

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

State of Ohio

Court of Appeals No. L-25-00176

Appellee/Cross-Appellant

Trial Court No. CR0202402466

v.

Kevin Thompson

DECISION AND JUDGMENT

Appellant/Cross-appellee

Decided: August 18, 2026

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for
appellee/cross-appellant.

Michael H. Stahl, for appellant/cross-appellee

* * * * *

SULEK, J.

{¶ 1} Defendant-appellant, Kevin Thompson, appeals a judgment of the Lucas County Court of Common Pleas which, following his guilty plea entered pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), convicted him of one count of kidnapping and one count of rape, and imposed an indefinite prison term of 18 to 23 years. The State cross-appeals, arguing that the sentence on the count of kidnapping is contrary to law.

For the reasons that follow, the trial court’s judgment is affirmed, in part, and reversed, in part.

I. Factual Background and Procedural History

{¶ 2} The Lucas County Grand Jury indicted Thompson on one count of kidnapping in violation of R.C. 2905.01(A)(4) and (C)(1), a felony of the first degree, with a sexual motivation specification pursuant to R.C. 2941.147(A), and three counts of rape in violation of R.C. 2907.02(A)(2) and (B), felonies of the first degree. The charges stem from an incident on or about September 28, 2024.

{¶ 3} Thompson initially pleaded not guilty. He subsequently sought leave to enter a plea of not guilty by reason of insanity. Dr. Wayne Hupp of the Court Diagnostic and Treatment Center evaluated Thompson and issued a “Mental Condition at the Time of the Offense(s)” report dated April 21, 2025, in which Dr. Hupp stated that Thompson “knew the wrongfulness of the acts charged.” The trial court, therefore, denied Thompson’s request.

{¶ 4} The case proceeded through extensive pretrial discovery. Relevant here, the State’s response to Thompson’s request for a bill of particulars stated that the “counts are as detailed in the summary report of the police investigation authored by the detective and provided to the defendant in discovery.” Thompson did not file an objection to the bill of particulars.

{¶ 5} At a pretrial conference on March 5, 2025, the parties advised the trial court that discovery was complete except for the victim’s medical records, which the

prosecutor explained had been partially supplied and were being expedited. During the pretrial on April 23, 2025, defense counsel acknowledged on the record the existence of video surveillance from Detroit and other videos and stated that they had been “able to analyze those.”

{¶ 6} On June 4, 2025, Thompson withdrew his prior plea and pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to the count of kidnapping and one count of rape. In exchange, the State agreed to dismiss the sexual motivation specification and remaining two counts of rape. During the plea colloquy, the trial court advised Thompson of the constitutional rights he was waiving, the nature of the charges, the maximum penalties, and the effect of the plea. The court determined that the plea was being made knowingly, intelligently, and voluntarily. The prosecutor then recited the factual basis for the plea:

[THE STATE]: Had this matter proceeded to trial the State of Ohio would have proved beyond a reasonable doubt that on or about September 28, 2024, and in Lucas County, the Defendant did by force, threat, or deception remove another from the place where she was found, or restrained her liberty for the purpose of engaging in sexual activity with her against her will.

Further, on or about September 28, 2024, and in Lucas County, the Defendant engaged in sexual conduct with another where the Defendant purposely compelled her to submit by force or threat of force.

Specifically, Judge, we would have shown that on that date at approximately 1:00 a.m., the Defendant forced his ex-girlfriend into his vehicles in Detroit, Michigan where she resides and works.

The Defendant had been stalking her for weeks following a breakup. She had obtained a Restraining Order to try to keep him away from her.

The Defendant picked her up and threw her into his car. This is captured on video surveillance.

He then handcuffed her -- handcuffed her, duct taped her eyes and mouth, and drove her to his home in Toledo at 515 Mayfair Boulevard here in Lucas County.

He continued to restrain her liberty. And drug her into his home where he raped her vaginally multiple times. He purposely compelled her by force or threat of force.

