

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

GERALD CLAUDE HAMILTON,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 25 MA 0026

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2024 CR 00365

BEFORE:

Carol Ann Robb, Cheryl L. Waite, Katelyn Dickey, Judges.

JUDGMENT:

Affirmed.

Atty. Lynn Maro, Mahoning County Prosecutor, *Atty. Kristie M. Weibling*, Assistant
Mahoning County Prosecutor, for Plaintiff-Appellee and

Atty. Gary L. Van Brocklin, for Defendant-Appellant.

Dated: October 17, 2025

Robb, P.J.

{¶1} Appellant, Gerald Claude Hamilton, appeals the October 17, 2024 judgment sentencing him to 15 to 19 years in prison after he pleaded guilty to seven felony counts.

{¶2} Hamilton contends the trial court committed plain error by imposing consecutive sentences. He also asserts he was denied the effective assistance of trial counsel based on his attorney's failure to object to the imposition of consecutive sentences and to the prosecution's statements supporting the consecutive sentences when there was no factual basis for the allegations. Thus, Hamilton claims we should modify the court's imposition of consecutive sentences and impose concurrent sentences.

{¶3} For the following reasons, we affirm.

Statement of the Case

{¶4} Hamilton was charged by secret indictment in June of 2024 with 36 counts of mostly sexually-oriented offenses. The indicted charges range from second-degree felonies to fifth-degree felonies and include: three counts of endangering children; one count of corrupting another with drugs; one count of compelling prostitution; fifteen counts of illegal use of a minor in nudity-oriented material or performance; one count of identity fraud; and fifteen counts of pandering sexually-oriented matter involving a minor. In addition to a two-page list of the indicted charges, the indictment includes a paragraph detailing each offense, which is comprised of ten pages. The indictment identifies three victims by their initials and dates of birth. (June 13, 2023 Indictment.)

{¶5} Hamilton appeared in court with counsel at the arraignment and entered a plea of not guilty. He was denied bond and was appointed counsel. (June 18, 2024 Judgment.) Hamilton waived his right to a speedy trial.

{¶6} The parties exchanged discovery, and the matter was set for jury trial in August of 2024.

{¶7} The state filed a bill of particulars on August 19, 2024. The recitation of facts therein is consistent with those detailed in the indictment and provides additional details of the offenses. The bill of particulars states the conversations soliciting images from minor victims were found on Hamilton's cellular phone. The bill of particulars

provides additional descriptions of the illicit images and videos retrieved from Hamilton's devices and SD cards found in his residence. (August 19, 2024 Bill of Particulars.)

{¶8} Days before the scheduled jury trial, Hamilton entered a guilty plea to seven counts: corrupting another with drugs, endangering children, illegal use of nudity-oriented materials including a minor, endangering children, identity fraud, illegal use of a minor in nudity-oriented material, and pandering sexually-oriented material including a minor. In exchange, the state agreed to recommend a prison term of 15-19 years with a Tier II sex offender registration requirement. The state also agreed to move to dismiss the remaining counts.

{¶9} The plea hearing reflects the prosecution listed the charges Hamilton was pleading guilty to and moved to dismiss the remaining counts. The prosecutor said the state was recommending 15 to 19 years in prison with a Tier II sex offender registration. The prosecution did not detail the factual predicate for the charges. The court asked about the victims' opinions about the plea agreement. The prosecution explained two victims were satisfied, and the third victim did not have an opinion about the plea agreement.

{¶10} The trial court judge conducted a plea colloquy with Hamilton, recited the charges to which he was pleading guilty, as well as the potential sentence for each. The state informed the court that Hamilton was facing a maximum total sentence of 23 to 27 years if the terms were ordered to be served consecutively. (March 20, 2024 Plea Hearing.)

{¶11} The trial court accepted the plea agreement; sustained the prosecution's motion to amend the indictment; ordered a presentence investigation (PSI); and set the case for sentencing. (August 21, 2024 Judgment.)

{¶12} The sentencing hearing also shows there were three identified victims. One victim provided a written victim impact statement. One victim spoke via Zoom, and the third victim chose not to participate. The factual basis for the charges was discussed based on the PSI. The PSI states a school resource officer was the first person to learn about Hamilton's offenses. The prosecution stated Hamilton posed as a teenage girl on the Snapchat app and solicited nude photographs from other teenagers. He had dozens of images on his devices. As for Hamilton's identity fraud charge, he used an old

photograph of another young girl taken while she was a minor. He used her name and likeness to lure other girls into sharing nude photos of themselves with him. He pretended he was the girl in the photo. (October 15, 2024 Sentencing Hearing.)

