[Cite as *State v. Schmidt,* 2015-Ohio-2450.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2012-P-0034**
- vs -	:	
ANTHONY D. SCHMIDT,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2010 CR 0792.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Kristina Drnjevich*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Anna Markovich, 18975 Villaview Road, Suite 3, Cleveland, OH 44119 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Anthony D. Schmidt appeals from the judgment of the Portage County Court of Common Pleas, sentencing him to imprisonment for one count of robbery. For the following reasons we affirm.

{¶2} On December 2, 2010, Mr. Schmidt was charged with a four count indictment for two counts of robbery in violation of R.C. 2911.02(A)(2 and (B), felonies of the second degree and R.C. 2911.02(A)(3), a felony of third degree; one count of

tampering with evidence in violation of R.C. 2913.02(A)(4), a felony of the fifth degree. The charges stem from a robbery committed on November 24, 2010 at the Key Bank in Rootstown, Ohio. On February 14, 2011, Schmidt waived his right to a jury trial and entered a plea of guilty to one count of robbery in violation of R.C. 2911.02(A)(2) and (B), a felony of the second degree. The trial court sentenced Schmidt on April 4, 2011, to seven years in prison and fined $200.00 to be paid within ten years.

{¶3} On April 20, 2012, Schmidt filed a pro se motion for leave to file a delayed. We dismissed this case when no action was taken on the appeal. On June 19, 2014, Schmidt filed an application to reopen this case stating that his assigned counsel failed to pursue this appeal. We granted the application on September 4, 2014.

{¶4} Mr. Schmidt has filed four assignments of error in this case.

{¶5} "Appellant's guilty plea was not knowing, intelligent, and voluntary and was in violation of Crim. R. 11(C).

{¶6} "The trial court's sentence imposed on Appellant is not supported by the record and is contrary to law.

{¶7} "The trial court denied Appellant due process to fair and impartial sentencing, when the trial court relied upon its own personal knowledge, not otherwise supported by evidence, about Appellant and his family and about Appellant's conduct following the commission of the robbery.

{¶8} "Appellant was denied his constitutional right to effective assitance (sic) of counsel pursuant the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Ohio Constitution."

{¶9} In support of his first assignment of error, Schmidt states that:

{¶10} "Was Appellant's guilty plea was not knowing, intelligent and voluntary, and in violation of Crim R. 11 (C) if the trial court misinformed him about the maximum penalty?

{¶11} "Was Appellant's guilty plea was not knowing, intelligent and voluntary, and in violation of Crim R. 11(C) if the trial court failed to fully inform Appellant about his privilege not to be compelled to testify against himself at trial and that neither the prosecutor nor the court could comment on his failure to testify?

{¶12} Crim.R. 11(C)(2) sets forth those matters which a trial court must inform a defendant of before accepting a plea of guilty or no contest. It provides:

{¶13} "In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

{¶14} "(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

{¶15} "(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

{¶16} "(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a

reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself."

{¶17} The matters set forth in Crim.R. 11(C)(2)(c) are constitutional, and strict compliance by the trial court with the rule is required in presenting them to a defendant. *State v. Woodliff,* 11th Dist. Portage No. 2004-P-0006, 2005-Ohio-2257, ¶51. In this case, the trial court clearly complied with all requirements of Crim.R. 11(C)(2). At the February 11, 2011 plea hearing, the trial court informed Mr. Schmidt of the nature of the charge against him, and asked whether he had been advised and understood the nature of the charge to which he was pleading. Schmidt replied he did. The trial court then informed Schmidt that the penalty included up to eight years in prison and up to a $10,000.00 fine and court costs. The trial court noted that the plea sheet indicated a maximum fine of $5,000.00 and that this mistake was being corrected. Schmidt's attorney agreed to the correction. However, as the State notes in their appellate brief, the actual maximum fine under the law on the date Schmidt entered his plea was $15,000.00. R.C. 2929.18(A)(3)(b). Schmidt claims that as his written plea agreement indicated a maximum fine of $5,000.00 and the trial court changed it (albeit incorrectly) to $10,000.00, that his guilty plea is invalid.

{¶18} When determining whether the trial court has met its obligations under Crim.R. 11 in accepting a plea, appellate courts have distinguished between constitutional and non-constitutional rights. With respect to the constitutional rights, a trial court must advise a defendant that, by pleading guilty, he or she is waiving: "(1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a

reasonable doubt, and (5) the privilege against compulsory self-incrimination." *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, syllabus. A trial court must strictly comply with those provisions of Crim.R. 11(C) that relate to the waiver of constitutional rights and the failure to do so invalidates the plea. *Veney, supra*; *see also State v. Lavender*, 11th Dist. Lake No. 2000-L-049, 2001 Ohio App. LEXIS 5858, *10 (Dec. 21, 2001).