Following some time the victim convinced the Defendant to go get pizza. When he left TPD SWAT hit the home and the Defendant was simultaneously arrested.

Her friends and family became worried about her when she failed to appear for work and quickly figured out that he had taken her.

THE COURT: All right. How did the SWAT Team become involved?

[THE STATE]: The Detroit police were contacted by the victim's family who then reached out to SWAT here.

THE COURT: All right. Was there something about videotape that caught a lot of this on --

[THE STATE]: So the initial kidnapping is captured on very good video of the Defendant picking up the victim and putting her into his car and driving away.

THE COURT: All right. So when she failed to appear is that video seen which resulted in calling the SWAT Team here?

[THE STATE]: Yes.

THE COURT: All right. [Defense counsel], any objection to the statements?

[DEFENSE COUNSEL]: No, Your Honor.

{¶ 7} The trial court accepted the plea, found Thompson guilty on both counts, and ordered no contact with the victim. On July 1, 2025, the trial court sentenced Thompson to an indefinite term of 10 to 15 years on the rape count and a definite term of

8 years on the kidnapping count. It further ordered that those sentences be served consecutively. Thompson timely appealed.

II. Assignments of Error

{¶ 8} Thompson raises two assignments of error for review:

1. The trial court erred in accepting a plea of guilty while Mr. Thompson maintained his innocence of all charges without verifying an adequate factual background in violation of the due process and due course of law provisions of the United States and Ohio Constitutions.

2. Mr. Thompson received ineffective assistance of counsel, which resulted in an involuntary, unintelligent, and unknowing plea of guilty while claiming innocence, in violation of the VI and XIV Amendments to the United States Constitution and Sect. 10 and 16 of the Ohio Constitution.

{¶ 9} The State has cross-appealed and sets forth a single assignment of error:

1. The trial court was required to impose a stated minimum and maximum term for the kidnapping conviction.

III. Thompson's Appeal

{¶ 10} In his first assignment of error, Thompson argues that the trial court erred when it accepted his *Alford* plea without an adequate factual background. In his second assignment of error, he contends trial counsel was ineffective for failing to investigate Thompson's professed innocence.

A. *Alford* Plea

{¶ 11} A guilty plea must be made knowingly, intelligently, and voluntarily to be valid under both the United States and Ohio Constitutions. *Boykin v. Alabama*, 395 U.S. 238 (1969); *State v. Engle*, 74 Ohio St.3d 525, 527 (1996). The same standard applies to

an *Alford* plea, which is like a guilty plea. *State v. Drzayich*, 2016-Ohio-1398, ¶ 11, 13 (6th Dist.). Under *Alford*, a defendant may enter a guilty plea while maintaining innocence when the defendant “intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt.” *North Carolina v. Alford*, 400 U.S. 25, 37 (1970). In such cases, “the trial court must evaluate the reasonableness of the defendant’s decision to plead guilty notwithstanding the protestation of innocence.” *Drzayich* at ¶ 13; *see also State v. Berentz*, 2026-Ohio-1853, ¶ 12 (5th Dist.) (“When a defendant’s plea is accompanied by a protestation of innocence, a trial court has a heightened duty to ensure that the defendant has made a rational decision to enter the plea.”); *State v. Obhof*, 2023-Ohio-408, ¶ 39 (11th Dist.).

{¶ 12} Before an Ohio court accepts an *Alford* plea, therefore, the trial court must “(1) question the defendant as to his reasons for deciding to plead guilty; and (2) inquire into the state’s evidence in order to determine that the likelihood of a conviction on offenses of equal or greater magnitude than the offenses to which the defendant entered a plea is great enough to warrant such a decision.” *State v. Bryant*, 2005-Ohio-3352, ¶ 9 (6th Dist.), quoting *State v. Nicely*, 2000 WL 864448, *2 (6th Dist. June 30, 2000). The first requirement can be met by asking the defendant the reasons for entering the guilty plea. *State v. Koperski*, 2024-Ohio-2838, ¶ 20 (6th Dist.); *State v. Battigaglia*, 2010-Ohio-802, ¶ 22 (6th Dist.). The second requirement calls for the court’s inquiry of a presentation of “a basic factual framework for the charge and plea.” *Id.* at ¶ 13, quoting *State v. Woods*, 2014-Ohio-3960, ¶ 6 (6th Dist.). “That kind of factual explanation allows

