

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	
	:	Nos. 115559, 115560, and
v.	:	115561
LEON MARBURY,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: October 22, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-24-689961-A, CR-24-689983-A, and CR-24-696948-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Eric Collins and Chad Cleveland, Assistant Prosecuting Attorneys, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Britta Barthol, Assistant Public Defender, *for appellant*.

DEENA R. CALABRESE, J.:

{¶ 1} Defendant-appellant Leon Marbury was bound over by the juvenile court to the general division in connection with five juvenile court cases. The State charged Marbury with multiple offenses, including murder in violation of

R.C. 2903.02(B). Following indictment, pretrial discovery, and plea negotiations in three general division cases, Marbury pled guilty to involuntary manslaughter, a felony of the first degree in violation of R.C. 2903.04(A), with a three-year firearm specification, discharge of firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3), and several other offenses. The trial court imposed a minimum sentence of 23 years, which was within the plea deal's agreed recommended minimum range of 15 to 23 years.¹

{¶ 2} Marbury now appeals, raising two assignments of error:

1. The juvenile court erred when it found probable cause that Leon Marbury committed felony murder and thus the transfer of jurisdiction on that charge to adult court was improper.
2. Leon Marbury received the ineffective assistance of counsel when his attorney failed to investigate, obtain, and present readily available mitigation evidence that the trial court would have been required to consider.

Finding no merit to the appeal, we affirm.

I. Juvenile Court Proceedings and General Division Indictments

{¶ 3} Marbury's cases, which originated in juvenile court, stemmed from multiple crimes committed from July 9, 2023, to July 25, 2023, the most serious of which resulted in the death of Marbury's friend P.D. After bindover, Marbury's five juvenile court cases led to three indictments in the general division.

¹ Marbury's sentence also includes a Reagan Tokes tail of four years and six months.

A. Cuyahoga C.P. No. CR-24-696948-B

1. Cuyahoga J.C. No. DL23108528

{¶ 4} On July 26, 2023, in Cuyahoga J.C. No. DL23108528, the State’s five-count complaint charged Marbury with murder, felonious assault, discharge of firearm on or near prohibited premises, having weapons while under disability, and improperly handling firearms in a motor vehicle in connection with a shooting incident on July 9, 2023, that led to the death of P.D. The first three charges included one- and three-year firearm specifications.

{¶ 5} The State filed a motion seeking mandatory bindover to the general division, and the juvenile court held a probable-cause hearing on January 8, 2024. The State presented testimony and other evidence that on July 9, 2023, two stolen Kia automobiles, driving in conjunction, made their way through Cleveland and ultimately stopped near basketball courts at Mark Tromba Park. Marbury was driving one of the stolen Kias and was accompanied by P.D., who was sitting in the front passenger seat. According to Cleveland Police Detective Andrew Hayduk, a witness who had been at the basketball court stated that individuals in the two Kias got “out of those cars and” began “shooting into the basketball court.” (Jan. 8, 2024 tr. 28.)² Numerous individuals on the basketball court returned fire, and P.D. was struck in the back. Police eventually recovered 93 shell casings involving ten separate 9 mm firearms.

² Marbury refers to this witness as an “unnamed individual[.]” (Appellant’s brief at p. 14.) Detective Hayduk provided the witness’s name during cross-examination. (Tr. 49.)

{¶ 6} Detective Hayduk testified that he interviewed Marbury, with his mother present, after reading him his Miranda rights. Detective Hayduk stated that during the interview, after he showed Marbury certain video footage, Marbury admitted he drove to the park where “[t]he shooting happened and then [P.D.] was struck.” (Jan. 8, 2024 tr. 30.) The video did not capture the volley of fire at the park itself. Detective Hayduk further testified, however, that Marbury told him — consistent with the available video footage — that soon after the initial shooting incident, he began driving away but then stopped, “got out of the car a second time[,] and shot back towards the park in the street[.]” (Jan. 8, 2024 tr. 30 and 68.)

{¶ 7} After returning to the car and beginning to drive again, Marbury stopped, removed the apparently deceased P.D. from the car, abandoned both the car and P.D., and left the scene with the individuals in the other stolen Kia. P.D. was deceased when officers arrived at the scene.

{¶ 8} Detective Hayduk testified that the video footage of Marbury and accomplices shooting towards the park in what appeared to be “a second volley of gunfire” just “seconds after the park shooting” suggested that the occupants of the Kia, including Marbury, had been armed the entire time. (Jan. 8, 2024 tr. 68.) In addition, Marbury and others were wearing “hoodies in July,” and spent shell casings were recovered not only on the basketball court but also on the street immediately outside it. (Jan. 8, 2024 tr. 18, 20, and 67.)