{¶19} While a court must strictly comply with Crim.R. 11 by advising a defendant of his constitutional rights, failure to inform the defendant of a non-constitutional issue is not per se prejudicial or plain error. *State v. Ballard*, 66 Ohio St.2d 473, 480 (1981). The remaining non-constitutional rights set forth under Crim.R. 11 require the court to: (1) determine the defendant understands the nature of the charge(s) and possesses an understanding of the legal and practical effect(s) of the plea; (2) determine the defendant understands the maximum penalty that could be imposed; and (3) determine that the defendant is aware that, after entering a guilty plea or a no contest plea, the court may proceed to judgment and sentence. Crim.R. 11(C)(2)(a) and (b); *State v. Nero,* 56 Ohio St.3d 106, 108 (1990).

{¶20} When non-constitutional issues are implicated, a guilty plea is valid if the court substantially complied with Crim.R. 11(C)(2). "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving." *Id; See State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, ¶88-89; *State v. Frazier*, 10th Dist. Franklin App. No. 05AP-425, 2006-Ohio-1475, ¶6. A defendant who argues that his guilty plea was not voluntarily, knowingly**,** and intelligently made must also show prejudicial effect. *State v.*

Schreiber, Butler App. No. CA2006-09-237, 2007-Ohio-6030, ¶8. "The test is whether the plea would have otherwise been made." *Nero* at 108.

{¶21} Although the trial court failed to advise Schmidt of the correct maximum potential fine, Schmidt nonetheless has failed to demonstrate any prejudice arising from this error. Nothing in the record suggests, and Schmidt does not even argue, that he would not have entered his plea had he known the maximum potential fine was higher than the $5,000.00 figure indicated on his plea form. Nor has Schmidt suffered any actual prejudice, since the fine imposed was less than the actual maximum potential fine and well within the limits of the maximum fine as stated by the trial court. *State v. Bailey*, 11th Dist. Geauga No. 2006-G-2734, 2007-Ohio-6160, ¶16.

{¶22} Appellate courts have reversed guilty pleas when the trial court understated the maximum penalty at the plea hearing and then imposed an actual sentence greater than the understated penalty. *State v. Carney,* 7th Dist. Belmont No. 06 BE 18,2007-Ohio-3180, ¶22-30; *State v. Puckett,* 4th Dist. No. 03CA2920, 2005-Ohio-1640, ¶6-14. Such is not the case in this matter. The trial court informed Schmidt that he faced a maximum fine of $10,000.00 but imposed only a fine of $200.00. As such, Schmidt suffered no prejudice.

{¶23} The second issue of Schmidt's first assignment of error involves his claim that the trial court failed to fully inform him about his privilege not to be compelled to testify against himself at trial. Schmidt claims that in addition to informing him that he was not required to testify against himself at trial, the trial court was required to also tell him that neither the prosecutor nor the trial court could comment on his failure to testify.

{¶24} A guilty plea is constitutionally defective when the defendant is not informed in a reasonable manner at the time of his guilty plea of his privilege against self-incrimination. *Ballard*, *supra.* Schmidt avers that being advised of his right not to be compelled to testify against himself is insufficient without the additional advisement that the prosecutor and the trial court cannot comment on his failure to testify. However, the Supreme Court of Ohio has held: "[T]he best method of informing a defendant of his constitutional rights is to use the language contained in Crim.R. 11(C), stopping after each right and asking the defendant whether he understands the right and knows that he is waiving it by pleading guilty. We strongly recommend such procedure to our trial courts." *Id.* at 479.

{¶25} By stating that the best method is to recite the rule verbatim, the Court upheld the practice of informing a defendant that they cannot be compelled to testify against themselves at trial. As such, there is no requirement of further explanation as the current rule does not require that a defendant be advised that no one can comment on their refusal to testify. Rather, the rule states that the defendant cannot be compelled to testify against themselves at trial. Therefore, in advising a defendant that they cannot be compelled to testify against themselves, the trial court is not required to further explain that no one can comment on a defendant's failure to testify where the defendant answers that he understands his right against self-incrimination. *State v. Giovanni*, 7th Dist. Mahoning No. 08 MA 150, 2009-Ohio-3333, ¶16; *State v. Burdette,* 11th Dist. Ashtabula No. 2009-A-0021, 2009-Ohio-5633, ¶59.

