

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
COSHOCTON COUNTY, OHIO

STATE OF OHIO,

Plaintiff - Appellee

-vs-

BURTCEL A. MOON,

Defendant - Appellant

Case No. 2026CA0002

Opinion And Judgment Entry

Appeal from the Coshocton County Court of
Common Pleas, Case No. 2025 CR 0011

Judgment: Affirmed

Date of Judgment Entry: September 29, 2026

BEFORE: Andrew J. King; Craig R. Baldwin; David M. Gormley, Judges

APPEARANCES: KATELYNN R. DAVIS, Assistant Prosecuting Attorney, for Plaintiff-Appellee; CHRISTOPHER BAZELEY, for Defendant-Appellant.

Baldwin, J.

{¶1} The appellant, Burtcel A. Moon, appeals the sentence imposed by the Coshocton County Court of Common Pleas following his guilty pleas to four counts of Aggravated Trafficking in Drugs. The appellee is the State of Ohio.

STATEMENT OF FACTS AND THE CASE

{¶2} On February 13, 2025, the appellant was indicted on four counts of Aggravated Trafficking in Drugs: Count One in violation of R.C. 2925.03(A)(1) and (C)(1)(a); Counts Two and Three in violation of R.C. 2925.03(A)(1) and (C)(1)(c); and Count Four in violation of R.C. 2925.03(A)(2) and (C)(1)(c). Count Four further alleged that the offense was committed in the vicinity of a juvenile.

{¶3} On June 2, 2025, the appellant entered pleas of guilty to all four counts. In exchange for the pleas, the appellee agreed to take no position with regard to sentencing. The trial court advised the appellant that the minimum term on Count Four was mandatory, accepted his pleas, found him guilty, and ordered a presentence investigation. The trial court continued the appellant's recognizance bond but advised him that failure to appear for sentencing was a factor the court could consider.

{¶4} Sentencing was scheduled for July 14, 2025. The appellant failed to appear, his bond was revoked, and a warrant was issued for his arrest. The appellant turned himself in on or about March 2, 2026, and was brought before the trial court that day. He appeared to be under the influence of some substance, and the trial court continued sentencing to March 9, 2026.

{¶5} The appellant appeared at the March 9, 2026, sentencing hearing in restraints and a safety helmet. When the trial court raised the issue of the appellant's restraints, defense counsel explained that the appellant had not been making sense during his appearance the prior week and appeared to be under the influence. Counsel also stated that she had contacted a corrections officer during the week and that the officer reported that the appellant was better but still not well. Counsel argued that the appellant might be experiencing an episode of substance-induced psychosis that would render him incompetent for purposes of the hearing and that due process required that he understand the information conveyed at sentencing, including his appellate rights, post-release control, and the mandatory nature of the prison term on the second-degree felony. Counsel requested a competency evaluation and asked that sentencing be deferred until it was completed.

{¶6} The trial court called the jail nurse as its own witness. The nurse testified that when she saw the appellant on March 2, 2026, he appeared intoxicated and reported having used several drugs, but his vital signs were normal, and he answered her questions appropriately. She testified that on March 3, 2026, the appellant was found on the floor and stated that he had fallen, but that a corrections officer reported that the jail's camera footage showed he had lowered himself to the ground. She further testified that the appellant was observed in the medical cell walking and eating without difficulty; that he later claimed he had brought drugs into the jail and used them; and that corrections officers reported that he tested negative for all substances. According to the nurse, throughout the week the appellant knew who he was, where he was, and why he was there, and he showed no signs of impairment on the morning of the hearing until he was brought to the booking area for transport to court. The appellee and defense counsel each questioned the nurse.

{¶7} The trial court found that nothing before it suggested that the appellant was incompetent to proceed. The trial court further found that he was attempting to avoid sentencing by feigning his behavior. The trial court then asked defense counsel whether she had "any statement, evidence, or information that [she] wish[ed] to offer on behalf of [her] client regarding sentencing." Counsel responded, "No, Your Honor." The trial court then asked the appellant directly whether there was anything he wanted to say. The appellant did not respond. The appellee likewise offered nothing, noting that it had previously agreed to take no position with regard to sentencing.

