

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

STATE OF OHIO

Plaintiff-Appellee

LYNN C. MARLATT

Defendant-Appellant

Case No. CT2026-0037

Opinion And Judgment Entry

Appeal from the Muskingum County Court
of Common Pleas, Case No. CR-2025-0570

Judgment: Affirmed

Date of Judgment Entry: October 5, 2026

BEFORE: William B Hoffman, Kevin W. Popham, and David M. Gormley, Judges

APPEARANCES: Ron Welch, Prosecuting Attorney, Joseph A. Palmer, for Plaintiff-Appellee; Steven A. Stickles, for Defendant-Appellant

OPINION

Popham, J.,

{¶1} Appellant Lynn C. Marlett [“Marlett”] appeals her convictions and sentence after a negotiated guilty plea in the Court of Common Pleas for Muskingum County, Ohio. For the reasons that follow, we affirm the trial court’s judgment.

Facts and Procedural History

{¶2} On September 10, 2025, an indictment was filed by the Muskingum County Grand Jury against Lynn C. Marlatt, charging her with Count 1: Theft in Office, a felony of the second degree; Count 2 Telecommunications Fraud, a felony of the second degree; and Count 3 Tampering with Records, a felony of the third degree.

{¶3} On September 15, 2025, Marlatt filed a demand for discovery.

{¶4} By Judgment Entry filed December 2, 2025, the court scheduled the case for a December 15, 2026 change of plea hearing.

{¶5} On December 15, 2025, the parties filed a Criminal Rule 11(C) and (F) negotiated plea form signed by Marlatt, her attorney and the assistant prosecuting attorney. The form specified that Marlatt would plead guilty to all three charges contained in the Indictment; however, Count 1 and Count 2 would merge for sentencing, with the State electing sentencing on Count 1. The negotiated plea further specified that Marlatt would pay restitution in the amount of \$475,521.75 to the Village of New Concord and \$16,359.00 to the Ohio Auditor of State. Further, Marlatt withdrew all previously filed motions.

{¶6} On December 15, 2026, Marlatt entered a guilty plea to Count 1: Theft in Office, a second-degree felony, Count 2: Telecommunications Fraud, a second-degree felony, and Count 3: Tampering with Records a third-degree felony. The trial judge ordered a Pre-sentence Investigation Report (PSI) and sentencing was deferred.

{¶7} On December 22, 2026, Marlatt filed a Notice of Substitution of Counsel noting that her previous attorney had retired. On December 23, 2025, Attorney Robert M. Barga, of the same law firm as her previous attorney, filed a Notice of Appearance / Substitution of Counsel.

{¶8} On February 20, 2026, Marlatt, through counsel Barga, filed a 6-page “Memorandum of Support for Sentencing Hearing.”

{¶9} On February 23, 2026, the trial court conducted a sentencing hearing during which the State produced in-person victim impact testimony from Mayor Robert Dickson, part-time fireman William Mitchell, along with victim impact statements from no less than

six other individuals. When asked if she had anything to say on her own behalf, Marlatt responded, “no thank you.” (Sent. T. at 30).

{¶10} After reviewing the PSI, hearing the statements of counsel for Marlatt and counsel for the State, hearing the in-court victim impact statements, reviewing the written victim impact statements, and engaging in a discussion of restitution and the underlying crimes with Marlatt, the trial court sentenced Marlatt to an indefinite term of imprisonment - a minimum term of seven years and a potential maximum term of ten and one-half years on Count 1, and 36 months on Count 3, to be served concurrently with Count 1. The Court further ordered Marlatt to pay restitution to the Village of New Concord in the amount of \$475,521.75 and to the Ohio Auditor of State in the amount of \$16,359.00. The court ordered Marlatt's entire monthly pension from the Ohio Public Employees Retirement System (OPERS) seized and applied to the restitution order.

Assignments of Error

{¶11} Marlatt raises two assignments of error for our consideration:

{¶12} “I. THE DEFENDANT'S PLEA WAS NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE AS DEFENSE COUNSEL'S FAILURE TO OBTAIN DISCOVERY AND LACK OF UNDERSTANDING REGARDING THE CRIMINAL SENTENCING GUIDELINES ROSE TO A LEVEL OF INEFFECTIVE ASSISTANCE OF COUNSEL.”

