[Cite as *State v. Cordell*, 2010-Ohio-5277.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2009 CA 57
v.	:	T.C. NO. 2008 CR 815
PHILLIP K. CORDELL	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 29th day of October, 2010.

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FROELICH, J.

{¶ 1} The Appellant was originally indicted for murder. On July 13, 2009, the Appellant appeared in court with counsel and pled guilty by way of a bill of information to the single charge of involuntary manslaughter, a felony of the third degree. The court

imposed a definite sentence of five years in prison, finding that the defendant was entitled to 249 days jail credit along with future custody days awaiting transportation to the institution, and also notified the defendant that three years of post release control is mandatory and of the consequences for a violation of the post release control. The court ordered restitution in the amount of $6,000. Appellant's trial counsel filed a timely notice of appeal and separate counsel was appointed on appeal.

{¶ 2} Appellate counsel has filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, stating that he "sees no basis to appeal" and has moved the court for leave to withdraw from any further representation.

{¶ 3} On December 15, 2009, the appellant was advised of the filing of the *Anders* brief and was granted time in which to file a pro se brief assigning any errors for review. On December 30, the appellant, pro se, filed a "Notice of Appeal" requesting that a "trial transcript" be prepared. Another magistrate's order informing the appellant of his right to file a pro se brief was filed on January 6, 2010. On February 10, the appellant filed a "Motion for Extension of Time to File Pro Se Brief, Motion for Order to Release Records Associated with Trial." We ordered that the appointed appellate counsel mail to the appellant a copy of the transcript filed in this appeal. Appellate counsel filed a response with this court certifying that on March 12, he mailed copies of the transcript of the suppression hearing and the plea and sentencing hearing to the appellant at the Chillicothe Correctional Institution.

{¶ 4} The Appellant filed a pro se brief and the State responded. The case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75,

109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 5} In counsel's *Anders* brief, he assigns as his "first potential assignment of error" "whether the trial court was correct to uphold the seizure of the coat and the search warrant." Similarly, the Appellant, pro se, assigns as error the court's overruling of his motion to suppress.

{¶ 6} The appellant filed a Motion to Suppress in which Branch I asked the court to suppress evidence seized from his possession, Branch II asked the court to suppress certain statements, Branch III asked the court to suppress certain DNA evidence, and Branch IV moved to suppress certain evidence that was allegedly obtained beyond the scope of the search warrant. The trial court denied some of the branches of the motion immediately after the hearing and took the others under advisement. We have reviewed the transcript of the Motion to Suppress.

{¶ 7} Subsequent to the hearing, appellant's trial counsel and the State negotiated an agreement in which the appellant would plead guilty by way of a bill of information to the third degree felony, involuntary manslaughter, with a joint recommendation of a maximum five-year sentence. As stated above, on July 13, 2009, the defendant entered a plea of guilty, by way of a bill of information, to that charge. The entry of a guilty plea waives any complaint as to claims of constitutional violations not related to the entry of the guilty plea. *State v. Ketterer*, 111 Ohio St.3d 70, 82, 2006-Ohio-5283, at ¶ 117.

{¶ 8} The second "potential assignment of error" is "whether appellant was denied speedy trial rights." The defendant was first arrested on his indictment for murder on November 14, 2008; as stated, he pled guilty to a bill of information charging involuntary

manslaughter on July 13, 2009. In the interim, there were numerous motions filed by the defendant/appellant (including a change of counsel), all of which operated to toll the speedy trial time pursuant to R.C. 2945.72. Additionally, there is nothing in the record reflecting any possible constitutional speedy trial violation for pre-indictment delay. Furthermore, the plea of guilty effectively waived any such challenge.

{¶ 9} The third "potential assignment of error" is "whether appellant's recorded statements to a police informant while imprisoned on different charges were admissible against him."

{¶ 10} One of the issues raised at the motion to suppress had to do with a statement which the appellant made, while incarcerated, to another individual who investigators allegedly had sent into the prison to record her conversations with the appellant. Such a scenario raises potential questions pursuant to *Illinois v. Perkins* (1990), 496 U.S. 292,110 S.Ct. 2394, 110 L.Ed.2d 243, *Maine v. Moulton* (1985), 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed.2d 481 and *Massiah v. United States* (1964), 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246, among other cases. Regardless, as stated above, the appellant waived any error concerning such alleged constitutional violations by entering a plea of guilty. See also, e.g., *United States v. Keys* (C.A. 6, 2009), 359 Fed Appx. 585, 587.

{¶ 11} The fourth "potential assignment of error" is "whether trial counsel was effective." Counsel's performance will not be deemed ineffective unless and until counsel's performance is proved to have fallen below an objective standard of reasonable representation and, in addition, prejudice arose from counsel's performance. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. To show that a

defendant has been prejudiced by counsel's deficient performance, the defendant must affirmatively demonstrate to a reasonable probability that were it not for counsel's errors, the result of the proceedings would have been different. Id.; *State v. Bradley* (1989), 42 Ohio St.3d 136. Further, the threshold inquiry should be whether a defendant was prejudiced, not whether counsel's performance was deficient. *Strickland*.

{¶ 12} A review of the record does not indicate any manner in which trial counsel was ineffective. Numerous motions were filed and argued, with one degree of success or another. A notice of alibi was filed with the court. Moreover, the defendant, who had a lengthy criminal record, was originally charged with several crimes including murder, an unclassified felony carrying a substantially more lengthy prison sentence, eventually pled to a felony of the third degree. Not only do we find no evidence of ineffective assistance, but, moreover, a defendant who pleads guilty is precluded from claiming ineffective assistance of counsel, except to the extent that the defects complained of caused the plea to be less than knowing, intelligent and voluntary. *State v. Barnett* (1991), 73 Ohio App.3d 244, 249. *State v. Benne*, Clermont App. No. CA 2005-09-090, 2006-Ohio-3628, ¶ 26.

{¶ 13} At the plea hearing, the appellant was asked if he understood "the nature of what that charge is all about" and whether he had "had an opportunity to review the facts of this case that were provided in the discovery by the State that sets forth the factual basis to this particular charge?" The defendant answered affirmatively to these and the other questions in the Rule 11 colloquy. Prior to signing the Rule 11 form, he acknowledged that he understood "that a plea of guilty is a complete admission of guilt and that [the judge] may draw the conclusion that [he] is indeed guilty. . ." We have reviewed the transcript of the

plea and have not found any arguable merit to a claim that the plea was less than knowingly, voluntarily, and intelligently entered.

{¶ 14} The defendant was sentenced to a mandatory three years of post release control. Pursuant to R.C. 2967.28, post release control for a felony of the third degree is discretionary unless the offense "caused or threatened physical harm to a person." A charge of involuntary manslaughter, by definition, involves physical harm to a person and, therefore, requires a mandatory three years post release control. At the plea hearing, the defendant was informed of the three years mandatory post release control and specifically acknowledged it.

{¶ 15} In addition to reviewing the assignment of error raised by Cordell in his pro se brief and the potential assignments of error raised by Cordell's counsel in his *Anders* brief, we have conducted an independent review of the trial court's proceedings and have found no potential assignments of error having arguable merit. Thus, the judgment of the trial court will be affirmed.

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DONOVAN, P.J. and GRADY, J., concur.

Copies mailed to:

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