{¶ 9} The juvenile court found “probable cause as to Counts 1, 2, 3, 4, and 5, including the firearm specifications as outlined in the Complaint,” and that Count 1,

murder in violation of R.C. 2903.02(B), resulted in mandatory bindover. (Jan. 8, 2024 tr. 79.) It explained directly to Marbury that this was not a finding of guilt but merely “that there was some sort of credible evidence which is all the State requires for this case to be bound over to the General Division.” (Jan. 8, 2024 tr. 79-80.)

2. General Division Indictment

{¶ 10} On November 13, 2024, the Cuyahoga County Grand Jury returned a six-count indictment that tracked the juvenile court complaint against Marbury. The sole additional count for receiving stolen property related to Marbury’s codefendants in Cuyahoga C.P. No. CR-24-696948.

B. Cuyahoga C.P. No. CR-24-689983

1. Cuyahoga J.C. No. DL23111046

{¶ 11} The State’s eight-count complaint in Cuyahoga J.C. No. DL23111046, filed September 26, 2023, charged Marbury with offenses related to a shooting captured on video on July 22, 2023. Testimony at the probable-cause hearing indicated that Marbury had been observed in a black Hyundai in a gas station parking lot. A white Kia stopped at a nearby stoplight, and the occupants of the Hyundai, including Marbury, were observed shooting at the Kia. Cleveland Police Detective, Daniel McCandless, testified at the probable-cause hearing that the victim of the shooting, E.H., “informed [him] that it was [Marbury] that was shooting at him.” (Jan. 8, 2024 tr. 116.) The State’s complaint contained two counts of discharge of firearm on or near prohibited premises, two counts of felonious assault, one count of having weapons while under disability, two counts of improperly

handling firearms in a motor vehicle, and one count of criminal damaging or endangering. Four counts included one- and three-year firearm specifications, and three counts included five-year drive-by shooting specifications.

2. Cuyahoga J.C. No. DL23110511

{¶ 12} The State’s three-count complaint in Cuyahoga J.C. No. DL23110511, filed September 12, 2023, pertained to a July 22, 2023 police chase involving a stolen vehicle. Westlake Police Officer Richard Dudas testified at the probable-cause hearing that a caller reported a black Hyundai sedan driving erratically on westbound Interstate 90. The officer located a vehicle matching the caller’s description as to make, color, and license plate at a Westlake gas station. A male and two females were near the car.

{¶ 13} When the officer activated his cruiser’s emergency lights, the trio rushed to the car and drove quickly to the westbound entrance ramp. Officers gave chase but terminated the pursuit for safety purposes after the male crossed the median and cut off eastbound traffic, “began to flee . . . on 90 eastbound” at speeds exceeding 110 m.p.h., and passed other motorists using the highway’s berms. (Jan. 8, 2024 tr. 105-108.) Westlake police alerted Rocky River police, who also chased the vehicle for a time but likewise halted the pursuit. The officer’s later review of surveillance video provided images of the male, later identified as Marbury, through photo comparisons and further indicated to the officer that the male appeared to be wearing a holster. Based on his in-person observations at the

gas station and the surveillance footage, the testifying officer identified Marbury as the male that he observed both on surveillance footage and in person.

{¶ 14} The three-count juvenile court complaint charged Marbury with two counts of failure to comply and one count of receiving stolen property.

3. Cuyahoga J.C. No. DL23110434

{¶ 15} The State's three-count complaint in Cuyahoga J.C. No. DL23110434 pertained to a firearm transaction on July 24, 2023. Cleveland Police Detective James Donnellan testified that in the course of an undercover operation, Marbury arrived on scene in a stolen vehicle and sold Detective Donnellan three firearms. Detective Donnellan identified Marbury on the record. The three-count juvenile court complaint charged Marbury with one count of having weapons while under disability, one count of receiving stolen property, and one count of improperly handling firearms in a motor vehicle. One count of the juvenile complaint contained a one-year firearm specification, and all three counts contained forfeiture specifications.

4. General Division Indictment

{¶ 16} The juvenile court found probable cause as to all counts. Following amenability determinations, the juvenile court bound Marbury over to the general division. On March 19, 2024, the Cuyahoga County Grand Jury returned a 13-count indictment that tracked the three referenced juvenile court complaints.³

³ All told, the three juvenile court complaints totaled 14 counts. The single count of criminal damaging or endangering in Cuyahoga J.C. No. DL2311046 was not included in the general division indictment.

C. Cuyahoga C.P. No. CR-24-689961

1. Cuyahoga J.C. No. DL23108536

{¶ 17} The State’s seven-count complaint in Cuyahoga J.C. No. DL23108536 pertained to the assault of victim A.J., a patron at a gas station on July 25, 2023, by multiple juveniles, including Marbury. The State also alleged that Marbury fired at passing cars using what appeared on video to be an assault rifle.⁴ The seven-count juvenile court complaint charged Marbury with one count of felonious assault, one count of aggravated riot, one count of having weapons while under disability, one count of discharge of firearm on or near prohibited premises, one count of improperly handling firearms in a motor vehicle, one count of receiving stolen property, and one count of criminal damaging or endangering. Three counts carried both one- and three-year firearm specifications. Another count carried a one-year firearm specification.

