[Cite as *State v. Leasure*, 2023-Ohio-2710.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio — Court of Appeals No. S-22-017

Appellee — Trial Court No. 20CR816

v.

Nichalus Leasure — **DECISION AND JUDGMENT**

Appellant — Decided: August 4, 2023

* * * * *

Beth A. Tischler, Sandusky County Prosecuting Attorney, and
Alexis M. Otero, Assistant Prosecuting Attorney, for appellee.

Michael H. Stahl, for appellant.

* * * * *

MAYLE, J.

{¶ 1} Appellant, Nichalus Leasure, appeals the December 15, 2021 judgment of the Sandusky County Court of Common Pleas sentencing him to 12 years in prison. For the following reasons, we affirm.

I. Background and Facts

{¶ 2} Leasure was indicted on five counts of gross sexual imposition ("GSI") in violation of R.C. 2907.05(A)(4), each a third-degree felony, and four counts of sexual imposition in violation of R.C. 2907.06(A)(4), each a third-degree misdemeanor. The charges involved two juvenile victims: R.C., who was between the ages of 11 and 13 when the offenses allegedly happened, and C.C., who was between the ages of 7 and 10 when the offenses allegedly happened.

{¶ 3} Leasure's appointed counsel and the prosecutor eventually reached a plea agreement under which Leasure agreed to plead guilty to three counts of GSI, each a third-degree felony, and one count of sexual imposition, a third-degree misdemeanor. In return, the state would dismiss the remaining charges at sentencing. The parties also agreed to jointly recommend an aggregate prison term of seven years.

{¶ 4} On August 10, 2021, Leasure entered his guilty pleas. Following an appropriate Crim.R. 11 colloquy, the trial court accepted Leasure's pleas, found him guilty, and ordered a presentence investigation. Leasure's sentencing was scheduled for October 13, 2021.

{¶ 5} On October 11, 2021—just two days before sentencing—Leasure sent a letter to the trial court asking to have his court-appointed counsel replaced and to withdraw his guilty pleas. Leasure made these requests because (1) he felt coerced into taking a polygraph test and entering the guilty pleas; (2) counsel had never shown him

the "physical results" of the polygraph; (3) he "never recieved [sic] [his] own copy of the discovery to have [him]self to go through it and explain the contradicting statements"; and (4) although Leasure gave his attorney "evidence of [his] own" for counsel to use in Leasure's defense, counsel "never once brought it or brought it to anyones [sic] attention."

{¶ 6} The next day, Leasure's attorney filed a motion to withdraw on the bases that Leasure requested a new attorney and "due to a breakdown of the attorney client relationship that makes further representation untenable."

{¶ 7} On October 13, rather than proceeding with sentencing, the trial court held a hearing on Leasure's pro se requests. At the hearing, Leasure explained that he did not intend his request to be disrespectful to his appointed attorney; in fact, he said that counsel "was a good attorney" for him. However, Leasure said that "I felt that I wasn't * * * getting the help I needed to fight for my case." He told the court that he was attempting to retain counsel, and attributed the last-minute filing of his letter to finding out shortly before filing that he was able to move to withdraw his pleas (which he apparently learned from speaking to an attorney that he was trying to retain).[1] Leasure did not provide any other information supporting his requests.

{¶ 8} When the court asked Leasure's attorney about his motion to withdraw, counsel said that he had a "different version of the events * * *" that Leasure put in his

[1] Leasure did not ultimately retain new counsel.

letter to the court. He believed that their attorney-client relationship had broken down, and, if the court granted Leasure's motion to withdraw his plea, counsel did not "feel that [he] could effectively represent [Leasure] going forward based on what we've been through in the last week or so, and that * * * lack of trust, I guess, that exists at this point * * *." Despite his request to withdraw, counsel said that "as we sit here at this moment, I am adamantly asking that [Leasure] be able to withdraw that plea because I am still representing him in his wishes * * *." Counsel did not provide any substantive information about Leasure's requests.

