however, did not object to the trial court's community control condition. He has, therefore, forfeited all but plain error. *State v. Policaro*, 10th Dist. No. 06AP-913, 2007-Ohio-1469, ¶ 6; *State v. Andrasak*, 194 Ohio App.3d 838, 2011-Ohio-3425, ¶ 7 (9th Dist.). Under Crim.R. 52(B), plain errors affecting substantial rights may be noticed by an appellate court even though they were not brought to the attention of the trial court. Plain error is (1) an error, or a deviation from a legal rule; (2) that is plain or obvious; and (3) that affected substantial rights. *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002) (citations omitted). Even if an error satisfies these prongs, appellate courts are

not required to correct the error, but retain discretion to correct plain errors. *Id.* Courts are to notice plain error under Crim.R. 52(B) " 'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.' " *Id.*, quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus.

{¶ 15} In light of this standard, we cannot say that the trial court's order for appellant to comply with a previously issued protective order is a manifest miscarriage of justice that rises to the level of correctable plain error. It is clear from the sentencing hearing on this matter that appellant and E.S. have had a difficult and turbulent relationship. That relationship caused E.S. to obtain a protective order to keep appellant away from her. It is not a manifest miscarriage of justice for the trial court to order appellant to comply with that protective order and to stay away from E.S. Accordingly, we cannot say that the trial court committed correctable plain error by ordering appellant to comply with the protective order as a condition of his community control. *See State v. Eal*, 10th Dist. No. 11AP-460, 2012-Ohio-1373, ¶ 101-02 (finding no plain error in imposition of condition of community control, even though condition not related to conviction). Appellant's second assignment of error is overruled.

{¶ 16} In conclusion, we overrule appellant's two assignments of error and affirm the judgment of the Franklin County Municipal Court .

Judgment affirmed.

SADLER and CONNOR, JJ., concur.
