

{¶ 1} Defendant-appellant, Jeremy J. Arnold, appeals from his conviction and sentence in the Clark County Court of Common Pleas after he pled guilty to multiple counts of failure to comply with the order or signal of a police officer, receiving stolen property, and breaking and entering. Arnold challenges his conviction on grounds that his trial counsel rendered ineffective assistance. He also contends that he was denied his constitutional right to confront the witnesses against him. For the reasons outlined below, the judgment of the trial court will be affirmed.

{¶ 2} Between June and October 2013, Arnold was indicted in five separate cases by the Clark County Grand Jury for multiple counts of failure to comply with the order or signal of a police officer, receiving stolen property, breaking and entering, and burglary. Pursuant to a plea agreement, the State dismissed two of the charges and one of the five cases, being Case No. 2013-CR-653, in exchange for Arnold pleading guilty to the following:

Case No. 2013-CR-396: Failure to comply (F3) – R.C. 2921.331

Case No. 2013-CR-417A: Breaking and entering (F5) - R.C. 2911.13

Case No. 2013-CR-521: Failure to comply (F3) - R.C. 2921.331

Receiving stolen property (F4) - R.C. 2913.51

Case No. 2013-CR-745B: Receiving stolen property (F4) - R.C. 2913.51

{¶ 3} Arnold pled guilty to the offenses listed above on December 9 and 23, 2013, and January 14, 2014, respectively. Following Arnold's pleas, on January 15, 2014, the trial court imposed a 30-month prison term for failure to comply in Case No. 2013-CR-396; a 12-month prison term for breaking and entering in Case No.

2013-CR-417(A); a 36-month prison term for failure to comply and a 12-month prison term for receiving stolen property in Case No. 2013-CR-521; and a 15-month prison term for receiving stolen property in Case No. 2013-CA-745(B). The trial court ordered all of these sentences to be served consecutively. In addition, the trial court ordered Arnold to pay \$6,002.25 in restitution and suspended his driver's license.

{¶ 4} Arnold now appeals from his conviction and sentence, raising two assignments of error for our review.

First Assignment of Error

{¶ 5} Arnold's First Assignment of Error is as follows:

THE DEFENDANT [WAS] DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN THE LATTER FAILED TO PRESENT EVIDENCE OF EXIGENT CIRCUMSTANCES OR OTHER DEFENSES OR ATTEMPT TO VIGOROUSLY DEFEND HER CLIENT THROUGH INTRODUCTION OF MOTIONS TO SUPPRESS OR EXHIBIT PRESENTATION.

{¶ 6} Under his First Assignment of Error, Arnold alleges that his trial counsel was ineffective in failing to: (1) present evidence of exigent circumstances; (2) attack the viability of the evidence offered by the State; (3) move to suppress any evidence; (4) file any motions; (5) offer any exhibits; and (6) cross-examine his girlfriend and adverse witness, Amanda Romine.

{¶ 7} In order to prevail on a claim of ineffective assistance of counsel, a criminal defendant must show both deficient performance and resulting prejudice. *Strickland v.*

Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), paragraph two of the syllabus; *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph two of the syllabus. Trial counsel is entitled to a strong presumption that his or her conduct falls within the wide range of effective assistance. *Id.* To show ineffective assistance a defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness and that the errors were serious enough to create a reasonable probability that, but for the errors, the result of the trial would have been different. *Id.*

{¶ 8} “When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *State v. Spates*, 64 Ohio St.3d 269, 272, 595 N.E.2d 351 (1992). Therefore, “[a] guilty plea waives the right to allege ineffective assistance of counsel, except to the extent that the errors caused the plea to be less than knowing and voluntary.” *State v. Webb*, 2d Dist. Montgomery No. 26198, 2015-Ohio-553, ¶ 15, citing *Spates* at 269. (Other citation omitted.) “Only if there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty but would have insisted on going to trial will the judgment be reversed.” (Citations omitted.) *State v. Huddleson*, 2d Dist. Montgomery No. 20653, 2005-Ohio-4029, ¶ 9.

{¶ 9} In this case, Arnold concedes that by pleading guilty he can only succeed on an ineffective assistance claim if he can demonstrate that his trial counsel's deficient performance rendered his plea less than knowing, intelligent, and voluntary. Nevertheless, Arnold fails to argue that his counsel engaged in any conduct that made his

plea less than knowing, intelligent, and voluntary. The deficiencies alleged by Arnold—that his trial counsel failed to present evidence of exigent circumstances, attack the viability of the evidence offered by the State, file any motions, offer any exhibits, or cross-examine his girlfriend—are completely unrelated to his guilty plea. Furthermore, since none of the charges against Arnold went to trial, his trial counsel never even had the opportunity to present or attack any evidence or witnesses. Accordingly, Arnold's claim that counsel provided deficient performance in failing to do these things is clearly without merit.