{¶ 9} When the court inquired of the state, the prosecutor pointed out that Leasure's plea was

> a negotiated resolution that occurred over the span of several months, including the stipulated polygraph. There's been two separate attorneys in the matter. * * * This is a matter in which there has been plenty of time. Nothing has changed. * * * [T]here isn't some—some new bit of evidence that has—has come up, and this case has been lingering * * * and, yet, here we are on the eve [of sentencing], and it feels to the State as though this is that moment of panic that occurs when that—that sentence is to be imposed, * * * [Leasure's] claims are vague and hard to believe that [appointed counsel] would fall so below the standard in this matter.

> [The state] ask[s] the Court deny the request, * * * the negotiated resolution was generous, and it's not likely to be so generous again.

{¶ 10} Before ruling on Leasure's requests, the court explained to Leasure that the state's original offer would no longer exist if Leasure withdrew his plea, and that the potential prison terms Leasure faced if he lost at trial "clearly exceed[ed]" the seven-year recommended sentence that was part of the original plea agreement. Leasure said that he understood. Leasure also conceded that his appointed attorney had gone over the evidence with him, he was aware of the evidence against him, and he understood that the results of the stipulated polygraph test would be admissible at trial.

{¶ 11} Ultimately, the trial court denied Leasure's request for new counsel and granted his request to withdraw his pleas. Regarding the motion for new counsel, the court pointed out that Leasure initially retained counsel, and then asked the court to appoint counsel when his first attorney withdrew. The court noted that Leasure was claiming a breakdown of the attorney-client relationship "a mere two days before sentencing's to begin, * * *" but it did not "believe that's likely the case." The court said that Leasure's attorney was "a competent attorney—more than competent attorney and has practiced in this court for many years and does a very good job." The court also noted that "[t]here was a lot of effort put into" reaching the plea agreement and that Leasure's attorney "was clearly on top of the case" during in-chambers discussions.

{¶ 12} Regarding Leasure's request to withdraw his pleas, the court told Leasure that it was "going to follow the spirit of the rule" that presentence motions to withdraw a plea should be freely and liberally granted. However, it noted it was not sure that Leasure "appreciate[d] how this could ultimately end" or had "given it enough consideration * * *."

{¶ 13} Two months later, in December 2021, Leasure and the state reached another plea agreement. The new agreement required Leasure to plead guilty to the same four charges as the original plea agreement (with the state dismissing the remaining charges at sentencing), but the jointly-recommended prison sentence increased to 11 years. Once again, following an appropriate Crim.R. 11 colloquy, the trial court accepted Leasure's pleas and found him guilty.

{¶ 14} After accepting Leasure's pleas, the court proceeded to sentencing. When the state addressed the court, it asked the court to follow the parties' joint recommendation of an 11-year prison sentence. The state pointed out that the close relationship between Leasure's family and the victims' family facilitated Leasure's offenses and that the harm Leasure caused to the victims was so great that no single prison term would sufficiently protect the public or punish Leasure.

{¶ 15} The mother of Leasure's victims gave a statement to the court and read the victims' statements in their behalf. Mother told the court how close her family was to Leasure's family, said that her children "loved [Leasure] and trusted him" and explained

that her children has lost their best friends (Leasure's children) because of Leasure's actions. Mother said that R.C. had frequent nightmares and flashbacks, C.C. had frequent nightmares and was scared to be alone, and both children see a therapist.

{¶ 16} In her statement, R.C. wrote that the time since she disclosed Leasure's assaults had been "the worst days of [her] life * * *." She had nightmares, replayed Leasure's actions over in her head, was scared to leave her house without another person, and was scared to stay overnight at friends' houses because she feared someone else abusing her. She explained that she did not report Leasure's actions sooner because she was so close to Leasure's family, was afraid of what would happen if she told someone, and was trying to protect C.C. But when C.C. told R.C. that Leasure was abusing her, they decided to tell their parents. R.C. recounted reliving Leasure's abuse when the police interviewed her, being called a liar and an attention-seeker, and losing her best friend. She also said that "[e]ven though Nick knew what he did to us, he still blamed it on our grandpa, siblings, even his own kids." R.C. concluded by saying that dealing with the court proceedings had worsened her mental health, causing depression and posttraumatic stress disorder.