{¶13} While pretending to be a teenage girl, Hamilton tricked one minor to meet him at a hotel. He told the minor he had an older friend who could supply the victim with drugs and alcohol. He then met the minor at the hotel. There are photographs of Hamilton at a local hotel with this victim. She said he provided her with drugs and alcohol in exchange for a forced “strip tease.” On another date, Hamilton forced this minor victim to serve alcohol to other males at a party while wearing lingerie. Hamilton communicated with this victim for more than a year.

{¶14} The state urged the court to impose consecutive sentences while the defense asked the court to order the sentences to run concurrently. The defense argued Hamilton stopped the “bad behavior” on his own, and he was charged after he was no longer committing such offenses. (October 15, 2024 Sentencing Hearing.)

{¶15} Hamilton spoke on his own behalf, listed his good character traits, history of community service, and suggested the charges were limited and “out of character.” The state disagreed and pointed out Hamilton still had many of the illegal images on his devices when the search warrant was executed, so his behavior was ongoing, contrary to Hamilton’s assertions. (October 15, 2024 Sentencing Hearing.)

{¶16} When responding to the defense request for concurrent sentences, the trial court stated:

[W]ith all due respect, my feeling on those types of things in every case I’ve ever had is, if you commit multiple crimes, you should not get a discount.

I know that the philosophy is not universal, and that concurrent sentencing is favored. Indeed, the legislature is in favor of concurrent sentences.

But these crimes are so great and so unusual, and the harm is so obvious that consecutive sentences are necessary.

So these are the seriousness, and with the felony 2s invokes the imposition of Reagan Tokes Law sentencing.

(October 15, 2024 Sentencing Hearing.)

{¶17} The court continued and sentenced him for count two, a felony of the second degree, to a term of eight to twelve years. For count seven, a second-degree felony, the court ordered a term of four years consecutive. For count one, corrupting another with drugs, the court imposed a one-year sentence to be served consecutive to the other sentences. For counts five and nine, fifth-degree felonies, the court ordered one-year concurrent sentences for each but ordered them to run consecutive to the other sentences. For counts ten and seventeen, fourth degree felonies, the court imposed one year sentences for each to run concurrent with one another but consecutive to the other sentences. In summary, the court stated in part:

So twelve years on the felony 2s, and then additional sentences of consecutive years on Count One, one year; Counts Five and Nine concurrent to each other, but consecutive to the total sentence; and one year sentences on Count Ten and Seventeen concurrent to one another, but consecutive to the other sentences, for a total minimum sentence of 15 years, with a maximum total sentence of 19 years.

(October 15, 2024 Sentencing Hearing.)

{¶18} The sentence pronounced in the trial court's judgment entry is consistent with that stated at the hearing. The court found consecutive sentences necessary to protect the public from future crime and to punish the offender. It also concluded consecutive sentences were not disproportionate to the seriousness of his conduct and the danger presented to the public. The court also determined that at least two of the offenses were part of a course of conduct and Hamilton caused harm that was so great or unusual that no single prison term adequately reflects the seriousness of his conduct. The court imposed an indefinite prison term of fifteen to nineteen years. It also classified Hamilton as a Tier II sex offender and ordered him to pay the costs of prosecution.

(October 17, 2024 Judgment.)

{¶19} We granted Hamilton’s motion for a delayed appeal. He raises two assigned errors on appeal.

Imposition of Consecutive Sentences

{¶20} Hamilton’s first assignment of error asserts:

“It was plain error for the trial court to impose consecutive sentences in this case.”

{¶21} Appellate courts may notice “[p]lain errors or defects affecting substantial rights . . . although they were not brought to the attention of the [trial] court.” Crim. R. 52(B). “Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.” *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. Plain error is an obvious deviation from a legal rule that affects the outcome of the trial. *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002).

{¶22} The appellant must show the outcome would have been different absent the plain error. *Id.*; *State v. Whitaker*, 2022-Ohio-2840.

{¶23} Hamilton’s argument here is two-fold. First, he contends the trial court stated it did not intend to follow the law regarding the imposition of consecutive sentences. And second, Hamilton claims the court committed plain error by considering statements made by the prosecution as facts when fashioning his sentence. We disagree.