the trial court to resolve the apparent conflict between ‘a defendant’s claim of innocence and the defendant’s desire to plead guilty to the charges.’” *Berentz* at ¶ 13, quoting *State v. Johnson*, 2016-Ohio-2840, ¶ 27 (8th Dist.). The trial court may rely on the entire record before it in conducting its analysis. *Koperski* at ¶ 13.

{¶ 13} Here, the trial court inquired into Thompson’s reasons for entering the guilty plea and clarified that he was pleading guilty to reduce his exposure to a lengthier prison sentence that could have come with the dismissed rape charges and sexual motivation specification.

{¶ 14} In addition, the factual basis recited at the plea hearing satisfied the “basic factual framework” for the charge and the plea. *Koperski* at ¶ 13. The prosecutor described the conduct underlying each charge: Thompson forced the victim into his vehicle in Detroit at approximately 1:00 a.m.; the abduction was captured on video surveillance; he handcuffed her, duct-taped her eyes and mouth, and drove her to a specific Toledo address; he raped her multiple times at that residence; and he was arrested when Toledo SWAT executed a raid after he left to obtain food. These facts established both the elements of kidnapping under R.C. 2905.01(A)(4)—removal of another by force for the purpose of engaging in sexual activity—and rape under R.C. 2907.02(A)(2)—sexual conduct compelled by force. The recitation also identified the geographic and conduct-specific facts that distinguish a basic factual framework from conclusory assertions.

{¶ 15} Thompson nonetheless argues that the factual basis was insufficient because the prosecutor did not specify the evidentiary sources supporting each fact. He maintains that it is not enough to say that the State would have shown that the victim was kidnapped and raped, but rather the prosecutor must identify that *the victim's testimony or other specific physical evidence* would have shown that she was kidnapped and raped. He emphasizes that in this case the prosecutor did not specify which witnesses would testify or how the video surveillance from Detroit would be authenticated.

{¶ 16} He further argues that this deficiency is compounded by a lack of incriminating evidence in the record. He contends that the State's discovery responses do not reveal any medical records, rape kit, or other physical evidence presented by a third party. He also cites Dr. Hupp's observation in the evaluation of Thompson's mental status that the Toledo Police Department report he reviewed contained no information "regarding the actual alleged acts of kidnapping or sexual assault of any kind."

Thompson asserts that this is the same report that the State referred to in its bill of particulars. He concludes that because the bill of particulars was not amended and no additional evidence was presented, "there is no mechanism for finding sufficient facts to accept a guilty plea over a protestation of innocence."

{¶ 17} In support of his argument that the State must identify the evidentiary source for the asserted facts, Thompson relies on *United States v. Tunning*, 69 F.3d 107 (6th Cir. 1995). There, the Sixth Circuit held that when the government establishes a factual basis by reciting what facts it would have proven at trial, the prosecutor "must

also identify the evidence it has to prove those facts.” *Id.* at 114. *Tunning*, however, analyzed the issue under former Fed.R.Crim.P. 11(f), now Fed.R.Crim.P. 11(b)(3), which provides that “Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.” This court has recognized that Ohio’s Crim.R. 11 does not contain a similar provision, and therefore “the trial court does not have an obligation under Crim.R. 11 to determine whether there was a factual basis for the plea.” *State v. Dyer*, 2019-Ohio-1558, ¶ 7 (6th Dist.); *see also State v. Drzayich*, 2016-Ohio-1398, ¶ 15 (6th Dist.); *State v. Battigaglia*, 2010-Ohio-802, ¶ 24 (6th Dist.).