{¶ 17} In her statement, C.C. wrote that Leasure's abuse had caused nightmares, made her scared to go anywhere without her parents, and "ruined" her relationship with Leasure's family. She described the situation as "so stressful" for her and R.C., and said that "[e]veryone thought [they] were lying, but it was [Leasure] this whole time." C.C.

concluded by saying that Leasure "gave us so much pain in our lives, and we will never forget it."

{¶ 18} When Leasure's attorney addressed the court, he told the court that "a ton of time" had gone into reaching the agreed 11-year recommendation, which was "based on a ton of factors[,]" and he asked the court to follow the parties' recommended sentence.

{¶ 19} When Leasure spoke, he apologized to the victims, "express[ed] how much I hate myself for what has happened[,]" said that he would work to better himself while in prison to "make sure this never happens again to anybody else, * * *" and apologized for hurting his children.

{¶ 20} After hearing the statements, the court reviewed information pertinent to sentencing. The court noted that Leasure had a criminal history that was "not terribly significant" and, although Leasure appeared to be remorseful, the court was unsure if his remorse was genuine because his statements at the sentencing hearing conflicted with some of the information in the PSI. The court also found the PSI "terribly troubling" because Leasure repeatedly victimized children who did not have the ability to resist and were overwhelmed by the circumstances; it called Leasure "tak[ing] advantage of a child's innocence * * * intolerable." The court also pointed out that Leasure's action had negatively affected his own family. It concluded by saying that "no words can really

capture all of the emotion that is involved in your actions and the spiral effect that you've caused and this hurt and pain you caused so many people."

{¶ 21} The court sentenced Leasure to 48 months in prison for each GSI conviction and no incarceration for the sexual imposition conviction. It ordered Leasure to serve the prison terms consecutively for an aggregate prison term of 12 years.

{¶ 22} In imposing consecutive sentences, the trial court determined that (1) consecutive sentences were necessary to protect the public from future crime and punish Leasure; (2) consecutive sentences were not disproportionate to the seriousness of Leasure's conduct and the danger that he poses to the public; and (3) two or more of Leasure's offenses were committed as part of a course of conduct and the harm Leasure caused was so great or unusual that no single prison term would adequately reflect the seriousness of his conduct.

{¶ 23} In its sentencing entry, the trial court repeated its reasons for imposing consecutive sentences, i.e., consecutive sentences were necessary to protect the public from future crime or punish Leasure, they were not disproportionate to the seriousness of Leasure's conduct and the danger he poses to the public, and two or more of Leasure's offenses were committed as part of a course of conduct and the harm Leasure caused was so great or unusual that no single prison term would adequately reflect the seriousness of his conduct.

{¶ 24} Leasure now appeals, raising two assignments of error:

> Assignment of Error I: The trial court erred by denying Mr. Leasure's counsel's motion to withdraw based upon a breakdown in communication and, at the same time granting Mr. Leasure's uncounseled motion to withdraw his plea or alternatively counsel was ineffective, resulting in a denial of the right to counsel under the Ohio and United States Constitutions[.]
>
> Assignment of Error II: The trial court erred in imposing consecutive sentences, both in general, and as to Counts 1 & 2 specifically[.]

II. Law and Analysis

A. Leasure failed to show that the trial court abused its discretion by declining to appoint new counsel, or that trial counsel was ineffective.

{¶ 25} In his first assignment of error, Leasure raises two alternative arguments. First, he contends that the trial court abused its discretion when it denied Leasure's request for new counsel and trial counsel's motion to withdraw. He claims that Leasure and his trial attorney demonstrated a breakdown in their relation, and, by denying new counsel while simultaneously granting Leasure's pro se motion to withdraw his plea, the trial court "effectively granted hybrid representation, and denied Mr. Leasure counsel on a critical motion."