{¶24} As for Hamilton’s contention that the court did not follow the law consistent with the trial court’s judge’s stated belief about consecutive sentencing, we disagree.

{¶25} As alleged, the judge generally stated he was personally against concurrent sentences, stating: “my feeling on those types of things in every case I’ve ever had is, if you commit multiple crimes, you should not get a discount.” (October 15, 2024 Sentencing Hearing.) Nevertheless, this statement was immediately followed by the court acknowledging that the legislature favors concurrent sentences.

{¶26} Further, as detailed in the statement of the case, the court imposed partially concurrent and partially consecutive sentences. It ordered Hamilton to serve a term of 15 to 19 years comprised of both concurrent and consecutive sentences. Had the court imposed strictly consecutive sentences, the aggregate sentence would have been 23 to 27 years in prison. (March 20, 2024 Plea Hearing.)

{¶27} The imposition of consecutive prison terms for multiple felony offenses is governed by R.C. 2929.14(C)(4), which is one of the provisions listed in R.C. 2953.08(G)(2)(a). Thus, we must affirm the imposition of consecutive terms unless we clearly and convincingly find the record does not support the trial court's findings under R.C. 2929.14(C)(4), which states:

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds [1.] that the consecutive service is necessary to protect the public from future crime or to punish the offender [2.] and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds [3.] any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At 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 committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶28} “[T]o impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings.” *State v. Bonnell*, 2014-Ohio-3177, ¶ 37.

{¶29} The trial court imposed a sentence comprised of both concurrent and consecutive sentences. The trial court made the requisite findings at the hearing and in

its judgment. Despite the trial court judge’s personal sentiments about consecutive sentences, there is no indication he did not follow the rule of law. This aspect of his first assignment of error fails to show error, let alone plain error.

{¶30} The second argument under Hamilton’s first assigned error also fails to establish error. He suggests the trial court improperly relied on the facts of the crimes to which Hamilton pled guilty when fashioning its sentence, even though no factual predicate or recitation of facts were offered by the state at the plea hearing.

{¶31} Hamilton tends to allege the court erroneously considered the state’s recitation of facts at sentencing when fashioning his sentence when one was not offered at the plea hearing. He further claims because there was no factual predicate, the court could not have conducted the requisite proportionality review before imposing consecutive sentences.

{¶32} Hamilton does not seek to withdraw his plea, but instead seems to challenge the sufficiency of the evidence against him, which is not permitted in a direct appeal from a guilty plea. *State v. Bradley*, 2018-Ohio-1671, ¶ 5 (11th Dist.). A guilty plea “is a complete admission of the defendant’s guilt.” Crim.R. 11(B)(1). A plea of guilty precludes a defendant from appealing the merits of the conviction, such that a defendant cannot claim the facts do not support the conviction. *Bradley*, ¶ 6-8.

{¶33} By entering a guilty plea, Hamilton waived the right to require the state to prove his guilt beyond a reasonable doubt. *State v. Isbell*, 2004-Ohio-2300, ¶ 16 (12th Dist.), citing Crim.R. 11(C)(2)(c). Consequently, Hamilton’s plea provides the necessary proof of the elements of the crime and sufficient evidence to support the conviction. The trial court was not required to determine whether a factual basis existed to support the guilty plea prior to entering judgment on that plea under the Ohio Rules of Criminal Procedure. *Bradley* at ¶ 7, citing *State v. Caldwell*, 2001 WL 908943, *3 (12th Dist. August 13, 2001), and *State v. Wood*, 48 Ohio App.2d 339, 344 (1976).

{¶34} Further, although Crim.R. 11(C)(2) requires a trial court to determine that a defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, “[t]he state has no obligation at the plea hearing to set forth the factual basis for a guilty plea.” *State v. Hill*, 2020-Ohio-7, ¶ 11 (2d Dist.), citing *State v. Riddle*, 2017-Ohio-1199, ¶ 39 (2d Dist.). “Unlike the procedure in the

federal courts, there is no requirement under the Ohio Rules of Criminal Procedure that say a court must make a determination that there is a factual basis for a guilty plea prior to entering judgment on that plea.” (Footnote omitted) *State v. Wood*, 48 Ohio App.2d 339, 344 (8th Dist. 1976).