{¶ 18} Marbury stipulated to probable cause as to all counts. Following an amenability determination, the juvenile court bound Marbury over to the general division.

2. General Division Indictment

{¶ 19} On March 19, 2024, the Cuyahoga County Grand Jury returned a six-count indictment that tracked the juvenile complaint. The single count of criminal

⁴ The State indicated during an amenability hearing that while 35 shell casings were recovered at the scene, all were either 9 mm or .223 caliber. The State could not definitely confirm whether Marbury’s long rifle was an assault weapon loaded with .223-caliber rounds or was a pistol-caliber carbine firing 9 mm rounds.

damaging or endangering contained in the juvenile complaint was omitted from the general division indictment.

II. Marbury's Guilty Plea

{¶ 20} Marbury initially pled not guilty to every count of each indictment. Following discovery and pretrials in the general division, he appeared before the trial court on July 7, 2025, for a change-of-plea hearing. The State placed the terms of the plea agreement on the record.

{¶ 21} In Cuyahoga C.P. No. CR-24-696948, Marbury was expected to plead guilty to three counts of the indictment as amended. Specifically, Count 1 was amended from murder to involuntary manslaughter, with the three-year firearm specification remaining. Marbury was also expected to plead guilty to Count 3, discharge of firearm on or near prohibited premises, and Count 5, improperly handling firearms in a motor vehicle. All other counts and specifications were dismissed.

{¶ 22} In Cuyahoga C.P. No. CR-24-689983, the plea agreement called for Marbury to plead guilty to Count 1, failure to comply; Count 4, discharge of firearm on or near prohibited premises; and Count 11, having weapons while under disability. All other counts were dismissed, along with all firearm specifications. The plea agreement, however, retained the weapon forfeiture specification attached to Count 11.

{¶ 23} In Cuyahoga C.P. No. CR-24-689961, the plea agreement called for Marbury to plead guilty to Count 2, aggravated riot; Count 4, discharge of firearm

on or near prohibited premises with a three-year firearm specification; and Count 6, receiving stolen property. All other counts and specifications were dismissed.

{¶ 24} The State further informed the court that as part of the package plea, there was “an agreed recommended sentence to this Court for sentencing on all three cases of 15 years to 23 years with no early release.” (Tr. 8.) The trial court clarified, and the State agreed, that “no early release” referred to judicial release. (Tr. 8.) The trial court further clarified that despite the agreed minimum range of 15 to 23 years, whatever term it would impose would be subject to “a tail possibility” pursuant to the Reagan Tokes Law. (Tr. 8.)

{¶ 25} The trial court engaged in a lengthy plea colloquy. Marbury has not sought to withdraw his plea, has not assigned error to any aspect of the colloquy, and has not otherwise alleged that his plea was not made, knowingly, intelligently, and voluntarily. We note, however, that the trial court specifically asked Marbury whether he understood the charges he was facing and the terms of the plea agreement. He answered in the affirmative to both questions. (Tr. 11.) The trial court also confirmed that he understood the effect of a guilty plea:

THE COURT: You understand you’re presumed innocent but if you plead guilty, you’re admitting to the truth of the facts and your full guilt Mr. Marbury[?]

DEFENDANT MARBURY: Yes, sir.

(Tr. 14-15.)

{¶ 26} The trial court further explained the maximum possible penalties and the effects of the Reagan Tokes Law. It also advised Marbury that it planned “to

honor” the “agreed recommended sentence” but specifically noted the application of the Reagan Tokes Law:

THE COURT: [T]hat’s the base for the minimum sentence. You’re still subject to the maximum term. So the 15 to 23 would be the minimum sentence and the maximum sentence depending on how I craft it could be — six years has to be gun spec; I’m not saying I’ll do it and I gave you 17 years as a minimum sentence, theoretically. Or it could be 17 because we have a three-year failure to comply so it would be 14. So, it could be — if I maxed you out; I’m not saying I will — the max you could receive would be 23 to 30 years because that’s the indefinite part, but the base sentence has to be 15 to 23.

Do you understand that?

DEFENDANT MARBURY: Yes, your Honor.

(Tr. 26-27.) Marbury thereafter entered guilty pleas pursuant to the plea agreement.

Through counsel, he waived a presentence investigation. (Tr. 36.)

III. Sentencing

{¶ 27} Marbury appeared for sentencing on August 2, 2025. At the outset, the trial court noted that “Marbury was a juvenile at the time [of] these offenses” and acknowledged that “in addition to the adult factors” it was required to consider for purposes of sentencing, it “must consider the juvenile factors contained in Revised Code 2929.19 of the Revised Code.” (Tr. 39.)