{¶26} In the present case, Schmidt was asked by the trial court if he understood that he was not required to testify against himself, and he answered in the affirmative.

{¶27} Schmidt's first assignment of error is without merit.

{¶28} In his second assignment of error Schmidt alleges that the sentence imposed by the trial court is not supported by the record and is disproportionate and inconsistent. Schmidt argues that the trial court failed to properly consider the principles and purposes of sentencing under R.C. 2929.11 and the seriousness and recidivism factors under R.C. 2929.12. Schmidt acknowledges that his sentence was within the statutory range but believes it was disproportionate.

{¶29} This court recently stated in *State v. Arkenburg*, 11th Dist. Lake No. 2013-L-087, 2014-Ohio-1361, ¶6-8:

{¶30} "'Subsequent to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, * * *, appellate courts have applied a two step approach in reviewing felony sentences. First, courts "examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court's decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶26, * * * (* * *).

{¶31} "'A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing, which are "to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources." R.C. 2929.11(A). A court imposing a sentence for a felony "has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section

2929.11 of the Revised Code." R.C. 2929.12(A). "In the exercise of this discretion, a court 'shall consider' the non-exclusive list of seriousness and recidivism factors set forth in R.C. 2929.12(B), (C), (D), and (E)." (Citation omitted.) *State v. Putnam*, 11th Dist. No. 2012-L-026, 2012-Ohio-4891, ¶8; R.C. 2929.12(A).

{¶32} "'There is no "mandate" for the sentencing court to engage in any factual finding under these statutes. Rather, "(t)he court is merely to 'consider' the statutory factors." *Foster* at ¶42. This standard continues to be applicable after the recent enactment of H.B. 86, which did not amend R.C. 2929.12. *Putnam* at ¶9, citing *State v. Alexander*, 1st Dist. Nos. C-110828 and C-110829, 2012-Ohio-3349, ¶24 (R.C. 2929.12 is "not (a) fact-finding statute() like R.C. 2929.14").' (Parallel citation omitted.) *State v. Beville*, 11th Dist. Ashtabula No. 2012-A-0057, 2013-Ohio-2139, ¶9-11." (Parallel citations omitted.)

{¶33} Schmidt plead guilty to one count of robbery in violation of R.C. 2911.02(A)(2) and (B), a felony of the second degree. The trial court sentenced Schmidt to seven years in prison and fined him $200.00 to be paid within ten years. For second degree felonies R.C. 2929.14(A)(2) states that "the prison term shall be two, three, four, five, six, seven, or eight years." Thus, appellant's seven-year sentence was within the statutory range under R.C. 2929.14(A)(2).

{¶34} Schmidt's main complaint regarding his sentence is his allegation that the trial court improperly considered facts and evidence not in the record when considering his likelihood of recidivism and whether or not he demonstrated remorse. Schmidt points to the trial court's statement that he (Schmidt) had taken advantage of his family and that they did not deserve this. Schmidt also notes that the trial court stated that he

"scared the life out of the tellers" at the bank even though no victim impact statement was included in the pre-sentence investigation (PSI). Lastly, Schmidt states there is no evidence in the record to support the trial court's allegation that he (Schmidt) tried to buy a gun after the robbery.

{¶35} At the sentencing hearing the trial court heard from the prosecutor, from Schmidt and from Schmidt's grandfather. The prosecutor outlined for the trial court that Schmidt involved a young woman in his crime who was being sentenced to three years in prison; that Schmidt planned to rob the bank a second time; that Schmidt bragged about the bank robbery; and that (after the robbery) Schmidt was looking to purchase a firearm. Schmidt did not deny any of these facts at sentencing.

{¶36} The record does not reveal that the trial court's statements regarding Schmidt's family were used to determine the likelihood of recidivism and whether or not he (Schmidt) demonstrated remorse. At no point did the trial court make any statement that would lead us to conclude that it connected its observation about Schmidt's treatment of his family to his likelihood of recidivism or whether he showed remorse. It seems that the trial court was merely expressing its disappointment with Schmidt.