{¶35} Hamilton likewise does not claim a violation of Crim.R. 11 or that he did not understand the nature of the charges against him at the time of the plea. Nevertheless, the factual predicate for each of the 36 offenses charged was detailed in the secret indictment issued in June of 2024. The indictment states the nature of the offenses, the date or date range of the offenses, and the date of birth of the victims of the charges. (June 13, 2024 Indictment.) This information was repeated with more detail in the bill of particulars. Hamilton entered a guilty plea with the assistance of counsel. He does not assert his plea was not entered knowingly, intelligently, and voluntarily.

{¶36} Furthermore, a sentencing court is permitted to consider more than the evidence supporting the convictions when determining one’s sentence. *State v. Barnes*, 2020-Ohio-4150, ¶ 23 (2d Dist.), quoting *State v. Bowser*, 2010-Ohio-951, ¶ 14 (2d Dist.). Among other things, a sentencing court “may consider ‘hearsay evidence, facts related to charges that were dismissed pursuant to a plea bargain, and allegations contained in a [presentence investigation] report.’” *State v. Davis*, 2019-Ohio-1904, ¶ 7 (2d Dist.), quoting *State v. Bautista*, 2016-Ohio-5436, ¶ 12 (2d Dist.).

{¶37} To the extent Hamilton claims the court erred by considering statements made by the prosecution at sentencing or facts underlying the charges recited at sentencing when fashioning Hamilton’s sentence, he fails to demonstrate a deviation from a legal rule that affected the outcome of the trial. “A sentencing court can consider inadmissible evidence as the Rules of Evidence do not apply to sentencing.” *State v. Hudson*, 2017-Ohio-645, ¶ 41 (7th Dist.), citing Evid.R. 101(C)(3).

{¶38} This assigned error is overruled in its entirety.

Ineffective Assistance of Trial Counsel

{¶39} Hamilton’s second assignment of error asserts:

“Defense counsel was guilty of ineffective assistance of counsel by failing to object to the imposition of consecutive sentences, and by failing to object to the prosecutor’s statements in support of a consecutive sentence of an indefinite term of 15 to 19 years in

a correctional facility, since there was no factual basis for these statements, which impaired substantial rights of Appellant to claim that consecutive sentences were statutorily illegal in this case.”

{¶40} To establish a claim of ineffective assistance of counsel, a defendant must show his trial counsel's performance was deficient, in that it fell below an objective standard of care, and the deficient performance resulted in prejudice. *State v. Bradley*, 42 Ohio St.3d 136, 141-143 (1989), citing *Strickland v. Washington*, 466 U.S. 668 (1984). The burden is on the defendant to prove ineffectiveness of counsel. *State v. Smith*, 17 Ohio St.3d 98 (1985). For an Appellant to show prejudice after entering a plea, he must demonstrate a “reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” *State v. Romero*, 2019-Ohio-1839, quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

{¶41} Licensed attorneys in Ohio are presumed competent. *State v. Calhoun*, 86 Ohio St.3d 279, 289 (1999). In evaluating trial counsel's performance, appellate review is highly deferential because of the strong presumption counsel's conduct fell within the wide range of reasonable professional assistance. *Bradley* at 142-143, citing *Strickland* at 689. In fact, appellate courts are prohibited from second-guessing trial counsel's strategic decisions. *State v. Carter*, 72 Ohio St.3d 545, 558 (1995).

{¶42} Hamilton contends his trial counsel was deficient for failing to object to the imposition of consecutive sentences for the reasons asserted under his first assigned error.

{¶43} First, as for the trial judge's stated beliefs on sentencing, we may agree the court should not have offered its personal opinion on the matter. However, he subsequently acknowledged the applicable law and applied it. Hamilton does not contend the court did not make the requisite findings for the imposition of consecutive sentences or that he would have not otherwise entered the plea agreement had his counsel objected.

{¶44} Second, to the extent the trial court considered the state's recitation of facts underlying the offense offered at the sentencing, Hamilton fails to show error in this regard. As stated, there is no requirement that a court must make a determination that there is a factual basis for a guilty plea prior to entering judgment on that plea. Thus, to the extent he claims his counsel should have objected, we disagree.

{¶45} We decline to find Hamilton's trial counsel's performance was deficient or that Hamilton was prejudiced as a result. This assigned error lacks merit.

Conclusion

{¶46} In light of the foregoing, both of Hamilton's assignments of error lack merit. The trial court's judgment is affirmed.

Waite, J., concurs.

Dickey, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs Waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.