{¶ 28} The State, which had filed a sentencing memorandum, outlined facts relevant to sentencing and played video recordings that included footage from the conflagration at Mark Tromba Park and from the other incidents involving gunfire, as well as video of Marbury throwing punches at gas station patron A.J. The State

urged the trial court to impose the maximum agreed recommended sentence of 23 years:

It's based on what he did from July 9th through July 25th that he was finally arrested. It's based on that he was on probation [in] juvenile court at this time for having weapons under disability which clearly did not deter Mr. Marbury from all his crimes. And the most troubling thing is that he committed a crime on . . . July 9th and a friend died in [P.D.] and his behavior did not stop.

Seeing a friend die, [P.D.], and dropping him and throwing him on the tree lawn did not stop the behavior of Leon Marbury. He continued to terrorize his community and he looped his friends in to his numerous other terrorizations of that including shooting at passerby cars in the middle of the day, running from police and then shooting at a supposed vehicle at a gas station after beating up an [A.J.] for reasons that don't make any sense as to why he would commit those crimes that day. And so the State of Ohio is asking for the maximum.

(Tr. 51.)

{¶ 29} The trial court also heard from P.D.'s mother, who indicated she was "asking for the max . . . before I walk out these doors for what happened to my baby boy." (Tr. 52.) P.D.'s father spoke next, indicating that because Marbury did not take P.D. to a hospital after being shot, it appeared to him that he "left [his] son on the lawn" because "he didn't care." (Tr. 54.) P.D.'s grandmother, like his mother, asked for a maximum sentence.

{¶ 30} Marbury's trial counsel spoke in mitigation. He stressed that the events at issue occurred over a "short period of time" and that Marbury was merely 16 years old at the time. (Tr. 57.) Trial counsel argued that during Marbury's time in jail, he "had a lot of time to slow down, to sit and think about his actions, to reflect

on what happened to his friend.” (Tr. 57-58.) He further described Marbury as “devastated” that P.D. died. (Tr. 58.)

{¶ 31} Trial counsel stressed that the minimum of the recommended range, 15 years, was “not an insignificant amount of time especially considering the additional time on the Reagan Tokes” and in fact was “almost the entire age [his] client was when he committed this, these acts.” (Tr. 58.) He urged the trial court to consider that the minimum of 15 years would allow Marbury “to participate in education at the bureau of prisons, to do the things that he needs to do to come home and be productive.” (Tr. 58.)

{¶ 32} Trial counsel also highlighted Marbury’s “great family support,” including individuals “here in the courtroom.” (Tr. 58.) He noted that Marbury had actually completed his high school education while incarcerated and “has really focused on the things that he needs to do to better himself.” (Tr. 59.) Trial counsel stressed that Marbury had accepted responsibility for his actions. Counsel noted again that the minimum agreed recommended sentence would essentially result in him doing an “amount of time in prison equal to his age at the time of his conduct,” which “certainly wouldn’t be going easy” on him. (Tr. 59.)

{¶ 33} The trial court indicated that pursuant to R.C. 2929.19, it had considered all of the factors pertinent to sentencing an offender who was under 18 years of age at the time the offense was committed. It then noted that having “considered all of those factors,” it also considered Marbury’s record, the fact that he was on probation when the offenses were committed, and that there were

multiple offenses. It noted the State’s sentencing memorandum and the victim-impact statements from P.D.’s family members. The trial court found consecutive sentences appropriate. After walking through all counts in each case, it imposed “the maximum that was allowed by the agreed recommended sentence.” (Tr. 68.)

The trial court concluded:

This is horrific. You are a danger to the public the way you shot those firearms. I’m honoring the agreement from the [S]tate but I am going to the maximum amount of that range to the 23 years not including Reagan Tokes.

(Tr. 70.)

{¶ 34} These consolidated appeals followed.

IV. Analysis

A. First Assignment of Error — Probable Cause

{¶ 35} In his first assignment of error, Marbury argues that the juvenile court erred when it found probable cause that he committed felony murder and that the transfer of jurisdiction to the general division on that charge was therefore improper. We find no merit to this assignment of error.

{¶ 36} Marbury negotiated a package plea agreement covering the three cases at issue. In CR-24-696948, the State amended Count 1 from murder to involuntary manslaughter. Marbury thereafter pled guilty to involuntary manslaughter and likewise pled guilty to all other remaining counts in that case and in the other two cases, all in accordance with the plea agreement.

{¶ 37} “A plea of guilty is a complete admission of the defendant’s guilt.” Crim.R. 11(B)(1). “By entering a guilty plea, a defendant is not simply stating that

he or she committed the discrete acts described in the indictment; he or she is admitting guilt of a substantive crime.” *State v. Griffin*, 2026-Ohio-925, ¶ 9 (8th Dist.), quoting *State v. Albright*, 2019-Ohio-1998, ¶ 36 (8th Dist.). “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process.” *State v. Darling*, 2017-Ohio-7603, ¶ 14 (8th Dist.), quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Accordingly, “when a defendant enters a guilty plea, he or she waives all appealable errors that might have occurred unless the errors precluded him or her from entering a knowing, voluntary, and intelligent plea.” *Griffin* at ¶ 10, citing *State v. Robinson*, 2020-Ohio-98, ¶ 6 (8th Dist.).