{¶ 26} Alternatively, Leasure contends that trial counsel was ineffective because he did not "ask[] for some time to try to clarify the issue * * *" of Leasure withdrawing his guilty pleas, and because he adopted and advocated for Leasure's pro se motion to withdraw the pleas. Leasure claims that he was "acting effectively without advice on—or any knowledge of—the consequences * * *" of withdrawing his pleas, and was prejudiced by counsel's representation because Leasure spent "a spell as a fugitive" and ultimately entered the same plea—but with a longer recommended sentence.

{¶ 27} The state responds that the trial court did not abuse its discretion by refusing to remove trial counsel because Leasure's request for new counsel was vague and did not demonstrate a breakdown in Leasure and trial counsel's relationship, and the court considered all of the facts of the case before declining to appoint new counsel. The state also argues that trial counsel was not ineffective because "[t]he record clearly demonstrates that trial counsel was representing his client, [Leasure], and his wishes."

1. Leasure has not shown any error related to removing his appointed attorney.

{¶ 28} We first address Leasure's argument that the trial court should have granted his request for a new attorney and trial counsel's motion to withdraw and appointed new counsel.

{¶ 29} We review a trial court's decision on a motion to remove court-appointed counsel for an abuse of discretion. *State v. Cowans*, 87 Ohio St.3d 68, 73, 717 N.E.2d 298 (1999). Abuse of discretion means that the trial court's decision was unreasonable,

arbitrary, or unconscionable. *State ex rel. Askew v. Goldhart*, 75 Ohio St.3d 608, 610, 665 N.E.2d 200 (1996). For an appellate court to find an abuse of discretion, "the trial court's judgment must be so profoundly and wholly violative of fact and reason that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." (Internal quotation and citations omitted.) *State v. Weaver*, Slip Opinion No. 2022-Ohio-4371, --- N.E.3d ----, ¶ 24.

{¶ 30} Although an indigent defendant has the right to competent counsel, he does not have the right to appointed counsel of his own choosing. *State v. Horn*, 6th Dist. Ottawa No. OT-03-016, 2005-Ohio-5257, ¶ 11. Thus, a defendant must show good cause for substituting appointed counsel. *Cowans* at 72. Good cause includes a conflict of interest or a complete breakdown in communication between the defendant and the attorney. *Horn* at ¶ 11, citing *State v. Blankenship*, 102 Ohio App.3d 534, 558, 657 N.E.2d 559 (12th Dist.1995); *State v. Henness*, 79 Ohio St.3d 53, 65, 679 N.E.2d 686 (1997), quoting *State v. Coleman*, 37 Ohio St.3d 286, 525 N.E.2d 792 (1988), paragraph four of the syllabus (discharging court-appointed counsel requires "'show[ing] a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's right to effective assistance of counsel.'"). Good cause does not include "'[h]ostility, tension, or personal conflicts between an attorney and a client that do not interfere with the preparation or presentation of a competent defense * * *'" or the

client's disagreement with the attorney's trial tactics or approach. *State v. Tingler*, 6th Dist. Ottawa No. OT-17-032, 2019-Ohio-816, ¶ 15, quoting *State v. Nickelson*, 6th Dist. Wood No. WD-06-023, 2007-Ohio-6367, ¶ 42.

{¶ 31} Here, neither Leasure nor his attorney presented the trial court with information sufficient to show a conflict of interest or a breakdown in their relationship that jeopardized Leasure's right to effective assistance of counsel or his ability to prepare a defense. Three of the complaints about trial counsel that Leasure put in his letter (i.e., Leasure not receiving copies of the polygraph results or discovery responses and counsel allegedly not using the evidence Leasure provided to him) related to counsel's trial tactics or approach, which does not show good cause for replacing appointed counsel. *Tingler* at ¶ 15. Regardless, although Leasure apparently did not receive copies of the discovery documents, he said at the hearing on his motion that he was aware of the evidence against him and had gone over the discovery with trial counsel. He also admitted that he "wasn't sure" if counsel had used the evidence Leasure gave him.