{¶37} Additionally, Schmidt claims that the sentence imposed by the trial court is disproportionate and inconsistent. This court stated in *State v. Adams*, 11th Dist. No. 2003-L-110, 2005-Ohio-1107, ¶57, (overruled on other grounds (2005):

{¶38} "* * * [A]lthough 'a trial court is required to engage in the analysis set forth by R.C. 2929.11(B) to ensure the consistency of sentences,' a court is not required 'to make specific findings on the record' in this regard. *State v. Newman*, 11th Dist. No. 2002-A-0007, 2003-Ohio-2916", ¶10. The trial court possesses 'broad discretion to

determine the most effective way to comply with the purposes and principles of sentencing within the statutory guidelines.' *State v. Smith* (June 11, 1999), 11th Dist. No. 98-P-0018, 1999 Ohio App. LEXIS 2632, at *8."

{¶39} This court has held that consistency of sentencing is not demonstrated by a trial court's comparison of the existing matter before the court to prior sentences for similar offenders and similar offenses. *State v. Spellman*, 160 Ohio App.3d 718, 2005-Ohio-2065, ¶12. Specifically, in *State v. Swiderksi*, 11th Dist. Lake No. 20014-L-112, 2005-Ohio-6705, ¶57-58, we stated:

{¶40} "We agree with the rationale of the *Lyons* court, insofar as the trial court must adhere to the statutory mandate to ensure consistency in sentencing. However, we note, as that court did, that the trial court is required to make its sentencing decisions in compliance with the statute, but need not specifically comb the case law in search of similar offenders who have committed similar offenses in order to ascertain the proper sentence to be imposed.

{¶41} "In short, a consistent sentence is not derived from a case-by-case comparison; rather, it is the trial court's proper application of the statutory sentencing guidelines that ensures consistency * * *."

{¶42} Notwithstanding the fact that the trial court is not required to comb the case law in search of similar offenders who have committed similar offenses, Schmidt offers no evidence that his sentence was inconsistent with other similar offenders.

{¶43} The record from the sentencing hearing shows that the trial court gave consideration to the relevant statutory considerations. The record establishes the court considered the statements by Schmidt, his counsel, his grandfather and the prosecutor

as well as the PSI. The PSI indicates that Schmidt has a lengthy misdemeanor record, covering 15 separate charges over the preceding decade. The court also considered the prosecutor's recitation of information from the PSI that appellant's actions after the robbery—his bragging about the robber and his attempt to buy a gun—demonstrated his lack of remorse.

{¶44} Schmidt's second assignment of error is without merit.

{¶45} In his third assignment of error Schmidt alleges that the trial court relied on its own personal knowledge, rather than the record before it, when sentencing defendant. In support of this argument Schmidt cites to *State v. Denoon*, 8 Ohio App.2d 70 (10th

{¶46} Dist.1966). However *Denoon* is readily distinguishable from the present case.

{¶47} In *Denoon* the appellant filed a motion for post conviction relief alleging that he was not represented by counsel, was not advised that he had the right to have counsel, and had been sentenced to prison without entering a guilty plea or being tried. *Id.* at 71. The trial court judge hearing appellant's post conviction motion was the same judge that had sentenced Denoon and the judge used his own recollection of the events to deny Denoon's motion. The Tenth District Court of Appeals held that the judge's recollection, unless properly presented, cannot be used as a basis for rejecting Dennon's evidence. *Id.*

{¶48} As stated above, the record in this matter indicates that the trial court's comments were an expression of its disappointment with Schmidt. This is not a case, as in *Denoon*, where the court ignored the record and relied upon its own personal

knowledge in reaching its decision. Again, the record in this case contains sufficient information to justify the sentence imposed on Schmidt. And there is nothing in the record to indicate that Schmidt's sentence was enhanced due to the trial court's personal familiarity with Schmidt and his family.

{¶49} Schmidt's third assignment of error is without merit.

{¶50} In his fourth assignment of error, Schmidt argues his trial counsel was ineffective because: (1) he failed to object to the trial court's consideration of personal knowledge at the pleas and sentencing; (2) he failed to object to the trial court's misrepresentation of facts listed in the PSI; and (3) failed to present any arguments regarding consistency and proportionality of the sentence for the trial court to consider.

{¶51} Regarding an ineffective assistance of counsel claim, this court stated in *State v. Henry*, 11th Dist. Lake No. 2007-L-142, 2009-Ohio-1138, ¶50-59:

{¶52} "Preliminarily, we note that *Strickland v. Washington* (1984), 466 U.S. 668, 687, * * * states:

{¶53} "'(a) convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction (* * *) has two components. 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. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the

conviction (* * *) resulted from a breakdown in the adversary process that renders the result unreliable.'