{¶ 38} *Griffin*, like the present case, involved a challenge to the juvenile court’s probable-cause bindover determination. This court held that because *Griffin* “did not challenge the validity of his plea in a separate assignment of error and his assigned errors do not relate to his plea . . . he has waived any right to assert nonjurisdictional issues arising from prior stages of the proceedings, *including the probable-cause finding*.” (Emphasis added.) *Griffin* at ¶ 16. Marbury, like *Griffin*, has not challenged the validity of his plea. This court’s holding in *Griffin* is dispositive of Marbury’s first assignment of error. By pleading guilty, he has waived any argument that the juvenile court erred in finding that probable cause supported his bindover to the general division. *See id.* at ¶ 17.

{¶ 39} This court has distinguished *Griffin*, but only to contrast juvenile court probable-cause determinations with juvenile court amenability findings. As discussed below, probable-cause findings are readily tied to the factual admissions

inherent in a guilty plea, while amenability findings are not. Accordingly, in *State v. Henderson*, 2026-Ohio-2315, ¶ 33 (8th Dist.), a case involving amenability, this court rejected the State’s reliance on *Griffin*, stating that “[a]n appellant’s rights following a guilty plea vary depending upon whether his assigned error challenges the juvenile court’s probable-cause or amenability finding[.]” *Id.* at ¶ 33. “A guilty plea does not waive a defendant’s right to challenge his amenability finding in the same way that it waives his right to appeal a juvenile court’s probable-cause finding.” *Id.*, citing *State v. T.S.*, 2024-Ohio-4898, ¶ 67 (8th Dist.), and *State v. D.T.*, 2024-Ohio-4482, ¶ 76 (8th Dist.) (holding that defendant who enters a guilty plea admits to the acts that were the subject of the probable-cause determination but does not admit to competency or amenability).⁵

{¶ 40} While we view *Griffin* as dispositive, the result would be the same even if we did not view this case through the lens of waiver. *See, e.g., State v. Pickens*, 2024-Ohio-951 (8th Dist.), in which this court found that “Pickens’s guilty plea subsume[d] the juvenile court’s conclusion as to the existence of probable cause to believe that Pickens committed acts that would be a murder offense if he was charged as an adult.” *Id.* at ¶ 19.

{¶ 41} Similar to the present case, Pickens had been bound over from juvenile court and indicted on aggravated murder, murder, and other charges. In the general

⁵ At the time of writing this opinion, the Ohio Supreme Court accepted the State’s appeals in both *D.T.* and *T.S.* *See State v. D.T.*, 01/28/2025 *Case Announcements*, 2025-Ohio-231, No. 2024-1276, and *State v. T.S.*, 02/18/2025 *Case Announcements*, 2025-Ohio-481, No. 2024-1647. Oral argument in *D.T.* was held on October 8, 2025. *T.S.* has been held for the Court’s decision in *D.T.*

division, he “pleaded guilty to involuntary manslaughter and improperly discharging a weapon into a habitation in exchange for the state agreeing to forego prosecution for the murder charges as alleged in the indictment.” *Id.* at ¶ 15. This court wrote that “[i]n doing so, Pickens admitted to committing the criminal acts underlying his convictions, in pertinent part, that he ‘knowingly, without privilege, did discharge a firearm at or into an occupied structure that is a permanent or temporary habitation of’ the victims.” *Id.* at ¶ 15. The *Pickens* Court held that “Pickens’s guilty plea to improper discharge of a firearm into a habitation, as the predicate offense underlying the involuntary manslaughter charge for causing the death of the victim, was *based on the same facts* underlying the probable-cause determination.” (Emphasis added.) *Id.* at ¶ 18. Therefore, “[b]y pleading guilty to the offenses charged, which are based on the same conduct alleged to support the original probable-cause determination, there can be no reversible error in the juvenile court’s factual determination.” *Id.* at ¶ 20.

{¶ 42} In connection with the death of P.D., Marbury pled guilty to both involuntary manslaughter in violation of R.C. 2903.04(A) and the predicate offense of discharge of firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3). In pleading guilty, therefore, he admitted that he “[d]ischarge[d] a firearm upon or over a public road or highway,” R.C. 2923.162(A)(3), and that this felonious act proximately caused the death of P.D. R.C. 2903.04(A). This was the same conduct underlying the probable-cause determination, i.e., the juvenile court’s conclusion that there was probable cause to

find that Marbury’s discharge of a firearm proximately caused P.D.’s death. Because Marbury pled guilty to offenses based on the same conduct associated with the probable-cause finding, there was no reversible error in the juvenile court’s factual probable-cause determination.