{¶ 32} The fourth complaint in Leasure's letter—that Leasure felt coerced into taking the polygraph test and entering guilty pleas—is belied by Leasure's statements in the record. At the first plea hearing, Leasure confirmed for the court that he was not threatened or forced into pleading guilty. Leasure also made statements during the presentence investigation indicating his reasons for taking a polygraph test, which did not include anything resembling coercion by his attorney. Moreover, when Leasure

addressed the court at the hearing on his motion to replace counsel, he did not say anything indicating that counsel had coerced him; he did say that trial counsel was a good attorney to him. We also note that nothing in the record indicates that Leasure retained another attorney to represent him (as he told the court he was in the process of doing) or renewed his request that the court remove and replace his appointed attorney. And Leasure indicated at both of his plea hearings that he was satisfied with trial counsel's representation.

{¶ 33} Aside from his letter asking the court to remove trial counsel, the only indication that Leasure was dissatisfied with counsel's performance was his statement at the hearing that "I felt that I wasn't getting—getting the help I needed to fight for my case." But that statement, standing alone, does not show that the issues Leasure perceived with trial counsel's performance rose to the level of necessitating new counsel. *See, e.g., State v. Stewart*, 2018-Ohio-684, 101 N.E.3d 688, ¶ 24 (8th Dist.).

{¶ 34} Further, trial counsel's motion and statements at the hearing on Leasure's request did not demonstrate a complete breakdown in communication that jeopardized Leasure's right to effective assistance of counsel. Counsel's motion said that he was moving to withdraw because Leasure requested new counsel and "due to a breakdown of the attorney client relationship that makes further representation untenable." At the hearing, counsel said that he had a "different version of the events that [Leasure] put in his motion * * *" and that he did not feel that he could effectively represent Leasure if the

court allowed Leasure to withdraw his pleas "based on what we've been through in the last week or so, and that * * * lack of trust, I guess, that exists at this point * * *." Counsel did not elaborate further, and the court did not inquire further. But personal tensions and hostilities—including a lack of trust—that do not rise to the level of jeopardizing the defendant's right to effective counsel do not justify replacing appointed counsel. *See Tingler*, 6th Dist. Ottawa No. OT-17-032, 2019-Ohio-816, at ¶ 15; *State v. Hall*, 6th Dist. Lucas Nos. L-09-1219 and L-09-1220, 2010-Ohio-2623, ¶ 67 (record did not show "a 'total lack of cooperation and trust[]'" between defendant and his appointed counsel, despite defendant expressing "concerns" with counsel and saying that he was "'kind of in between[]'" on trusting counsel to try his case, when defendant was not "insistent" on obtaining new counsel and said that he did not have problems communicating with counsel). The explanation that trial counsel gave the court—i.e., that there was a "lack of trust" between Leasure and counsel—did not substantiate a serious, irreparable breakdown of communication rising to the level of jeopardizing counsel's effective representation of Leasure. And, again, neither counsel nor Leasure attempted to have counsel removed from Leasure's case after the October 2021 hearing.

{¶ 35} To show that the trial court abused its discretion, Leasure argues that the trial court did not conduct a sufficient investigation of the nature of the breakdown of his relationship with counsel before denying the motions to remove counsel. We disagree.

{¶ 36} A trial court is required to inquire on the record about "sufficiently specific" complaints a defendant makes regarding appointed counsel's representation, but the court's duty to investigate does not arise from vague or general objections. *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, 858 N.E.2d 1144, ¶ 68, citing *State v. Carter*, 128 Ohio App.3d 419, 423, 715 N.E.2d 223 (4th Dist.1998); and *State v. Deal*, 17 Ohio St.2d 17, 19, 244 N.E.2d 742 (1969). For example, a defendant's complaints that his attorney "would not fight for him[,]" "had not 'fully represented' him[,]" would not do "'[s]tuff that [the defendant] believe[d]'" was required to defend the case, or had "a difference of opinion regarding * * * plea negotiations" are vague or general objections that do not require further investigation. *E.g.*, *Stewart* at ¶ 24; *State v. Phipps*, 2d Dist. Montgomery No. 29199, 2022-Ohio-1188, ¶ 18; *State v. Payne*, 11th Dist. Ashtabula No. 2014-A-0001, 2014-Ohio-4304, ¶ 41; *State v. Conner*, 5th Dist. Tuscarawas No. 2007 AP 06 0035, 2008-Ohio-4042, ¶ 25. Further, a client and an attorney both raising nonspecific complaints about the state of their relationship does not require a court to find that their relationship has completely broken down. *See State v. Cowan*, 6th Dist. Wood No. WD-14-026, 2015-Ohio-2101, ¶ 17-19. When the trial court does investigate a defendant's complaints about counsel, any inquiry "may be brief and minimal." *State v. Harris*, 6th Dist. Lucas No. L-92-039, 1992 WL 348193, *2 (Nov. 27, 1992); *State v. Jordan*, 10th Dist. Franklin Nos. 21AP-421 and 21AP-422, 2022-Ohio-2033, ¶ 17.