{¶13} “II. WHILE THE IMPOSITION OF SENTENCE IS THE EXCLUSIVE PURVIEW OF THE TRIAL COURT, THE COURT ERRED IN ORDERING A 7 TO 10 1/2 YEAR SENTENCE ON COUNTS I AND II AND THE MAXIMUM SENTENCE ON COUNT III.”

I.

{¶14} In her first assignment of error, Marlatt maintains that her guilty pleas were not entered knowingly, intelligently, and voluntarily because she received ineffective assistance of counsel. Specifically, Marlatt argues that neither her original counsel nor substitute counsel received and reviewed discovery from the State before she entered her guilty pleas.¹ We disagree.

Marlatt's Guilty Plea

{¶15} A defendant has “the ultimate authority” to determine “whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal.” *Jones v. Barnes*, 463 U.S. 745, 751 (1983); *Wainwright v. Sykes*, 433 U.S. 72, 93, fn. 1 (1977) (Burger, C.J., concurring). A guilty plea constitutes a complete admission of guilt. Crim.R. 11(B)(1). “By entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime.” *United States v. Broce*, 488 U.S. 563, 570 (1989).

{¶16} Marlatt does not identify any deficiency in the trial court’s Crim.R. 11 colloquy. Instead, her challenge rests entirely upon the alleged ineffective assistance of counsel.

{¶17} The record demonstrates that Marlatt entered her guilty pleas knowingly, intelligently, and voluntarily. Marlatt executed a written plea form, signed by both her and counsel, identifying the charges, the potential penalties, the parties’ agreement, and the constitutional rights she agreed to waive. A written waiver of constitutional rights is presumed

¹ Although the State asserts that “Attorney Barga received discovery from the County Prosecutor on January 6, 2026,” Appellee’s Brief at 2, we find no corresponding docket entry demonstrating that the State filed a response to Marlatt’s discovery request or otherwise provided discovery to defense counsel. In any event this is well after Marlatt entered her guilty pleas on December 15, 2025.

to have been made knowingly, intelligently, and voluntarily. *State v. Turner*, 2005-Ohio-1938, ¶ 25; *State v. Clark*, 38 Ohio St.3d 252, 261 (1988).

{¶18} During the plea hearing, the trial court advised Marlatt of her constitutional rights, including her right to a jury trial, her right to confront witnesses, her right to compulsory process, her right to require the State to prove her guilt beyond a reasonable doubt, and her privilege against self-incrimination. Marlatt acknowledged that she understood those rights, the nature of the charges, and the potential penalties. She further indicated that she was satisfied with counsel's representation. Marlatt admitted her guilt on the record and has not asserted that she was innocent of the offenses to which she pleaded guilty.

{¶19} Thus, the record demonstrates that the trial court complied with the constitutional requirements of Crim.R. 11 and substantially complied with the rule's nonconstitutional requirements. The record contains no indication that Marlatt's pleas were anything other than knowing, intelligent, and voluntary.

Ineffective Assistance of Counsel

{¶20} Marlatt nevertheless argues that her pleas were invalid because she received ineffective assistance of counsel. Specifically, she contends that counsel failed to review the State's discovery before she entered her guilty pleas and that counsel's failure to do so ultimately affected counsel's ability to advocate for her at sentencing.

{¶21} To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the two-prong *Strickland* test. *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984). First, the defendant must demonstrate that counsel's performance fell below an objective standard of reasonable representation. *Id.* Judicial scrutiny of counsel's performance is highly deferential, and a reviewing court must indulge a strong presumption that counsel's conduct

fell within the wide range of reasonable professional assistance and constituted sound trial strategy. *Id.*

{¶22} Second, the defendant must demonstrate prejudice - that is the defendant must show a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.*; see also *State v. Harris*, 2024-Ohio-2993, ¶¶ 28-29 (5th Dist.).

{¶23} When ineffective assistance is alleged in connection with a guilty plea, the defendant must demonstrate that counsel's deficient performance affected the decision to plead guilty. In other words, the defendant must establish a reasonable probability that, but for counsel's deficient performance, they would not have entered the plea and would have insisted on proceeding to trial. See *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). See also *State v. Norris*, 2026 Ohio App. LEXIS 1650, at *11 (5th Dist. Mar. 16, 2026).