{¶8} The trial court reviewed the presentence investigation report, noting the appellant's sale of methamphetamine and the recovery of packaging materials, digital scales, and other drug paraphernalia from his residence. The trial court concluded that the appellant

had an ongoing drug-dealing operation running out of his house. The trial court noted that the appellant had no prior felony convictions but found that consecutive sentences were necessary in light of his continued sale of methamphetamine in his neighborhood. The trial court also considered the appellant's conduct at the hearing and the harm caused to the community by the distribution of methamphetamine.

{¶9} The trial court sentenced the appellant to seventeen months on Count One; thirty months on each of Counts Two and Three; and an indefinite prison term on Count Four, with a mandatory minimum term of eight years and a maximum term of twelve years. The trial court relied on the appellant's flight from the jurisdiction in imposing the maximum term on Count Four and stated on the record that it had not considered his flight in imposing consecutive sentences. The trial court ordered the sentences served consecutively and made findings under R.C. 2929.14(C)(4) on the record. The trial court stated that the appellant would serve seventy-seven months, followed by an indefinite prison term of eight to twelve years. The sentence was journalized on March 18, 2026.

{¶10} The appellant filed a timely notice of appeal and sets forth the following sole assignment of error:

{¶11} "I. MOON'S TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO ALLOCUTE ON HIS BEHALF AT SENTENCING."

I.

{¶12} In his sole assignment of error, the appellant argues that his trial counsel was ineffective for failing to offer an argument on his behalf before sentence was imposed. We disagree.

STANDARD OF REVIEW

{¶13} The standard of review for ineffective assistance of counsel was set forth in the seminal case of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and was discussed by this Court in *Mansfield v. Studer*, 2012-Ohio-4840, ¶ 58 (5th Dist.):

A claim of ineffective assistance of counsel requires a two-prong analysis. The first inquiry is whether counsel's performance fell below an objective standard of reasonable representation involving a substantial violation of any of defense counsel's essential duties to appellant. The second prong is whether the appellant was prejudiced by counsel's ineffectiveness. *Lockhart v. Fretwell* (1993), 506 U.S. 364, [113 S.Ct. 838, 122 L.Ed.2d 180]; *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989).

{¶14} In order to warrant a finding that trial counsel was ineffective, the appellant must meet both prongs of *Strickland* and *Bradley*. *Knowles v. Mirzayance*, 556 U.S. 111, 129 S.Ct. 1411, 173 L.Ed.2d 251 (2009).

{¶15} To show deficient performance, the appellant must establish that "counsel's representation fell below an objective standard of reasonableness." *Strickland* at 688. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. *Strickland* at 687. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial process. *Strickland* at 688.

{¶16} The Supreme Court further explained:

Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court then must determine whether, in light of all of the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. At the same time, the court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Id. at 690.

In light of the “variety of circumstances faced by defense counsel [and] the range of legitimate decisions regarding how best to represent a criminal defendant,” the performance inquiry necessarily turns on “whether counsel’s assistance was reasonable considering all the circumstances.” *Strickland v. Washington*, 466 U.S. 668 at 689, 104 S.Ct. at 2064. At all points, “[j]udicial scrutiny of counsel’s performance must be highly deferential.” *Strickland v. Washington*, 466 U.S. 668 at 689, 104 S.Ct. at 2064.

Studer at ¶ 61.

{¶17} To demonstrate prejudice, the appellant must show a reasonable probability that, but for counsel’s alleged error, the result of the proceeding would have been different.

Strickland at 687-688, 694. A “reasonable probability” is “a probability sufficient to undermine confidence in the outcome.” *Strickland* at 694.

{¶18} Thus, in order to prevail on an ineffective assistance of counsel argument, the appellant must show both: (1) that his trial counsel’s performance fell below an objective standard of reasonable representation involving a substantial violation of an essential duty to the appellant; and (2) that the appellant was prejudiced by the alleged ineffectiveness.

ANALYSIS

{¶19} Crim.R. 32(A)(1) provides that at the time of imposing sentence, the trial court shall “[a]fford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.”

{¶20} The rule places an obligation upon the trial court, and this Court has ordered resentencing where a trial court failed to afford the opportunity it requires. *State v. Weber*, 2009-Ohio-1344, ¶ 58, 64 (5th Dist.). That did not occur in the case sub judice. The trial court asked defense counsel whether she wished to offer any statement, evidence, or information on the appellant’s behalf, and then addressed the appellant personally and asked whether he wished to say anything. The trial court complied with Crim.R. 32(A)(1). The appellant’s reliance upon *State v. Green*, 90 Ohio St.3d 352 (2000), is misplaced for the same reason. *Green* concerns the trial court’s obligation to afford the right of allocution, and the trial court discharged that obligation here. The appellant’s challenge is not to the absence of the opportunity, but to counsel’s decision not to use it.