{¶ 37} In this case, the court inquired into Leasure's and counsel's reasons for asking to terminate their relationship—despite the vagueness and generality of their complaints—and determined that their relationship was not so dysfunctional that new counsel was required. A "brief and minimal" inquiry into their reasons was all that the trial court had to do. *Harris* at *2; *Jordan* at ¶ 17. Moreover, contrary to what Leasure implies in his brief, the trial court was not required to appoint new counsel for Leasure simply because he and counsel each claimed a general breakdown of their relationship. *See Cowan* at ¶ 17-19. Given the nature of the information in Leasure's and counsel's motions, and what they told the court at the hearing, we are satisfied that the trial court conducted a sufficient investigation before denying the motions.

{¶ 38} After reviewing the evidence, we cannot find that the trial court abused its discretion by denying Leasure's request for a new court-appointed attorney or counsel's motion to withdraw.

2. Leasure has not shown that trial counsel was ineffective.

{¶ 39} Alternatively, Leasure argues that trial counsel was ineffective because he did not ask the trial court for time to discuss the ramifications of Leasure withdrawing his pleas and he "effectively adopt[ed]" Leasure's request to withdraw his pleas, which led to Leasure "acting effectively without advice on—or any knowledge of—the consequences * * *" of withdrawing his pleas. He claims that he was prejudiced by counsel's performance because he received a longer sentence under the second plea deal than he

and the state recommended under the first plea deal. Leasure's argument is without merit.

{¶ 40} To establish ineffective assistance of counsel, an appellant must show "(1) deficient performance of counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel's errors, the proceeding's result would have been different." *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864, ¶ 204, citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A reasonable probability is one sufficient to undermine confidence in the outcome. *State v. Sanders*, 94 Ohio St.3d 150, 151, 761 N.E.2d 18 (2002). Failure to present sufficient evidence on either prong is fatal to an ineffective-assistance claim. *See Strickland* at 697.

{¶ 41} Here, Leasure has failed to show that trial counsel's performance was deficient. First, the transcript of the October 2021 hearing shows that the trial court explained—and Leasure understood—the consequences of withdrawing his pleas. At the hearing, the court asked Leasure if he understood (1) that withdrawing his pleas meant that the state's offer—which Leasure had accepted—would no longer exist, (2) the evidence against him, (3) what was in the discovery materials, (4) that the results of the polygraph he took would be admissible at trial, and (5) that the maximum prison sentence he faced if convicted of all charges "clearly exceeds" the seven-year sentence the parties recommended under the original plea agreement. Leasure indicated that he understood

each of these points. Leasure faults trial counsel for not stopping the hearing to discuss the consequences of plea withdrawal with him, but, based on the trial court's discussion with Leasure, we cannot say that it was objectively unreasonable for counsel to proceed as if Leasure understood what he was doing.