{¶ 10} As for Arnold's claim that his counsel was deficient in failing to file a motion to suppress, we note that "a defendant who pleads guilty generally waives the right to make allegations of ineffective assistance of counsel * * * for failure to move for suppression unless he alleges that the error caused the plea to be less than knowing, voluntary, and intelligent." (Citations omitted.) *State v. Jackson*, 7th Dist. Mahoning No. 13 MA 121, 2014-Ohio-2249, ¶ 17; *Huddleson* at ¶ 9. Again, Arnold does not claim that his counsel's failure to file a motion to suppress caused his plea to be less than knowing, intelligent, and voluntary. Accordingly, this failure cannot form the basis of his ineffective assistance claim.

{¶ 11} Arnold also implies that his guilty pleas were not knowing, intelligent, and voluntary because he was confused by the numerous cases, charges, and plea offers involved. It is well-established that "[i]n order for a plea to be given knowingly and voluntarily, the trial court must follow the mandates of Crim.R. 11(C)." *State v. Brown*, 2d Dist. Montgomery Nos. 24520 and 24705, 2012-Ohio-199, ¶ 13. "[B]ecause Crim.R. 11(C)(2)(a) and (b) involve non-constitutional rights, the trial court need only substantially

comply with those requirements.” *State v. Carter*, 2d Dist. Clark No. 2013-CA-115, 2014-Ohio-4856, ¶ 6, citing *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990). In contrast, the trial court must strictly comply with the requirements of Crim.R. 11(C)(2)(c), as they pertain to the waiver of federal constitutional rights. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 31.

{¶ 12} In reviewing the plea colloquies between the trial court and Arnold, there is no indication that Arnold was confused about his various guilty pleas. Moreover, we find that the trial court strictly complied with the constitutional waiver requirements and substantially complied with the non-constitutional waiver requirements set forth in Crim.R. 11 before it accepted Arnold’s guilty pleas. Therefore, the record before this court indicates that Arnold’s pleas were knowingly, intelligently, and voluntarily made.

{¶ 13} Because Arnold has not demonstrated that his trial counsel provided deficient representation that affected the knowing, intelligent, and voluntary character of his guilty pleas, his ineffective assistance claim must fail. Accordingly, Arnold’s First Assignment of Error is overruled.

Second Assignment of Error

{¶ 14} Arnold’s Second Assignment of Error is as follows:

THE DEFENDANT WAS DENIED HIS SIXTH AND FOURTEENTH
AMENDMENT CONSTITUTIONAL RIGHTS TO FACE HIS ACCUSER/S
[sic].

{¶ 15} Under his Second Assignment of Error, Arnold contends that he was denied the right to confront the witnesses against him as guaranteed by the Sixth and Fourteenth

Amendments to the United States Constitution. Specifically, Arnold claims that he was unable to cross-examine Amanda Romine due to Ms. Romine going missing since July 2013.

{¶ 16} Pursuant to Crim.R. 11(C)(2)(c), the trial court was required to advise Arnold that by pleading guilty he would be waiving various constitutional rights, including the right to confront the witnesses against him. At each of Arnold's plea hearings, the trial court strictly complied with the mandates of Crim.R. 11(C)(2)(c) and specifically advised Arnold that his right of confrontation and cross-examination would be waived if he pled guilty. Following these advisements, Arnold stated on the record at each of his plea hearings that he understood the rights he was waiving and then pled guilty to his various offenses. See Plea Hearing Trans. (Dec. 9, 2013), p. 13-14; Plea Hearing Trans. (Dec. 23, 2013), p. 10-11; Plea Hearing Trans. (Jan.14, 2014), p. 8-9. Therefore, the record is clear that Arnold knowingly, intelligently and voluntarily waived his right to confront and cross-examine the witnesses against him when he pled guilty. As a result, he is now prohibited from raising that issue on appeal.

{¶ 17} Arnold's Second Assignment of Error is overruled.

Conclusion

{¶ 18} Having overruled both assignments of error raised by Arnold, the judgment of the trial court is affirmed.

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FROELICH, P.J. and FAIN, J., concur.

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