[Cite as *State v. Niese*, 2026-Ohio-4528.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
PUTNAM COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE,

v.

RODNEY JAMES NIESE,

DEFENDANT-APPELLANT.

CASE NO. 12-26-02

OPINION AND JUDGMENT ENTRY

Appeal from Putnam County Common Pleas Court
Trial Court No. 2025-CR-00020

Judgment Affirmed

Date of Decision: November 16, 2026

APPEARANCES:

Timothy J. Hoover **for Appellant**

Gary L. Lammers **for Appellee**

WILLAMOWSKI, J.

{¶1} Defendant-appellant Rodney James Niese ("Niese") appeals the judgment of the Putnam County Court of Common Pleas, arguing that he was denied his right to the effective assistance of counsel. For the reasons set forth below, the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} On March 26, 2025, Niese was indicted on one count of trespass in a habitation when a person is present or likely to be present in violation of R.C. 2911.12(B), a fourth-degree felony. On June 5, 2025, Niese pled guilty to the charge in the indictment. At sentencing on July 17, 2025, the trial court ordered Niese to serve five years on community control and one hundred twenty (120) days in jail. At this point, he had twenty-eight (28) days of jail-time credit.

{¶3} On November 24, 2025, the State filed a motion to revoke Niese's community control. This motion alleged that Niese violated the conditions of his community control by consuming alcohol and going to an establishment that sells alcohol over the counter. On January 12, 2026, Niese admitted to violating his community control. The trial court then ordered Niese to serve five years on community control and to complete a program at the Western Ohio Regional Treatment and Habilitation Center ("WORTH Center").

{¶4} On February 25, 2026, the State filed a motion to revoke Niese's community control. The motion alleged that Niese had violated the conditions of his community control by failing to complete the program at the WORTH Center. On March 30, 2026, Niese admitted to this violation. The trial court then ordered him to serve five years on community control and three hundred sixty-five (365) days in jail. At this point, he had two hundred twenty (220) days of jail-time credit. On March 30, 2026, the trial court issued its judgment entry of sentencing.

Assignment of Error

{¶5} Niese filed his notice of appeal on April 29, 2026 and raises the following assignment of error:

> **Trial counsel rendered ineffective assistance by advising Mr. Niese to admit the community-control violation and proceeding directly to disposition without presenting available medical evidence, requesting a continuance, or otherwise creating a record that Mr. Niese's failure to complete W.O.R.T.H. Center programming resulted from a documented medical condition and medical release rather than refusal to comply.**

Legal Standard

{¶6} "Ohio law presumes that a licensed attorney's representation was competent." *State v. Morgan*, 2024-Ohio-625, ¶ 13 (3d Dist.). "In order to prove an ineffective assistance of counsel claim, the appellant must carry the burden of establishing (1) that his or her counsel's performance was deficient and (2) that this deficient performance prejudiced the defendant." *State v. McWay*, 2018-Ohio-3618, ¶ 24 (3d Dist.), quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

{¶7} To establish deficient performance, the appellant must demonstrate that defense "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *State v. Howton*, 2017-Ohio-4349, ¶ 35 (3d Dist.), quoting *Strickland* at 687. In general, matters that fall within the ambit of trial strategy or debatable tactics do not constitute ineffective assistance of counsel. *State v. Wears*, 2023-Ohio-4363, ¶ 32 (3d Dist.).

{¶8} To establish prejudice, "the defendant must show a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *State v. Bibbs*, 2016-Ohio-8396, ¶ 13 (3d Dist.). "If the appellant does not establish one of these two prongs, the appellate court does not need to consider the facts of the case under the other prong of the test." *State v. Gear*, 2023-Ohio-1246, ¶ 50 (3d Dist.).

Legal Analysis

{¶9} On appeal, Niese argues that defense counsel was ineffective for failing to present mitigating evidence prior to the trial court imposing a sentence. In particular, he asserts that defense counsel should have sought a continuance; obtained the administrative records from the WORTH Center; subpoenaed his medical records; and fully explained the circumstances surrounding his failure to complete the WORTH Center programming to the trial court.

{¶10} However, defense counsel provided a more detailed explanation for Niese's departure from the WORTH Center at sentencing than Niese has provided

in his brief on appeal. She informed the trial court that Niese had a hernia and that the WORTH Center decided to return Niese to jail so that a doctor could examine him. While Niese asserts that defense counsel should have presented various records to support her assertions, he has not explained what these materials would have added to what she represented to the trial court at sentencing.

{¶11} Since the medical and administrative documents that Niese references are not in the record before us, we also cannot determine whether these materials would have supported his position or provided any additional information for the trial court to consider. *See State v. Lingam*, 2026-Ohio-3802, ¶ 94 (3d Dist.). Arguments predicated on the unknown contents of materials not in the record are, in the end, speculative in nature. *See State v. Nichols*, 2023-Ohio-4364, ¶ 21 (3d Dist.).

{¶12} Ultimately, "[t]he decision to forgo the presentation of additional mitigating evidence does not itself constitute proof of ineffective assistance of counsel." *State v. McWay*, 2018-Ohio-3618, ¶ 27 (3d Dist.), quoting *State v. Keith*, 79 Ohio St. 3d 514, 536 (1997). Rather, the presentation of mitigating evidence is generally considered to be a matter of trial strategy. *McWay* at ¶ 27. On appeal, Niese has not advanced an argument that demonstrates how the strategic choices made by defense counsel rise to the level of deficient performance in this case.

{¶13} Further, defense counsel's representations about Niese's failure to complete the WORTH Center programming were not disputed at the sentencing

hearing. As noted previously, Niese has not explained what additional information the identified records would have provided to the trial court at sentencing. Similarly, Niese has not demonstrated how introducing records that confirmed defense counsel's undisputed representations would have changed the outcome of this proceeding.

{¶14} In summary, defense counsel explained the situation that led to Niese's failure to complete the WORTH Center programming at sentencing and ably advocated for Niese's desired outcome. Tr. 16. *State v. Marlatt*, 2026-Ohio-3941, ¶ 35 (5th Dist.) ("[I]neffective assistance is not established merely because counsel's advocacy did not produce a defendant's desired result"). Having examined the contents of the record, we conclude that Niese's arguments fail to establish that he was deprived of his right to the effective assistance of counsel. Thus, the sole assignment of error is overruled.

Conclusion

{¶15} Having found no error prejudicial to the appellant in the particulars assigned and argued, the judgment of the Putnam County Court of Common Pleas is affirmed.

Judgment Affirmed

ZIMMERMAN, P.J. and WALDICK, J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignment of error is overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. *See* App.R. 30.

John R. Willamowski, Judge

William R. Zimmerman, Judge

Juergen A. Waldick, Judge

DATED:
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