

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

STATE OF OHIO,	:	APPEAL NOS. C-110383
		C-110384
Plaintiff-Appellee,	:	TRIAL NOS. B-1008610
		B-1008326
vs.	:	<i>JUDGMENT ENTRY.</i>
FERNANDO RABB,	:	
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. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-appellant Fernando Rabb appeals the judgment of the Hamilton County Court of Common Pleas convicting him of tampering with evidence, possession of heroin, and two counts of theft. He was convicted after entering guilty pleas, and he was sentenced to two years' imprisonment.

In his first assignment of error, Rabb argues that his guilty pleas were not voluntary because the trial court had failed to inform him that he would be required to submit a deoxyribonucleic acid (DNA) sample as a result of the convictions.

With respect to rights that do not arise under the federal or state constitutions, the trial court must substantially comply with Crim.R. 11. See *State v. Ballard* (1981), 66 Ohio St.2d 473, 475-476, 423 N.E.2d 115. Substantial compliance means that under the totality of circumstances, the defendant subjectively understands the nature of the plea and its implications. *State v. Fields*, 1st Dist No.

C-090648, 2010-Ohio-4114, ¶9. Where the defendant challenges the voluntariness of a plea, he must demonstrate that, in the absence of the alleged defect in the plea colloquy, he would not have entered the plea. *Id.*

Even were we to assume that a trial court is required to inform a defendant of the DNA-sample requirement, we would find no error in the case at bar. Here, Rabb was adequately apprised of the requirement that he provide a DNA sample. In the entries withdrawing his pleas of not guilty, which Rabb acknowledged on the record that he had read and signed, he was informed of the requirement and of the consequences of refusal. And in any event, Rabb has failed to show that he would not have entered the pleas in the absence of the alleged defect in the plea colloquy. We overrule the first assignment of error.

In his second and final assignment of error, Rabb argues that his aggregate sentence of two years' imprisonment was excessive. Under *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus, a trial court has full discretion to impose a sentence within the applicable statutory range. A reviewing court must first determine whether the sentence was clearly and convincingly contrary to law. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶14-17. If the sentence was not contrary to law, the appellate court then reviews the sentence under an abuse-of-discretion standard. *Id.* at ¶17. Where the trial court does not explicitly put on the record its consideration of applicable sentencing statutes, it is nonetheless presumed that the court properly considered those statutes. *Id.* at fn. 4.

In the case at bar, it is undisputed that the sentence was within the statutory range, and we find no abuse of discretion. Rabb had an extensive criminal record that included a previous term of imprisonment, and he was on community control

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when he committed the offenses in the case at bar. Under these circumstances, the two-year prison term was fully justified, and we overrule the second assignment of error.

The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on December 2, 2011

per order of the court _____.
Presiding Judge