{¶24} Marlatt does not make that showing. She does not identify any evidence contained in the State's discovery that she would have relied upon to reject the plea agreement and proceed to trial. Nor does she identify any defense, factual issue, or legal argument that counsel could have developed from the discovery that would have affected her decision to plead guilty. Instead, Marlatt argues generally that counsel's failure to review discovery prevented counsel from presenting a stronger case for leniency at sentencing.

{¶25} The record does not support that assertion. After assuming representation of Marlatt, Attorney Barga filed a seven-page sentencing memorandum advocating for community-control sanctions or, alternatively, the minimum prison sentence. Counsel argued that Marlatt would never again hold public office and had already been deterred from future criminal conduct by the reaction of the police and fire departments and comments made to

her. Counsel argued that incarceration would interfere with Marlatt's ability to make positive changes in her life. Counsel also emphasized that Marlatt's OPERS account was subject to the court's restitution order and could therefore be used to compensate the victims.

{¶26} Counsel further provided the court with a personal background summary concerning Marlatt, along with letters of support from the former New Concord Village Administrator and Marlatt's therapist at Behavioral Health Choices. Counsel addressed the seriousness and recidivism factors under R.C. 2929.12 and argued that those factors supported a lesser sentence. Counsel ultimately recommended community-control sanctions or, alternatively, a minimum prison term followed by post-release control and restitution.

{¶27} Counsel continued that advocacy at the sentencing hearing, emphasizing the importance of making the victims whole.

{¶28} The trial court considered the possibility of restitution and noted that Marlatt had already begun drawing from her OPERS account, making a lump-sum payment unavailable. (Sent. Tr. at 32-33, 44-45). The court noted that only \$1,853.28 per month was then available for restitution and that, consequently, it would take years to recover the amount Marlatt had stolen.

{¶29} The trial court also considered significant mitigating information. The court noted that Marlatt had been employed by the Village for nearly twenty-seven years, including eleven years as its fiscal officer. (Sent. Tr. at 35). The court recognized Marlatt's strong family ties, lack of substance-abuse issues, and lack of a prior criminal record. (*Id.* at 35-36). The court nevertheless considered the seriousness of the offenses, including that Marlatt had stolen nearly half a million dollars and, when questioned by the court, could not account for how the money had been spent. (*Id.* at 39-40). The court also noted that Marlatt had no property

in her own name and that the home in which she lived was titled in her daughter's name. (*Id.* at 39). The court further considered that Marlatt had retired and begun drawing from her OPERS account before the criminal proceedings had concluded.

{¶30} Finally, the trial court considered the broader impact of Marlatt's offenses and noted that the offenses had undermined the public's trust and caused members of the community to question whether their tax dollars were secure and whether governmental decisions were being made in good faith. (Sent. Tr. at 38). The court considered the anger, disappointment, and sense of betrayal experienced by members of the community, as well as the applicable seriousness and recidivism factors and the need for deterrence. (*Id.* at 44-46).

{¶31} The trial court also considered the presentence investigation report. (Sent. Tr. at 31).

{¶32} Against this record, Marlatt has failed to demonstrate deficient performance or prejudice. She does not identify what additional evidence counsel should have presented, how counsel could have used that evidence, or how the evidence would have changed the outcome. Her argument, therefore, rests on speculation that further review of discovery might have enabled counsel to present a stronger argument for leniency. Speculation, however, is insufficient to establish the prejudice required under *Strickland*. *State v. Montgomery*, 2016-Ohio-5487, ¶ 104; *State v. Short*, 2011-Ohio-3641, ¶ 119.

{¶33} More importantly, Marlatt does not demonstrate a reasonable probability that, had counsel reviewed the discovery before the plea hearing, she would have rejected the plea agreement and proceeded to trial. She entered her guilty pleas after being advised of her constitutional rights and the consequences of doing so, acknowledged her understanding of

those rights, and admitted her guilt. Nothing in the record connects counsel's alleged failure to review discovery with Marlatt's decision to plead guilty.