{¶54} "'(* * *) When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness.' *Id*. at 687-688. *State v. Bradley* (1989), 42 Ohio St.3d 136, 142, * * *, quoting *Strickland, supra*, at 694, states: '(t)o warrant reversal, "(t)he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.'"

{¶55} "Very few criminal cases are reversed on the basis of an ineffective assistance of counsel claim due to the fact that there is no clear standard on what dictates 'trial strategy.' The present standard as set forth in *Strickland* sets a broad standard for lawyer competency. Under *Strickland* and its interpretation by Ohio courts, the mere possession of a law license, regardless of experience or criminal defense training, and the most tenuous and reckless of trial strategies, renders counsel effective.

{¶56} " * * * In order to prevail on a claim of ineffective assistance of counsel, the defendant has the burden to establish two things: (1) that counsel's performance was deficient, and (2) that counsel's deficiency prejudiced the defense. *State v. Reynolds* (1998), 80 Ohio St.3d 670, 674, * * *, citing *Strickland, supra*, at 687. The defendant must produce evidence that counsel acted unreasonably by substantially violating essential duties owed to the client. *State v. Sallie* (1998), 81 Ohio St.3d 673, 674, * * *.

{¶57} "A criminal defense attorney owes a duty of care to his client. A 'duty' is defined as '(a) legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right.' *Black's Law Dictionary* (8 Ed.2004) 543.

{¶58} "Under *Strickland* as interpreted by Ohio courts, attorneys are presumed competent, reviewing courts must refrain from second-guessing strategic, tactical decisions and strongly presume that counsel's performance falls within a wide range of reasonable legal assistance. *State v. Carter* (1995), 72 Ohio St.3d 545, 558, * * *. *See, also, State v. Burley* (Aug. 11, 1998), 7th Dist. No. 93-CA-204, 1998 Ohio App. LEXIS 3895, at *9 (a defendant is not guaranteed the right to the best or most brilliant counsel).

{¶59} "Upon demonstrating counsel's deficient performance, the defendant then has the burden to establish prejudice to the defense as a result of counsel's deficiency. *Reynolds, supra*, at 674. The reviewing court looks at the totality of the evidence and decides if there exists a reasonable probability that, were it not for serious errors made, the outcome of the trial would have been different. *Strickland, supra*, at 695-696. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. *Id*.

{¶60} "An attorney has a duty to zealously represent a criminal defendant. 'Criminal defense is an art, not a science. Criminal defense attorneys adopt different approaches to their craft, based partly upon the demands of the particular case, and partly upon their own personal characteristics. Ordinarily, defense counsel's particular style of defense is not a basis for a claim of ineffective assistance of counsel.' *State v. Benton* (Jan. 20, 1993), 2d Dist. No. 91 CA 71, 1993 Ohio App. LEXIS 172, at *7. Ohio

Rule of Professional Conduct 1.1 prohibits a lawyer from representing a client in a legal matter that the lawyer is professionally incompetent to manage."

{¶61} As we have noted, there is no evidence in the record to support Schmidt's claim that his sentence was the result of the trial court's personal knowledge of him and his family. Additionally, Schmidt presents no evidence to contradict the information from the PSI indicating that he sought to purchase a firearm after the robbery. The PSI clearly states that the Portage County Sheriff's Office arranged a meeting between Schmidt and another individual for the purpose of Schmidt purchasing a 9-mm handgun and bullets. Schmidt was arrested when he arrived at this meeting.

{¶62} The trial court's comment that Schmidt intended to use the gun to "go out in a blaze of glory" appears to be mere hyperbole. It does not appear that this comment affected the sentence imposed. Otherwise the trial court would likely have sentenced Schmidt to the maximum sentence of eight years (rather than seven) and would likely also have imposed a fine far greater than a mere $200.00.

{¶63} The record in this case reveals that the trial court properly considered the relevant factors in determining the proper sentence. As we noted above, Schmidt offers no evidence that the sentence in this case was inconsistent or disproportionate to other offenders with similar records who have committed similar crimes. If Schmidt cannot now offer evidence of similar cases where defendants have received lesser sentences, it cannot be said that his trial counsel was ineffective when he likewise failed to offer such similar cases for the trial court's consideration during the plea and sentencing.

{¶64} Schmidt's fourth assignment of error is without merit.

{¶65} For the foregoing reasons, appellant's assignments of error are not well taken. The judgment of the Portage County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDELL, J.,

concur.