{¶ 43} Accordingly, Marbury’s first assignment of error is overruled.

B. Second Assignment of Error — Ineffective Assistance of Counsel

{¶ 44} In his second assignment of error, Marbury argues that he received the ineffective assistance of counsel in connection with his sentencing. He claims that his attorney “failed to investigate, obtain, and present readily available mitigation evidence that the trial court would have been required to consider.” We overrule this assignment of error.

{¶ 45} Pursuant to the Sixth Amendment of the United States Constitution and Article I, Section 10 of the Ohio Constitution, defendants in all criminal proceedings are entitled to the assistance of counsel for their defense. Furthermore, the United States Supreme Court has held that “the right to counsel is the right to the *effective* assistance of counsel.” (Emphasis added.) *Strickland v. Washington*, 466 U.S. 668, 686 (1984), quoting *McMann v. Richardson*, 397 U.S. 759, 771, fn. 14 (1970).

{¶ 46} To establish a claim of ineffective assistance of counsel, Marbury “must demonstrate that (1) counsel’s performance was deficient; and (2) the deficient performance prejudiced him so as to deprive him of a fair trial.” *State v. Bennett*, 2023-Ohio-4412, ¶ 10 (8th Dist.), citing *State v. Trimble*, 2009-Ohio-2961,

¶ 98, citing *Strickland* at 687. In *State v. Thompson*, 2024-Ohio-5910 (8th Dist.), this court stated that “the failure to make a showing of *either* deficient performance or prejudice defeats a claim of ineffective assistance of counsel.” (Emphasis added.) *Id.* at ¶ 5, quoting *In re S.A.*, 2019-Ohio-4782, ¶ 46 (8th Dist.). See also *State v. Davenport*, 2018-Ohio-2933, ¶ 25 (8th Dist.). To put it even more explicitly, “[t]he failure to prove either prong of *Strickland*’s two-part test makes it unnecessary for a reviewing court to consider the other prong.” *State v. McCann*, 2025-Ohio-966, ¶ 18 (8th Dist.), citing *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000).

{¶ 47} “Deficient performance, the first prong of the *Strickland* test, requires a showing ‘that counsel’s representation fell below an objective standard of reasonableness.’” *McCann* at ¶ 18, quoting *Strickland* at 688. “In Ohio, every properly licensed attorney is presumed to be competent and, therefore, a defendant claiming ineffective assistance of counsel bears the burden of proof.” *In re S.A.* at ¶ 47, citing *State v. Smith*, 17 Ohio St.3d 98, 100 (1985). See also *McCann* at ¶ 18. Moreover, “[c]ounsel’s tactical decisions or trial strategy cannot form the basis for a claim of ineffective counsel.” *In re S.A.* at ¶ 47, citing *State v. Foster*, 2010-Ohio-3186, ¶ 23 (8th Dist.). See also *State v. Clayton*, 62 Ohio St.2d 45 (1980).

{¶ 48} Reviewing courts “will strongly presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *McCann* at ¶ 17, quoting *State v. Powell*, 2019-Ohio-4345, ¶ 69 (8th Dist.); see also *Strickland*, 466 U.S. at 689 (A reviewing court “must indulge a strong presumption that counsel’s conduct falls within the wide range of

reasonable professional assistance.”). We therefore afford “great deference” to “trial counsel’s performance and tactical decisions and trial strategies.” *McCann* at ¶ 17. Even “debatable” or “questionable” trial tactics generally “do not constitute ineffective assistance of counsel.” *State v. Harris*, 2022-Ohio-4630, ¶ 50 (8th Dist.), citing *State v. Scarton*, 2020-Ohio-2952, ¶ 90 (8th Dist.). “In evaluating a claim of ineffective assistance of counsel, a court must be mindful that there are countless ways for an attorney to provide effective assistance in a given case, and it must give great deference to counsel’s performance.” *Bennett* at ¶ 10. Appellate courts therefore “ordinarily refrain from second-guessing strategic decisions counsel make at trial’ . . . even where appellate counsel argues that he or she would have defended against the charges differently.” *Scarton* at ¶ 90, quoting *State v. Myers*, 2002-Ohio-6658, ¶ 152. *See also State v. Stewart*, 2024-Ohio-5802, ¶ 54 (8th Dist.).

