

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-230596
	:	TRIAL NO. B-2104144
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
JOHN BOYD,	:	
Defendant-Appellant.	:	

The court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

After the trial court denied defendant-appellant John Boyd's motion to suppress a four-hour-and-nine-minute video recording of his interrogation by police officers, Mr. Boyd pleaded guilty to two counts of rape, in violation of R.C. 2907.02. In exchange, the state dismissed six additional counts of rape and agreed to remove language from the two guilty counts designating that the victims were less than 13 years of age. Both counts were felonies of the first degree and were subject to indefinite sentencing under the Reagan Tokes Law ("RTL"). The trial court sentenced Mr. Boyd to 10 to 15 years in prison on the first count and to 10 years on the second count and imposed the sentences consecutively, rather than concurrently, under R.C. 2929.14(C)(4). He raises three assignments of error on appeal, and

we agree only with his argument that he did not receive the proper RTL sentencing notifications.

First, Mr. Boyd argues he received ineffective assistance of counsel because his attorney failed to advise him that he would waive his right to appeal the denial of his motion to suppress by pleading guilty instead of pleading no contest. Generally, to prevail on an ineffective assistance claim, the appellant must demonstrate that (1) “counsel’s performance was deficient,” and (2) “the deficient performance prejudiced the defense.” *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In the context of a guilty plea, the appellant “ ‘must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty \* \* \*.’ ” *State v. Xie*, 62 Ohio St.3d 521, 524, 584 N.E.2d 715 (1992), quoting *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

To determine whether a defendant received ineffective assistance where his counsel allowed him to plead guilty instead of no contest, this court has required the defendant to prove three elements: “ ‘(1) the State would have agreed to a no-contest plea on the same terms; (2) counsel failed to advise the defendant that a no-contest plea, in contradistinction to a guilty plea, would preserve the pretrial issue for appeal; and (3) had defendant been so advised, the defendant would have rejected the plea offer.’ ” *State v. Collins*, 2022-Ohio-452, 185 N.E.3d 146, ¶ 13 (1st Dist.), quoting *State v. Frazier*, 2016-Ohio-727, 60 N.E.3d 633, ¶ 82 (2d Dist.).

Here, Mr. Boyd does not argue that the state would have agreed to a no-contest plea on the same terms or that he would have pleaded no-contest to all eight counts instead of accepting the plea deal (he asserts generally that he would have pleaded no-contest). Furthermore, he does not identify evidence in the current record that shows his trial counsel failed to advise him about the appealability difference between pleading guilty and pleading

no contest. Upon this court's independent review of the present record, we see no apparent evidence of his counsel's failure to advise him on that issue. Although this does not conclusively prove such evidence does not exist, Mr. Boyd cannot currently meet his burden on direct appeal to prove ineffective assistance under *Strickland* and *Collins*. We thus overrule his first assignment of error.

Second, Mr. Boyd appeals the court's order imposing his sentences consecutively. A trial court may impose consecutive sentences under R.C. 2929.14(C)(4) only if the court finds that (1) "the consecutive service is necessary to protect the public from future crime or to punish the offender," (2) the "consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public," and (3) one or more of the conditions outlined in R.C. 2929.14(C)(4)(a) through (c) apply. R.C. 2929.14(C)(4); see *State v. Ventura*, 1st Dist. Hamilton No. C-240051, 2024-Ohio-2311, ¶ 8-10. When imposing consecutive sentences, a trial court is required to "make the findings at the defendant's sentencing hearing and incorporate its findings in the sentencing entry," but it is "not required to state its reasons for imposing consecutive sentences." *State v. Sergent*, 148 Ohio St.3d 94, 2016-Ohio-2696, 69 N.E.3d 627, ¶ 41, citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37.

Here, the trial court made the required findings on the record at the sentencing hearing and incorporated them into the sentencing entry, reciting and citing the applicable statute. Although it was not required to expound on its reasoning, it highlighted the serious, lifetime harm that Mr. Boyd inflicted on the two victims. Upon our independent review, we do not see clear and convincing evidence that the trial court's conclusions were unsupported by the record. See *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 23 ("[A]n appellate court may vacate or modify any sentence that is not clearly and convincingly contrary to law only if the appellate court finds by clear and convincing evidence

that the record does not support the sentence.”). Therefore, we overrule his second assignment of error.

Third, Mr. Boyd appeals his convictions on the grounds that the trial court failed to provide the proper RTL sentencing notifications under R.C. 2929.19(B)(2)(c) at Mr. Boyd’s sentencing hearing. “When sentencing an offender to a nonlife felony indefinite prison term under the Reagan Tokes Law, a trial court must advise the offender of the five notifications set forth in R.C. 2929.19(B)(2)(c)(i)-(v) at the sentencing hearing to fulfill the requirements of the statute.” *State v. Jackson*, 1st Dist. Hamilton No. C-200332, 2022-Ohio-3449, ¶ 20, citing *State v. Whitehead*, 8th Dist. Cuyahoga No. 109599, 2021-Ohio-847, ¶ 43. We have repeatedly held that providing the notifications at the plea hearing or in a plea entry does not satisfy the statute. *See, e.g., State v. Searight*, 1st Dist. Hamilton No. C-230060, 2023-Ohio-3584, ¶ 8; *State v. Greene*, 1st Dist. Hamilton No. C-220160, 2022-Ohio-4536, ¶ 9.

The state concedes that the trial court failed to provide the RTL sentencing notifications at Mr. Boyd’s sentencing hearing. After reviewing the record, we agree and therefore sustain Mr. Boyd’s third assignment of error. We reverse the judgment of the trial court to the extent that it failed to provide the required RTL notifications and remand this cause for resentencing for the limited purpose of providing Mr. Boyd the requisite sentencing notifications under R.C. 2929.19(B)(2)(c). The trial court’s judgment is affirmed in all other respects.

The court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

**BOCK, P.J., BERGERON and ZAYAS, JJ.**

**To the clerk:**

**Enter upon the Journal of the Court on 6/28/2024 per Order of the Court.**

**By: \_\_\_\_\_**  
**Administrative Judge**