

[Cite as *State v. Hunt*, 2023-Ohio-2608.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Appellee

v.

DAVON L. HUNT

Appellant

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C.A. No. 2022-CA-84

Trial Court Case No. 22-CR-0095B

(Criminal Appeal from Common Pleas
Court)

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OPINION

Rendered on July 28, 2023

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ALICE K. DEWINE, Attorney for Appellee

JOHN A. FISCHER, Attorney for Appellant

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EPLEY, J.

{¶ 1} Defendant-Appellant Davon L. Hunt appeals from his conviction in the Clark County Court of Common Pleas after he pled guilty to aggravated robbery and felonious assault, both with firearm specifications. For the reasons that follow, the judgment of the trial court will be affirmed.

I. Facts and Procedural History

{¶ 2} In early 2022, Hunt was indicted on 13 counts, including one count each of aggravated robbery, aggravated burglary, kidnapping, and tampering with evidence; two counts of having weapons while under disability; and seven counts of felonious assault. Many of the charges included firearm specifications. In November 2022, Hunt entered into a plea agreement with the State in which he pled guilty to one count of aggravated robbery with a firearm specification and one count of felonious assault with a firearm specification. In return, the State agreed to dismiss the remaining 11 indicted counts in this case and to dismiss another case entirely. The parties also agreed to jointly recommended sentences of six to seven and a half years on each count (including the firearm specifications). The sentences were to run consecutively to each other and to the sentence he was already serving in a different case. The trial court accepted the plea and sentenced Hunt accordingly. In addition, the court ordered him to pay court costs.

{¶ 3} Hunt appeals, raising a single assignment of error.

II. Court Costs and Ineffective Assistance of Counsel

{¶ 4} In his assignment of error, Hunt argues that he was denied the effective assistance of counsel when his trial attorney failed to request a waiver of court costs at sentencing.

{¶ 5} R.C. 2947.23(A)(1)(a) states that, in all criminal cases, the court must include in the sentence the costs of prosecution and render a judgment against the defendant for those costs. Nevertheless, the court has been granted continuing jurisdiction to “waive, suspend, or modify the payment of the costs of prosecution * * * at the time of sentencing or at any time thereafter.” R.C. 2947.23(C). So, while the court is obligated to impose

costs, it also has the ability to waive them.

{¶ 6} When an indigent defendant raises an ineffective assistance of counsel claim based on trial counsel's failure to request a court costs waiver, a reviewing court must apply the test from *State v. Bradley*, 42 Ohio St.3d 136, 141-142, 538 N.E.2d 373 (1989), which adopted the well-known standard from *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A defendant must prove that counsel's performance was deficient and that he or she was prejudiced by that deficiency. *Bradley* at 141-142. "[T]he defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness and that there exists a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *State v. Davis*, 159 Ohio St.3d 31, 2020-Ohio-309, 146 N.E.3d 560, ¶ 10. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the case. *Id.*, quoting *Strickland* at 694. Finally, a "finding of ineffective assistance of counsel depends on the facts and circumstances in each case." *Id.* at 1. The facts and circumstances of this case do not lead to the conclusion that Hunt's representation was ineffective, as neither prong from *Strickland* can be met.

{¶ 7} The first prong, deficiency, cannot be met because much deference is given to trial counsel. "[A] court must indulge in a strong presumption that the challenged action might be considered sound trial strategy. Thus, judicial scrutiny of counsel's performance must be highly deferential." *State v. Bird*, 81 Ohio St.3d 582, 585, 692 N.E.2d 1013 (1998). Other Ohio appellate districts, including the Fourth and Sixth Districts, have opined that counsel's decision not to seek waiver of costs at sentencing could be seen

as trial strategy. In *State v. Holt*, 6th Dist. Lucas No. L-19-1101, 2020-Ohio-6650, and *State v. Rister*, 4th Dist. Lawrence No. 21CA17, 2023-Ohio-1284, our sister districts held that trial counsels' focus on mitigation (trying to ensure a shorter sentence, or even probation) rather than prioritizing a waiver of court costs was in the best interest of the defendants and, thus, was a reasonable strategic decision.

{¶ 8} The same logic applies here. Hunt's trial counsel successfully negotiated a plea deal that shortened Hunt's potential sentence. Instead of pleading or being found guilty of 13 felonies (many of them first- and second-degree felonies with firearm specifications), Hunt's trial counsel negotiated an agreement in which he pled to two felonies and attendant firearm specifications. It is realistic that he believed it was more advantageous to focus on mitigation rather than asking the court to waive costs.

{¶ 9} We further conclude that Hunt cannot meet the second *Strickland* prong, prejudice. Hunt argues that the length of his sentence and status as a felon will make it difficult for him to earn money to pay the court costs once he is released from prison, and he theorizes that interest and other fees may accrue on the imposed costs in the meantime. While it may be two decades before he is released after serving his sentence, that alone does not mean he cannot get a job and earn money post-release. He will still be a relatively young man, and his status as a felon does not foreclose gainful employment and/or the ability to pay the court costs in the future. Furthermore, Hunt has presented no evidence that had his trial counsel filed a motion to waive costs and made this argument at disposition, the trial court would have granted it. That lack of evidence is fatal because "[t]he burden of proof is on the defendant to show ineffective assistance of

counsel.” *State v. Stutz*, 2d Dist. Montgomery No.24489, 2011-Ohio-5210, ¶ 5. Based on the record before us, we cannot conclude that Hunt’s outcome would have been any different had his trial attorney asked the court to waive costs. Thus, he cannot meet either prong of *Strickland*; the assignment of error is overruled. Hunt has also not lost his ability to make such a request, since R.C. 2947.23(C) allows defendants to make such requests at the time of sentencing or at any time thereafter.

III. Conclusion

{¶ 10} The judgment of the trial court will be affirmed.

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WELBAUM, P.J. and TUCKER, J., concur.