{¶34} Nor does the record demonstrate that counsel failed to investigate or prepare for sentencing. On the contrary, counsel submitted a detailed sentencing memorandum, presented mitigating evidence, addressed the statutory sentencing factors, advocated for community control and, alternatively, the minimum prison term, and continued that advocacy at the sentencing hearing.

{¶35} While Marlatt may disagree with the sentence ultimately imposed, ineffective assistance is not established merely because counsel's advocacy did not produce a defendant's desired result. The record demonstrates that counsel vigorously advocated for a lesser sentence and presented the trial court with substantial mitigating information.

{¶36} Accordingly, Marlatt has failed to demonstrate either deficient performance or resulting prejudice under *Strickland*.

{¶37} For these reasons, Marlatt's first assignment of error is overruled.

II.

{¶38} In her second assignment of error, Marlatt argues that the trial court's sentence was not consistent with the purposes and principles of felony sentencing. We disagree.

Standard of Review

{¶39} In reviewing a felony sentence, we examine the entire record, including any oral or written statements, the presentence report, and the trial court's sentencing findings. R.C. 2953.08(F); *State v. Jones*, 2020-Ohio-6729, ¶ 36; *State v. Howell*, 2015-Ohio-4049, ¶ 31 (5th Dist.).

{¶40} Pursuant to R.C. 2953.08(G)(2), an appellate court may modify or vacate a felony sentence only if it clearly and convincingly finds either that (1) the record does not support the sentencing court’s findings under the applicable statutes, or (2) the sentence is otherwise contrary to law. *State v. Bonnell*, 2014-Ohio-3177, ¶ 28.

{¶41} A sentence is not contrary to law when the trial court considers the purposes and principles of felony sentencing set forth in R.C. 2929.11, considers the seriousness and recidivism factors in R.C. 2929.12, properly imposes post-release control, and imposes a sentence within the applicable statutory range. *State v. Pettorini*, 2021-Ohio-1512, ¶¶ 14-16 (5th Dist.), quoting *State v. Dinka*, 2019-Ohio-4209, ¶ 36 (12th Dist.).

{¶42} An appellate court may not modify a sentence merely because it disagrees with the trial court’s weighing of the factors under R.C. 2929.11 and R.C. 2929.12. *Jones*, ¶ 39. However, where a sentence is based upon considerations outside the statutory sentencing framework, it is contrary to law and remains subject to appellate review. *State v. Bryant*, 2022-Ohio-1878, ¶ 22; *State v. Hargraves*, 2026-Ohio-2378, ¶ 19 (5th Dist.).

R.C. 2929.13(D) – Presumption of Prison Term

{¶43} Marlatt was convicted of Theft in Office, a second-degree felony, and Tampering with Records, a third-degree felony, with the sentences ordered to run concurrently.

{¶44} R.C. 2929.13(D)(1) provides, in applicable circumstances, that when sentencing an offender convicted of a first or second-degree felony, “it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code.” The statute nevertheless permits a trial court to impose community control under R.C. 2929.13(D)(2) if it finds that community control

would adequately punish the offender, protect the public from future crime, and would not demean the seriousness of the offense because the applicable less-serious factors outweigh the applicable more-serious factors.

{¶45} Thus, where the statutory presumption applies, the trial court is not required to impose a prison term. Rather, it must determine whether the requirements of R.C. 2929.13(D)(2) are satisfied before imposing community control.

Purposes and Principles of Felony Sentencing

{¶46} R.C. 2929.11(A) provides that felony sentences shall be reasonably calculated to achieve the two overriding purposes of felony sentencing: protecting the public from future crime by the offender and others, and punishing the offender using the minimum sanctions that the court determines to accomplish those purposes without imposing an unnecessary burden on state or local government resources. R.C. 2929.11(B) further provides that a felony sentence must be commensurate with and not demeaning the seriousness of the offender's conduct and its impact upon the victim and consistent with sentences imposed for similar crimes committed by similar offenders.

{¶47} Under R.C. 2929.12, the trial court must consider the factors bearing upon the seriousness of the offense and the likelihood of recidivism. Although a trial court must consider the factors set forth in R.C. 2929.12, it is not required to make specific findings or recite the statutory language, provided the record demonstrates that the court considered the appropriate factors. *Jones*, ¶ 20; *State v. Webb*, 2019-Ohio-4195, ¶ 19 (5th Dist.); *State v. Clanin*, 2024-Ohio-2445, ¶ 14 (5th Dist.).