{¶ 49} Whether viewed through the lens of tactical decisions and strategy (the first prong of *Strickland*) or prejudice (the second prong of *Strickland*), we find no merit to Marbury’s argument that counsel was ineffective. We first observe that Marbury’s arguments are similar to those made in *Bennett*, where the defendant claimed that “his counsel did not address nor ask the court to consider the factors set forth in R.C. 2929.19(B) regarding his youth and its attendant characteristics as mitigating factors in sentencing.” *Bennett*, 2023-Ohio-4412, at ¶ 11 (8th Dist.). R.C. 2929.19(B)(1)(b) provides:

If the offense was committed when the offender was under eighteen years of age, in addition to other factors considered, consider youth and its characteristics as mitigating factors, including:

- (i) The chronological age of the offender at the time of the offense and that age's hallmark features, including intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks and consequences;
- (ii) The family and home environment of the offender at the time of the offense, the offender's inability to control the offender's surroundings, a history of trauma regarding the offender, and the offender's school and special education history;
- (iii) The circumstances of the offense, including the extent of the offender's participation in the conduct and the way familial and peer pressures may have impacted the offender's conduct;
- (iv) Whether the offender might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth, such as the offender's inability to deal with police officers and prosecutors during the offender's interrogation or possible plea agreement or the offender's inability to assist the offender's own attorney;
- (v) Examples of the offender's rehabilitation, including any subsequent growth or increase in maturity during confinement.

Similar to the present case, Bennett had asked this court to consider

that the record contains no mention from either his counsel or the court of his specific intellectual capacity and failure to appreciate risks, his family or home environment, any trauma he may have suffered and the psychological impacts thereof, the extent of his participation in the conduct and the effects of peer pressure, or his general capacity for growth, maturation, and rehabilitation, the factors set forth in R.C. 2929.19(B)(1)(b)(i)-(v).

Id. at ¶ 11.

{¶ 50} According to Bennett, his trial attorney's reference to factors such as his youth and mental health diagnoses were perfunctory and devoid of context and efforts at mitigation were primarily left to Bennett's mother and grandmother, who addressed the trial court during sentencing. *Id.* He contended on appeal "that

because counsel failed to present any investigation or argument concerning the specific mitigating effects of his youth as set forth in [R.C. 2929.19(B)(1)(b)], counsel's performance was objectively unreasonable and deficient." *Id.* at ¶ 11.

{¶ 51} This court agreed "that it would have been better had counsel addressed the [R.C. 2929.19(B)(1)(b)] factors" at sentencing, but it declined to find counsel's performance objectively deficient. It first noted that R.C. 2929.19(B)(1)(b) "does not impose a burden on counsel to argue the mitigating factors to the trial court at sentencing." *Id.* at ¶ 12. Instead, the statute "imposes a burden on the trial court to consider the identified factors[.]" *Id.* It then observed "the record adequately demonstrates that the trial court considered the [R.C. 2929.19(B)(1)(b)] factors before sentencing Bennett." *Id.*

{¶ 52} We acknowledge that here, unlike in *Bennett*, 2023-Ohio-4412 (8th Dist.), there was no presentence-investigation report. Marbury's counsel, however, highlighted several factors relevant to the statutory considerations, despite not referencing specific statutory provisions. He commented on Marbury's youth at the time of the offense, noting not only Marbury's age at the time of sentencing but that imposing the agreed recommended minimum sentence of 15 years would nearly exactly match Marbury's age at the time of the offenses. These comments were relevant pursuant to R.C. 2929.19(B)(1)(b)(i). Trial counsel commented on the circumstances of the offenses, stressing that they all occurred over a "short period of time," (tr. 57) which is relevant pursuant to R.C. 2929.19(B)(1)(b)(iii). He noted that Marbury had completed high school while incarcerated and "has really focused

on the things that he needs to do to better himself,” (tr. 59) which are facts relevant under R.C. 2929.19(B)(1)(b)(v). He also stressed that Marbury accepted responsibility for his actions and was sincerely remorseful for P.D.’s death.

{¶ 53} The record further indicates that after counsel made these remarks, the trial court considered the R.C. 2929.19(B)(1)(b) factors before sentencing Marbury. While Marbury does not challenge the trial court’s decision, we note that “there is no requirement that the trial court explain its analysis of those factors in a given case.” *Bennett* at ¶ 12. Here, the trial court explicitly stated that it had considered the R.C. 2929.19(B)(1)(b) factors:

THE COURT: The court notes for the record I must first of all consider the juvenile factors pursuant to 2929.19. Since he was under 18 I have to consider his youth and his age at the time of the offense and the features including intellectual capacity, immaturity, impetuosity, and failure to appreciate risks and consequences. I also have to consider family and home environment, his inability to control his surroundings and the history of trauma. School history. I have to consider the extent of his participation in the conduct and the way that peer pressure may have affected him. I also have to consider any subsequent growth or increase in maturity during confinement and rehabilitation. So I’ve considered all of those factors in that revised code.

(Tr. 60.)

{¶ 54} Returning to the obligations of trial counsel, we agree with the State that forgoing a presentence-investigation report may be attributable to strategy. The report would not only have laid bare the detailed and unsavory facts related to each case but also would have included Marbury’s extensive juvenile criminal history.

