

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-14-1150

Appellee

Trial Court No. CR0201301763

v.

Antonio Taylor

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Frank J. Simmons II, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Antonio Taylor, appeals the June 13, 2014 judgment of the Lucas County Court of Common Pleas which, following appellant's guilty pleas to murder, aggravated burglary, and felonious assault, with firearm specifications, sentenced him to a prison term of 35 years to life. Because we find that the sentence is supported

by the record and is not contrary to law and that appellant was effectively represented by counsel, we affirm.

{¶ 2} On May 15, 2013, appellant was indicted on one count of murder, R.C. 2903.02(B) and 2929.02, one count of aggravated robbery, R.C. 2911.01(A)(1), one count of aggravated burglary, R.C. 2911.11(A)(2), and two counts of felonious assault, R.C. 2903.11(A)(2). All counts contained gun specifications. The charges stemmed from a drug-related home invasion on April 29, 2013. Appellant entered not guilty pleas to the charges.

{¶ 3} On August 30, 2013, and pursuant to an agreement with the state, appellant withdrew his not guilty pleas and entered pleas of guilty to murder, aggravated burglary, and one count of felonious assault. In exchange for his plea and the state's dismissal of the aggravated robbery and one felonious assault charge, appellant agreed to provide testimony against a co-defendant. The state further agreed to recommend that the three, three-year mandatory prison terms for the firearms specifications be served concurrently. The plea forms were journalized on September 6, 2013.

{¶ 4} Shortly before appellant's sentencing, his counsel submitted a lengthy letter to the court, with documentary support, detailing appellant's prior mental health issues, including a brief hospitalization and treatment with prescription medication. Counsel asked the court to "weigh the nature of what Antonio did with the mental health issues that Antonio clearly has had in the past and clearly still suffers from today."

{¶ 5} On June 11, 2014, appellant's sentencing hearing was held and he was sentenced to 35 years to life in prison, just below the 37 to life maximum. Appellant's attorney spoke at length on his behalf. Prior to imposing sentence, the court noted that it considered the letter written by counsel but that it did not justify appellant's crimes. Over three pages of text, the court then detailed the events of April 29, 2013.

{¶ 6} In sentencing appellant, the court stated that it considered the record, oral statements, victim impact statements, and the presentence investigation report. The court then sentenced appellant to consecutive sentences for murder, aggravated burglary, and felonious assault; to also be served consecutively to the concurrent three year terms for the firearms specifications. The court noted that consecutive sentences were necessary to fulfill the purposes of the sentencing statutes and were not disproportionate to the seriousness of appellant's conduct or the danger he poses. A nolle prosequi was entered dismissing the aggravated robbery and a felonious assault charge as well as the attendant firearms specifications. This appeal followed.

{¶ 7} Appellant raises two assignments of error for our review:

I. The trial court abused its discretion when it sentenced the defendant to near maximum sentence when the defendant agreed to testify against the co-defendant as part of the plea.

II. The defendant was not afforded effective assistance of counsel as required by the Sixth Amendment.

{¶ 8} In his first assignment of error, appellant argues that the trial court abused its discretion at sentencing by not first considering the totality of the circumstances including appellant's mental health status and the conditions of the plea agreement. As noted by the state, this court reviews felony sentences under the two-prong approach set forth in R.C. 2953.08(G)(2). *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 11. R.C. 2953.08(G)(2) provides that an appellate court may increase, reduce, modify, or vacate and remand a dispute sentence if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶ 9} We first note that the sentence imposed was within the statutory range of a maximum of 37 years to life. The court, at length, detailed its reasons for the sentence imposed which was reflected in the judgment entry. As to consecutive sentences the court explained that they were necessary to protect the public and were not disproportionate to the seriousness of the crimes.

{¶ 10} Further, as set forth above, the court noted that it had considered appellant's attorney's letter and explained that appellant's mental health concerns did not justify his actions. The court, although it did follow the state's recommendations

pursuant to the plea agreement, was not bound by the agreement. *See State v. Harder*, 6th Dist. Ottawa No. OT-14-005, 2015-Ohio-795, ¶ 7. Based on the foregoing, we find that the court reviewed the totality of the circumstances presented, thoroughly stated its reasons for imposing the sentence, and that appellant's sentence was not contrary to law. Appellant's first assignment of error is not well-taken.

{¶ 11} In appellant's second assignment of error he contends that he was denied the effective assistance of counsel where counsel failed to file a motion requesting diagnostic testing of appellant prior to sentencing in light of his mental health and intellectual limitations. To prevail on a claim of ineffective assistance of counsel, a defendant must prove two elements: "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Proof of prejudice requires a showing "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694; *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph three of the syllabus.

{¶ 12} In the context of convictions based upon guilty pleas, the prejudice element generally requires a showing "that there is a reasonable probability that, but for counsel's errors * * * [the defendant] * * * would not have pleaded guilty and would have insisted

on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); *State v. Xie*, 62 Ohio St.3d 521,524, 584 N.E.2d 715 (1992).

{¶ 13} Reviewing appellant’s argument and the record before us, we find no real assertion that, but for his counsel’s failure to procure diagnostic testing or further examination of his mental status, he would not have entered a guilty plea. Further, there is no evidence in the record that appellant’s plea was not knowing and voluntary or that his mental state in any way prevented his full participation in the proceedings. Finally, counsel did make certain that the court knew of appellant’s history and the transcript evidences that the court considered it prior to sentencing. Accordingly, appellant’s second assignment of error is not well-taken.

{¶ 14} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and his conviction and sentence is affirmed. The court, however, during the course of this appeal and review of the record, has discovered an error in the trial court’s June 13, 2014 sentencing judgment entry. The judgment entry erroneously states that appellant was convicted of aggravated robbery, R.C. 2911.01(A)(1), when, in fact, the conviction was for aggravated burglary, R.C. 2911.11(A)(2). Both are first degree felonies with the same sentencing parameters. Accordingly, we remand the matter and order the court to issue a nunc pro tunc judgment entry correcting the error. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