{¶ 18} Thompson, in effect, seeks to incorporate a requirement from the Federal Rules of Criminal Procedure to expand the analysis under Ohio law regarding whether a factual basis exists to support an *Alford* plea. He cites no cases, and this court could not independently identify any, where an Ohio court has applied this standard. This court declines to be the first. Accordingly, under Ohio law, when the State sets forth the factual basis to support an *Alford* plea, it need not identify the specific pieces of evidence that underly each fact.

{¶ 19} Thompson’s first assignment of error is not well-taken.

B. Ineffective Assistance of Counsel

{¶ 20} In his second assignment of error, Thompson argues that his trial counsel was ineffective.

{¶ 21} To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate (1) that counsel’s performance was deficient, meaning it fell below an

objective standard of reasonableness, and (2) that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 669 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 143 (1989). The second prong requires the defendant to show that there is a reasonable probability that, but for counsel's errors, the defendant would not have entered the plea and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *State v. Xie*, 62 Ohio St.3d 521, 524 (1992).

{¶ 22} A properly licensed attorney is presumed competent, and the burden rests on the defendant to overcome that presumption. *State v. Hamblin*, 37 Ohio St.3d 153, 155-156 (1988). Debatable, strategic, and tactical decisions do not constitute ineffective assistance, even if, in hindsight, a different strategy may have been available. *State v. Clayton*, 62 Ohio St.2d 45, 49 (1980).

{¶ 23} Because this court's review is confined to the record, a claim of ineffective assistance that depends on evidence outside the record cannot be established on direct appeal but may be raised in a postconviction proceeding. *State v. Cooperrider*, 4 Ohio St.3d 226, 228 (1983).

{¶ 24} Here, Thompson argues that trial counsel was constitutionally ineffective for failing to conduct any meaningful investigation before advising him to plead guilty while maintaining his innocence. He identifies three principal failures. First, counsel did not act on the discrepancy between the State's bill of particulars and Dr. Hupp's observation that the report contained no information regarding the alleged acts of kidnapping or sexual assault. Second, after the State filed motions describing material it

characterized as potentially exculpatory, counsel issued no subpoenas, filed no motion to compel, and sought no amended bill of particulars. Third, counsel advised Thompson that the case was a “slam dunk” notwithstanding his consistent assertions of innocence.

{¶ 25} Relying on *Strickland*’s recognition that counsel has a duty to conduct reasonable investigations, Thompson contends these omissions fell below an objective standard of reasonableness and produced an unknowing and unintelligent plea. He acknowledges that the claim may ultimately require evidence beyond the record but maintains that the existing record demonstrates deficiency.

{¶ 26} The State, on the other hand, argues that Thompson has established neither deficient performance nor prejudice. It emphasizes that review of counsel’s performance is highly deferential, that a licensed attorney is presumed competent, and that strategic and tactical decisions do not support a claim of ineffective assistance. The State also maintains that no error prejudiced Thompson because his *Alford* plea was entered knowingly, intelligently, and voluntarily, and because counsel received full open-file discovery. It further argues that Dr. Hupp’s receipt of limited discovery does not show that counsel lacked essential factual information, and that, as established with respect to the first assignment of error, Ohio law does not require either the bill of particulars or the prosecutor’s recitation at the plea hearing to identify the sources of the State’s evidence.

{¶ 27} Upon review, Thompson’s ineffective-assistance claim fails because the record does not overcome the presumption that counsel’s performance was reasonable and he cannot demonstrate prejudice.

{¶ 28} The bulk of Thompson’s argument depends on matters outside the appellate record. His contention that counsel conducted no investigation, issued no subpoenas, and overlooked exculpatory material rests on the absence of such in the record. Counsel may have reviewed the State’s open-file discovery, examined the Detroit surveillance footage, and made an informed judgment that further investigation would not aid the defense; the record neither confirms nor refutes these possibilities. Where the claimed deficiency turns on such off-record matters, it cannot be resolved on direct appeal and is properly reserved for postconviction evidentiary proceedings. *Cooperrider* at 228. To the extent his claim depends on what investigation counsel did or did not undertake, it is not cognizable on this record.

