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

STATE OF OHIO,	:	APPEAL NO. C-150690 TRIAL NO. B-1305901
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
DANIEL MCCLURE,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Daniel McClure was indicted for aggravated murder, two counts of murder, felonious assault, and endangering children. The charges stemmed from the death of the two-month-old son of his girlfriend. The child's death was the result of having been violently shaken. After signing a jury waiver, McClure elected to proceed to a bench trial. At the conclusion of the state's case, the trial court denied McClure's Crim.R. 29 motion for a dismissal. McClure then elected to enter a guilty plea to one count of murder and one count of felonious assault. The trial court found him guilty, merged the felonious-assault count with the murder count, and sentenced McClure to an agreed-upon term of 15 years to life. On the entry, the trial court made the additional notation "NO EARLY RELEASE."

In his first assignment of error, McClure claims that the trial court lacked jurisdiction to proceed with a bench trial because the jury waiver he executed was not filed with the clerk's office until a few days later. But McClure pleaded guilty at the conclusion of the state's case. The mandates of R.C. 2945.05, requiring the filing of a written waiver of a trial by jury, are not applicable when an accused enters a plea of guilty. *State v. Kinebrew*, 1st Dist. Hamilton No. C-060769, 2008-Ohio-812, ¶ 3,

citing *Martin v. Maxwell*, 175 Ohio St. 147, 191 N.E.2d 838 (1963). We overrule McClure's first assignment of error.

In his second assignment of error, McClure claims that it was error for the trial court to include the "NO EARLY RELEASE" notation on the sentencing entry. In a similar case from the Eighth Appellate District, the trial court had sentenced the defendant to "15 years to life with eligibility for parole *after 15 full years*." (Emphasis added.) *State v. Agosto*, 8th Dist. Cuyahoga No. 98303, 2012-Ohio-4606, ¶ 4. Addressing the argument that the surplus language rendered the sentence void, the court noted that "[t]he law precludes defendant, who received an indefinite sentence of 15 years to life for the offense of murder, from earning good time credit for purposes of parole eligibility. Because he is not entitled to good time credit as a matter of law, he must therefore serve fifteen full years before he will be eligible for parole." *Id.* at ¶ 10.

We agree with the analysis of the Eighth Appellate District on this point. The language on McClure's entry did not prejudice McClure, because he received a sentence which requires him to serve at least 15 years in prison. He would not be eligible for early release before serving that minimum term, even if the trial court had not included the language. As a result, the language in the entry may have been superfluous, but it was not error to include it. We overrule McClure's second assignment of error.

In his third assignment of error, McClure claims that his guilty plea to murder was not knowing, voluntary, or intelligent. He first argues that his plea was not knowing, voluntary, and intelligent because the trial court should have granted the Crim.R. 29 motion on the aggravated-murder charge. But he cannot complain about the failure of the trial court to dismiss a count that was eventually dismissed as part of the plea agreement. Even if the aggravated-murder charge had been dismissed,

McClure cannot show that he would either not have entered into a plea, or that the plea agreement would have been different.

McClure also argues that the colloquy was defective because he was not informed that he might not actually receive parole at some point after serving the first 15 years of his sentence. But "[b]ecause parole is not certain to occur, trial courts are not required to explain it as part of the maximum possible penalty in a Crim.R. 11 colloquy." *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 37.

We agree with the state that McClure's plea decision was actually much better informed than the pleas of most defendants because he knew exactly what the evidence against him was when he entered his plea. His plea was knowing, voluntary, and intelligent. We overrule his third assignment of error and 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., CUNNINGHAM and **MOCK, JJ.**

To the clerk:

Enter upon the journal of the court on August 24, 2016

per order of the court _____.

Presiding Judge