{¶ 42} Second, there is nothing in the record indicating that Leasure and his counsel did *not* discuss the ramifications of Leasure withdrawing his plea.[2] The appellant has the burden of showing that counsel was ineffective, and, on direct appeal, must do so using evidence in the record. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 62 ("On the issue of counsel's ineffectiveness, the petitioner has the burden of proof * * *."); *State v. Quinn*, 6th Dist. Lucas No. L-12-1242, 2014-Ohio-340, ¶ 37, citing *State v. Hartman*, 93 Ohio St.3d 274, 299, 754 N.E.2d 1150 (2001); and *State v. Carter*, 89 Ohio St.3d 593, 606, 734 N.E.2d 345 (2000) ("A claim of ineffective assistance of counsel that requires consideration of evidence outside the record of trial court proceedings cannot be considered on direct appeal."). Leasure has not pointed to any record evidence supporting his theory that counsel did not spend sufficient time discussing plea withdrawal with him, or that counsel should have known that Leasure did not understand the consequences of withdrawing his pleas.

[2] In fact, counsel's comment at the hearing about "what we've been through in the last week or so * * *" implies that counsel and Leasure communicated about Leasure wanting to withdraw his pleas in the days leading up to the hearing.

{¶ 43} Finally, Leasure has not pointed to any evidence that trial counsel's decision to adopt and argue for Leasure's pro se request to withdraw his guilty pleas fell below an objective standard of reasonable representation. When a defendant files pro se motions while represented by counsel, how counsel chooses to proceed with the pro se motions falls under the umbrella of trial strategy. *See, e.g.*, *State v. Smith*, 2017-Ohio-8558, 99 N.E.3d 1230, ¶ 57 (1st Dist.) (counsel declining to argue pro se motions because counsel believed they were meritless was trial strategy). And trial strategy or tactical decisions—even debatable ones—cannot form the basis of a claim of ineffective assistance of counsel. *State v. Grissom*, 6th Dist. Erie No. E-08-008, 2009-Ohio-2603, ¶ 22. Leasure did not point to anything in the record showing that counsel's decision to support Leasure's pro se request to withdraw his pleas was objectively unreasonable or anything other than strategy.

{¶ 44} In sum, there is no evidence that counsel should have known that Leasure did not understand the consequences of withdrawing his pleas, and counsel's decision to join Leasure's motion was a strategic decision. Thus, Leasure cannot show that trial counsel's performance was deficient or that counsel provided ineffective assistance.

{¶ 45} Leasure's first assignment of error is not well-taken.

B. The trial court's consecutive-sentence findings are not clearly and convincingly unsupported by the record.

{¶ 46} In his second assignment of error, Leasure argues that the trial court erred by imposing consecutive sentences because the court's findings regarding consecutive

sentences are not supported by competent, credible evidence. Specifically, he argues that the harm he caused "is not unusual to this case—it is the impact that is felt in every case, * * *" and that this general harm is reflected in the basic penalties for GSI. He also points out that two of the GSI charges involve the same victim, timeframe, and conduct, which, he contends, makes a stronger case for ordering those convictions to be served concurrently.

{¶ 47} The state responds that the record contains impact statements from the victims and the victims' mother that outline the psychological, emotional, and social harms that Leasure caused, which supports the trial court's consecutive-sentence findings.

{¶ 48} We review sentencing challenges under R.C. 2953.08(G)(2). The statute allows an appellate court to increase, reduce, or otherwise modify a sentence or vacate the sentence and remand the matter for resentencing only if it clearly and convincingly finds either of the following:

> (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
>
> (b) That the sentence is otherwise contrary to law.

R.C. 2953.08(G)(2). Because Leasure challenges the trial court's imposition of consecutive sentences under R.C. 2929.14(C)(4), R.C. 2953.08(G)(2)(a) applies.