{¶48} Where the record is silent, a presumption arises that the trial court considered the factors under R.C. 2929.11 and R.C. 2929.12. *State v. Hannah*, 2015-Ohio-4438, ¶ 13 (5th Dist.); *State v. Blosser*, 2024-Ohio-173, ¶¶ 16-17 (5th Dist.).

Application

{¶49} Here, both the sentencing transcript and judgment entry demonstrate that the trial court considered the purposes and principles of felony sentencing and the seriousness and recidivism factors. The court considered the presentence investigation report, the arguments of counsel, Marlatt's sentencing memorandum, the victim impact statements, and the information presented at the sentencing hearing.

{¶50} The record also demonstrates that the trial court considered substantial mitigating information. The court noted that Marlatt had been employed by the Village for nearly twenty-seven years, including eleven years as its fiscal officer. (Sent. Tr. at 35). The court recognized Marlatt's strong family ties, lack of substance-abuse issues, and lack of a prior criminal record. (*Id.* at 35-36). The court also considered the mitigating evidence presented by defense counsel, including letters of support and counsel's arguments concerning Marlatt's deterrence, personal circumstances, and prospects for rehabilitation.

{¶51} The court nevertheless considered the seriousness of Marlatt's conduct. Marlatt stole nearly half a million dollars from the Village and, when questioned by the court, could not account for how the money had been spent. (Sent. Tr. at 39-40). The court also considered Marlatt's financial circumstances, including that she had no property in her own name, that the home in which she lived was titled in her daughter's name, and that she had retired and begun drawing from her OPERS account before the criminal proceedings had concluded.

{¶52} Restitution was another consideration. The court noted that Marlatt had already begun drawing from her OPERS account, making a lump-sum restitution payment unavailable. (*Id.* at 32-33, 44-45). The court determined that only \$1,853.28 per month was then available for restitution and recognized that, at that rate, it would take years to recover the amount Marlatt had stolen.

{¶53} The court also considered the broader impact of Marlatt's offenses. The court noted that Marlatt's conduct had undermined the public's trust and caused members of the community to question whether their tax dollars were secure and whether governmental decisions were being made in good faith. (*Id.* at 38). The court considered the anger, disappointment, and sense of betrayal experienced by members of the community, as well as the applicable seriousness and recidivism factors and the need for deterrence. (*Id.* at 44-46).

{¶54} Of particular significance, the trial court expressly referred to the "purposes and principles of the sentencing statute" and considered whether community control would adequately address the seriousness of Marlatt's conduct. The court placed substantial weight on the financial impact of the offenses, including the substantial amount of public funds Marlatt misappropriated and the resulting impact upon the Village and its residents. The prosecutor likewise addressed the effect of the loss of those funds on the Village's ability to provide necessary services.

{¶55} The trial court ultimately concluded that a prison term was appropriate punishment and that imposing community control under the circumstances would demean the seriousness of the offense. That determination was within the trial court's discretion to make after considering the statutory factors. Our role is not to reweigh those factors or substitute our judgment for that of the sentencing court. *Jones*, ¶ 39.

{¶56} Marlatt may disagree with the weight the trial court assigned to the seriousness of her conduct relative to the mitigating factors. But disagreement with the trial court's weighing of the R.C. 2929.11 and R.C. 2929.12 factors does not establish that a sentence is contrary to law. The record demonstrates that the trial court considered the relevant statutory purposes and factors, considered both aggravating and mitigating circumstances, and imposed sentences within the applicable statutory ranges.

{¶57} Accordingly, we find no clear and convincing evidence that the record fails to support the trial court's sentencing findings or that Marlatt's sentence is otherwise contrary to law.

{¶58} Marlatt's second assignment of error is overruled.

{¶59} For the reasons stated in our Opinion, the judgment of the Muskingum County Court of Common Pleas is affirmed. Costs to be paid by Appellant Lynn C. Marlatt.

By: Popham, P. J.

Hoffman, J. and

Gormley, J., concur