

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

TROY C. PHILLIPS,

Defendant-Appellant.

CASE NOS. 2024-A-0025

2024-A-0026

2024-A-0027

Criminal Appeals from the
County Court, Western District

Trial Court Nos. 2023 CRB 00419 W

2023 CRB 00420 W

2023 CRB 00492 W

OPINION

Decided: September 16, 2024

Judgment: Affirmed

Coleen M. O'Toole, Ashtabula County Prosecutor, and *Calvin Nguyen*, Assistant Prosecutor, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Gregory T. Stralka, 6509 Brecksville Road, P.O. Box 31776, Cleveland, OH 44131 (For Defendant-Appellant).

ROBERT J. PATTON, J.

{¶1} Defendant-appellant, Troy C. Phillips (“Phillips”), appeals his sentence for his convictions for Failure to Comply, Aggravated Menacing, and Resisting Arrest from the Ashtabula County Court, Western District. For the following reasons, we affirm.

{¶2} Phillips appeals his sentence for three consolidated cases from the Western District of the Ashtabula County Court. Phillips was convicted of Failure to Comply and Resisting Arrest (Case No. 2023-CRA-00419), two counts of Aggravated Menacing (Case No. 2023-CRB-00420), and another Failure to Comply (Case No. 2023-CRB-00492).

{¶3} A plea hearing was held on December 5, 2023. Phillips pleaded guilty to all charges and in return, the State dismissed three additional cases pending against Phillips. The trial court accepted his plea. The trial court sentenced Phillips on January 17, 2024, to a suspended sentence of 180-days and 90-days on the Failure to Comply and Resisting Arrest conviction (Case No. 2023-CRA-00419). Phillips was sentenced to 180 days with credit for time served back to October 8, 2023, on the Aggravated Menacing convictions (Case No. 2023-CRB-00420), resulting in a release date of April 5, 2024. On that day, he was then to begin another 180-day sentence on the second Failure to Comply conviction (Case No. 2023-CRB-00492), with the possibility of release to a treatment facility after July 17, 2024. On January 31, 2024, Phillips filed a Motion to Enforce Plea Agreement, and an Emergency Motion for Injunctive Relief and to Modify Sentence, which were both denied by the trial court in an entry filed February 6, 2024.

{¶4} Phillips now timely appeals the trial court's sentence.

{¶5} Phillips asserts one assignment of error on appeal:

{¶6} [1.] "Appellant should have been sentenced to a residential treatment facility as was the understanding of the [a]ppellant at the time he entered his change in plea."

{¶7} Phillips contends that he pleaded guilty after making an agreement with the State. According to Phillips, in exchange for his plea, the State would recommend to the trial court residential treatment and six months of probation at sentencing. Phillips assignment of error asks this Court to review whether the trial court erred in sentencing him to six months of jail time instead of residential treatment, as a part of his sentence.

{¶8} We review misdemeanor sentencing under an abuse of discretion standard. "Misdemeanor sentencing is within the discretion of the trial court and a sentence will not

be disturbed absent an abuse of discretion.” *State v. O’Keefe*, 2019-Ohio-841, ¶ 24, (11th Dist.) quoting *State v. Corbissero*, 2012-Ohio-1449, ¶ 53, (11th Dist.). An abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2010-Ohio-1900, ¶ 62, quoting *Black’s Law Dictionary* 11 (8th Ed.Rev.2004).

{¶9} In his brief, Phillips asserts that he had a “reasonable expectation that he would not be going to jail and could be placed in an in-patient residential treatment facility at the time the Appellant entered his guilty pleas.” Phillips contends that the State negotiated a deal with him that in exchange for his guilty pleas, the State would recommend a treatment facility instead of jail.

{¶10} A thorough review of the record reveals no evidence that a plea agreement existed between Phillips and the State on a recommendation for sentencing. At the plea hearing, the State indicated to the trial court:

In-in the 419 case, he will offer a plea to resisting and failure to comply. We will dismiss Case [457] which is an unauthorized use of a vehicle charge. In Case Number [420], he will plead to aggravated menacing. We will dismiss Case Number 2023 TR D 1016 at his costs. We will dismiss the felony CR A 493 case in return for a change of plea in the 492 case, which is a failure to comply. And then it is my understanding that the Court will - - will order a Presentence Investigation Report on those cases, and that we will argue sentencing once a sentencing hearing is set * * *.

{¶11} This interaction with the trial court indicates that no agreement had been reached between Phillips and the State. At the subsequent sentencing hearing, upon providing its recommendation to the trial court, the State explained:

I had the opportunity to meet with [Phillips] * * * and I did not at that time have the Defendant’s complete criminal record. I had not had the opportunity to review that, Your Honor. I did

at that time have an initial recommendation. I wanted the Defendant to plead to certain charges. I was initially inclined to recommend suspended time and probation.

However, shortly thereafter, we did not reach a resolution, and the Defendant had picked up new charges * * *. [W]hile we did not discuss any kind of specific apportionment to any kind of particular charge, the State was looking for at least six months of forthwith time, which [defense counsel] was otherwise trying to negotiate. * * * I have a note in my file here that that offer was relayed. * * *

[W]e are now here today for sentencing, Your Honor, following that, and the State still stands by its recommendation, looking for at least six months of forthwith time.”

{¶12} The record on appeal contains no formal plea agreement or any other indication that an agreement on sentencing recommendation existed.

{¶13} Phillips relies on *State v. Dye*, 2010-Ohio-5728, to argue that negotiated plea bargains are contractual in nature and because of this, “Appellant’s guilty pleas * * * should have resulted in a sentence of in-patient residential treatment.” Phillips reliance on *State v. Dye* is misplaced. While the *Dye* court explains in great detail the rationale set forth in *State v. Carpenter*, 1993-Ohio-226, discussing the contractual nature of plea agreements, those principles do not apply here as the record does not reflect an agreement.

{¶14} Further, had there been an agreement between Phillips and the State on the State’s recommendations, the trial court is under no obligation to adopt that recommendation. “This court has repeatedly held that ‘[a] trial court is not required to impose a jointly-recommended sentence.’” *State v. Frisina*, 2006-Ohio-4664, ¶ 6, (11th Dist.) quoting *State v. Zenner*, 2005-Ohio-6070, ¶ 26, (11th Dist.).

{¶15} The trial court did not abuse its discretion in sentencing Phillips to jail time and not residential treatment. Accordingly, Phillips sole assignment of error is without merit.

{¶16} For the foregoing reasons, we affirm the decision of the Ashtabula County Court, Western District.

MARY JANE TRAPP, J.,

JOHN J. EKLUND, J.,

concur.