{¶ 29} Considering the matters that are in the record, Thompson cannot show deficient performance. As stated above, Ohio law does not require the bill of particulars to disclose the State’s evidence or its sources, nor does it require the prosecutor’s plea-hearing recitation to identify the evidence supporting each fact. Counsel’s decision to acknowledge on the record that the defense had reviewed the video and other discovery, and to advise an *Alford* plea that secured dismissal of two rape counts and the sexual-motivation specification, reflects a reasonable consideration of the facts rather than constitutionally deficient performance.

{¶ 30} Thompson also cannot establish prejudice. The prejudice inquiry first requires the defendant to show that counsel’s performance was deficient. *Xie*, 62 Ohio St.3d at 524. Second, the defendant must show there is a reasonable probability that, but

for counsel’s errors, he would not have pleaded guilty. *Id.* Here, the presentence investigation report reveals that the State’s evidence of guilt was substantial. It included the victim’s testimony, the Detroit surveillance video capturing the abduction, and the physical evidence recovered from Thompson’s home and vehicle—a bookbag containing handcuffs and tape, the victim’s concealed phone, her separated passport and keys, the protection order, used tape in the vehicle, and engaged child safety locks. Against this evidence, the *Alford* plea eliminated Thompson’s exposure on two additional first-degree felony rape counts and a sexual-motivation specification. Thompson does not identify what a more vigorous investigation would have uncovered, nor does he explain how any such evidence would have created a reasonable probability that he would have forgone that resolution and proceeded to trial. His after-the-fact dissatisfaction with the plea, standing alone, does not establish prejudice.

{¶ 31} Accordingly, because Thompson has demonstrated neither deficient performance nor resulting prejudice, his claim of ineffective assistance of counsel must fail. Thompson’s second assignment of error is not well-taken.

IV. The State’s Cross-Appeal

{¶ 32} In its cross-appeal, the State argues that the trial court erred by imposing a definite eight-year prison term on the kidnapping count, rather than an indefinite prison term as required by R.C. 2929.14(A)(1)(a). Notably, Thompson concedes this error.

{¶ 33} “The state is permitted to appeal a sentence as a matter of right if the sentence is contrary to law. R.C. 2953.08(B)(2). A sentence that does not comply with

the mandatory provision of the sentencing statutes is contrary to law.” *State v. Chambers*, 2024-Ohio-3341, ¶ 210 (6th Dist.). R.C. 2929.14(A)(1)(a) states that for a felony of the first degree committed on or after March 22, 2019, the prison term shall be an indefinite prison term with a stated minimum term selected by the court, and a maximum term that is determined according to section 2929.144 of the Revised Code. Under R.C. 2905.01(C)(1), kidnapping is a felony of the first degree.

{¶ 34} At the sentencing hearing on July 9, 2025, the trial court imposed an indefinite prison term of 10 to 15 years on the rape count but imposed only a definite “term of 8 years” on the kidnapping count. Although the trial court properly computed Thompson’s maximum sentence, and it seems likely that the court intended the eight-year term to be the stated minimum term for the kidnapping conviction, this does not change the fact that, as written, the court imposed a definite term instead of an indefinite one. Because R.C. 2929.14(A)(1)(a) requires the trial court to impose an indefinite sentence with a stated minimum term on the kidnapping count, that portion of the sentence is contrary to law. *Chambers* at ¶ 210-213.

{¶ 35} Accordingly, the State’s assignment of error on cross-appeal is well-taken. The sentence on the kidnapping count is vacated, and the matter is remanded to the trial court for resentencing consistent with R.C. 2929.14(A)(1)(a).

V. Conclusion

{¶ 36} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed in part and reversed in part. The sentence on the count of

kidnapping is reversed and vacated, and the matter is remanded to the trial court for resentencing. The conviction is affirmed in all other respects. Thompson is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed, in part,
reversed, in part and remanded.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Thomas J. Osowik, P.J.

JUDGE

Myron C. Duhart, J.

JUDGE

Charles E. Sulek, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.