{¶21} The appellant argues that his trial counsel was unable to think of any argument to make on his behalf. The record reflects that counsel argued at length that the appellant

might not be competent to proceed, requested a competency evaluation and a deferral of sentencing, and questioned the trial court's witness. It is also true, however, that counsel offered nothing in mitigation when the trial court invited her to do so. We need not decide whether that decision fell below an objective standard of reasonable representation, because the appellant has not demonstrated that he was prejudiced by it. *Strickland* at 697. We also reject the appellant's suggestion that a defense attorney who makes no statement at sentencing is ineffective as a matter of law. He cites no authority for that proposition, and we decline to adopt it.

{¶22} The appellant does not identify anything counsel should have said. He argues instead that because the one person in the courtroom most familiar with him and his case offered nothing, the trial court must have concluded that there were no mitigating circumstances. His claim of prejudice rests entirely upon that inference.

{¶23} The record does not support it. The trial court reviewed the presentence investigation report and discussed it at length. Further, the trial court itself placed a significant mitigating fact on the record before pronouncing sentence: the appellant had no prior felony convictions. The trial court did not assume that no mitigating circumstances existed. It identified one, weighed it, and explained why it did not change the result, pointing to the appellant's continued sale of methamphetamine in his neighborhood and the harm caused to the community.

{¶24} Nor has the appellant identified anything counsel could have added. This Court has held that a defendant who claims that counsel should have presented additional evidence must demonstrate that the evidence would have been of significant assistance; the claim fails where the record contains no proffer of that evidence. *State v. Jenkins*, 2021-Ohio-4100, ¶ 54

(5th Dist.), citing *State v. Reese*, 8 Ohio App.3d 202, 203 (1st Dist. 1982). The appellant has proffered nothing. His assertion that some unidentified statement by counsel would have resulted in a lesser sentence is speculative, and speculation does not establish a reasonable probability of a different result.

{¶25} Moreover, mitigating evidence that is merely cumulative of what was already before the sentencing court does not undermine the result of sentencing. *State v. Baker*, 2024-Ohio-906, ¶ 59 (5th Dist.), quoting *State v. Herring*, 2014-Ohio-5228, ¶ 117. The assessment of and weight to be given mitigating evidence are matters for the trial court's determination. *Baker* at ¶ 62, citing *State v. Jackson*, 2005-Ohio-5981, ¶ 106. An appellate court may not independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and R.C. 2929.12. *Baker* at ¶ 66, citing *State v. Jones*, 2020-Ohio-6729, ¶ 39. The appellant's argument would require us to presume that a statement by counsel would have led the trial court to weigh the sentencing factors differently. The record provides no basis for that presumption.

{¶26} Further, the trial court's stated reasons for the sentence were specific. The trial court distinguished between the considerations supporting the maximum term on Count Four and those supporting consecutive sentences, stating expressly that it had not considered the appellant's flight from the jurisdiction in imposing consecutive sentences. On this record, there is no reasonable probability that the trial court would have imposed a lesser sentence had defense counsel made a statement on the appellant's behalf.

{¶27} The appellee relies upon *State v. Campbell*, 2024-Ohio-5343 (2d Dist.), and *State v. Maguire*, 2009-Ohio-4393 (7th Dist.). In each case, the reviewing court noted that the defendant had spoken on his own behalf and had a criminal history. *Campbell* at ¶ 13; *Maguire*

at ¶ 20-21. Here, by contrast, the appellant had no prior felony convictions and did not address the trial court. Neither distinction assists him. The trial court knew of and weighed the absence of a felony record. The appellant was afforded the opportunity to speak and did not respond, and the trial court found that he was feigning the behavior he exhibited at the sentencing hearing.

{¶28} Accordingly, the appellant's sole assignment of error is overruled.

CONCLUSION

{¶29} Based upon the foregoing, the judgment of the Coshocton County Court of Common Pleas is hereby affirmed.

{¶30} Costs to the appellant.

By: Baldwin, J.

King, P.J. and

Gormley, J. concur.