{¶ 49} We review a trial court's findings related to consecutive sentences de novo. *State v. Gwynne*, Slip Opinion No. 2022-Ohio-4607, --- N.E.3d ----, ¶ 27.[3]

{¶ 50} In determining whether consecutive sentences are clearly and convincingly contrary to law under R.C. 2953.08(G)(2), the appellate court must first ensure that the trial court made each of the findings required by R.C. 2929.14(C)(4). *Id.* at ¶ 25. To impose consecutive sentences, a trial court is required to make three findings: (1) consecutive sentences are "necessary to protect the public from future crime or to punish the offender * * *;" (2) imposition of consecutive sentences is not "disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public * * *;" and (3) one of the factors in R.C. 2929.14(C)(4)(a) to (c) applies. R.C. 2929.14(C)(4); *State v. Beasley*, 153 Ohio St.3d 497, 2018-Ohio-493, 108 N.E.3d 1028, ¶ 252. As relevant here, R.C. 2929.14(C)(4)(b) requires the trial court to find that "[a]t least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses * * * adequately

[3] We note that a motion for reconsideration of this decision is pending before the Ohio Supreme Court.

reflects the seriousness of the offender's conduct." If the trial court fails to make these findings, the sentence is contrary to law. *Gwynne* at ¶ 25.

{¶ 51} The second step the appellate court must take is determining if the trial court's findings are clearly and convincingly supported by the record. *Id.* at ¶ 26. This requires the appellate court to have "a firm conviction or belief" that the evidence in the record does not support the trial court's findings before vacating or modifying consecutive sentences. *Id.* at ¶ 26-27. Reviewing the record for clear and convincing evidence requires the appellate court to (1) determine if there is some evidentiary support in the record for the trial court's consecutive sentence findings, and (2) ensure that whatever evidentiary basis exists is "adequate to fully support the trial court's consecutive-sentence findings." *Id.* at ¶ 29.

{¶ 52} A sentencing court must make its findings under R.C. 2929.14(C)(4) at the sentencing hearing and incorporate them into the sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. The trial court is not required to state the reasons behind its findings, however. *Id.*

{¶ 53} In this case, the trial court made all three findings at both the sentencing hearing and in the judgment entry, which Leasure does not dispute. Leasure takes issue only with the trial court's finding under R.C. 2929.14(C)(4)(b), i.e., that Leasure committed two or more of the offenses as part of a course of conduct, and "the harm caused by two or more of the multiple offenses * * * was so great or unusual that no

single prison term for any of the offenses * * * adequately reflects the seriousness of [Leasure's] conduct." He contends that, although the "allegations are reprehensible, * * * they are incorporated within the statute[,]" and the impact on his victims "is not unusual to this case—it is the impact that is felt in every case, * * *" which is reflected in the "base penalty" for a third-degree felony GSI conviction.

{¶ 54} Leasure's argument ignores the predatory nature of Leasure's conduct (i.e., using his position as a close family friend to assault the victims numerous times over many years) and the serious and lasting mental, emotional, and social harm Leasure's actions caused to each victim (i.e., recurring nightmares, fear of being alone, and ostracization from friends and peers). Moreover, "this court and others have determined that an offender's prolonged sexual relationship with an underage victim under his care in some capacity supports a trial court's finding that the harm caused was so great or unusual that no single prison term adequately reflects the offender's conduct." *State v. Russell*, 11th Dist. Lake No. 2019-L-138, 2020-Ohio-3243, ¶ 137, citing *State v. Jones*, 8th Dist. Cuyahoga No. 105527, 2017-Ohio-9020, ¶ 8; *State v. Clyde*, 6th Dist. Erie Nos. E-16-045 and E-16-048, 2017-Ohio-8205, ¶ 14; *State v. Nierman*, 6th Dist. Ottawa No. OT-15-020, 2017-Ohio-672, ¶ 18; *State v. Harrington*, 11th Dist. Trumbull No. 2006-T-0122, 2007-Ohio-5784, ¶ 26; and *State v. Taft*, 6th Dist. Huron No. H-18-003, 2019-Ohio-1565, ¶ 26. Taking this into consideration, we cannot say that consecutive

sentences are clearly and convincingly unsupported by the record. Therefore, Leasure's second assignment of error is not well-taken.

III. Conclusion

{¶ 55} The December 15, 2021 judgment of the Sandusky County Court of Common Pleas is affirmed. Leasure is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J. _____
JUDGE

Christine E. Mayle, J. _____
JUDGE

Gene A. Zmuda, J.
CONCUR. _____
JUDGE