{¶ 55} We further note that many of Marbury’s criticisms of his trial counsel’s performance find little support, and sometimes no support, in the record. For example, Marbury argues on appeal that his trial counsel “did not have anyone speak on his behalf or even offer letters on his behalf.” (Appellant’s brief at p. 12.) But there is nothing in the record to suggest anyone wished to speak or write letters on Marbury’s behalf, that trial counsel dissuaded individuals from doing so, or that counsel failed to solicit individuals to provide letters or live statements. Marbury argues on appeal that his attorney “completely failed” to “investigat[e] the relevant mitigation factors and provid[e] the trial court with information relevant to those factors.” (Appellant’s brief at p. 17.) But there is nothing in the record to indicate what trial counsel did or did not investigate and review and nothing to indicate how the results of any such inquiry played into trial counsel’s strategy at sentencing. Marbury argues that his trial counsel “had ready access” to the transcripts of the two juvenile court amenability hearings and related records, that trial counsel “apparently did not obtain” them, and that “competent counsel would have reviewed [his] juvenile record and the associated court records, probation reports, and amenability reports.” (Appellant’s brief at p. 18-20.) Again, however, there is nothing in the record to establish that trial counsel failed to comb through the juvenile court transcripts and reports. The record is silent with respect to what trial counsel did or did not review and how that featured in trial counsel’s strategy at sentencing.

{¶ 56} In that regard, we agree with the State that not referencing juvenile court proceedings, including Juv.R. 30 reports and the amenability hearing transcripts, may be attributable to trial strategy. Marbury cherry-picks certain aspects of the reports to support his copious arguments relating to factors such as family history and negative influences. The State, however, had referenced one such report at an amenability hearing for its conclusion that Marbury had no history of mental illness and that his estimated risk for future violence was high. At that hearing, the trial court noted, *inter alia*, that Marbury had been removed from a school designed for juveniles with behavioral issues because he allegedly attacked a 63-year-old teacher. The juvenile court observed that if that specialized school “can’t handle the kid, that’s an extreme indicator of violence.” (Mar. 6, 2024 vol. II tr. 47.) It also noted that, as conceded by his probation officer, he had violated probation by cutting off a home-detention monitor and going AWOL. The juvenile court, summarizing and commenting on the findings in a Juv.R. 30 report, remarked:

He’s been involved in the Juvenile Justice System . . . since he was . . . 14 and 11 months of age. He has seven cases pending currently. He’s had two periods of time on home detention. The first period was from January the 24th of 2023 to February the 21st of 2023, and had multiple violations, including taking the monitor off and going AWOL.

. . .

He has a high estimate for future violence, and these are based on historical as well as alleged current criminal factors for violence. He . . . is in the high offender range for sophistication and maturity.

. . .

[He] is displaying a higher level of sophistication and maturity and using these emerging skills in a criminogenic manner.

...

I've heard a lot about mental health, but the diagnostic evaluation just doesn't support that.

(Mar. 6, 2024 vol. II tr. 47-53.) In light of these unfavorable aspects of the reports and proceedings in juvenile court, the failure to reference them during sentencing is not inconsistent with strategy. In requesting a sentence at the low end of the agreed range, trial counsel instead focused on Marbury's age, the short period of time over which the charged offenses occurred, Marbury's progress towards rehabilitation while incarcerated, and his remorse.

{¶ 57} In *Bennett*, this court concluded that “[b]ecause counsel’s sentencing argument referenced Bennett’s youth and experiences, we do not find ineffective assistance of counsel, even though counsel did not specifically mention the R.C. 2929.19(B)(1)(b) factors and their applicability to Bennett at sentencing.” *Bennett*, 2023-Ohio-4412, at ¶ 13 (8th Dist.). Consistent with this court’s decision in *Bennett*, we refrain from second-guessing trial counsel’s professional judgment, even where appellate counsel would have approached the sentencing proceedings differently. Because we cannot, on this record, conclude that trial counsel’s performance fell outside the wide range of reasonable professional assistance, we find that the representation provided by Marbury’s trial counsel did not fall below an objective standard of reasonableness.

{¶ 58} Moreover, “even if we were to find that counsel’s failure to argue the R.C. 2929.19(B)(1)(b) factors was objectively unreasonable,” Marbury “cannot demonstrate that he was prejudiced by counsel’s deficient performance, the second prong of the test for ineffective assistance of counsel.” *Id.* at ¶ 14. Simply put, the trial court, thanks in part to the efforts of trial counsel in negotiating the plea agreement, sentenced Marbury to a term of imprisonment “within the range of the agreed sentence.” *Id.* Because of that, he “cannot show that he was prejudiced by counsel’s performance.” *Id.* This observation should not be interpreted as merely an afterthought. As discussed above, “the failure to make a showing of either deficient performance or prejudice defeats a claim of ineffective assistance of counsel.” *Thompson*, 2024-Ohio-5910, at ¶ 5 (8th Dist.), quoting *In re S.A.*, 2019-Ohio-4782, at ¶ 46 (8th Dist.).

{¶ 59} Marbury’s second assignment of error is overruled.

{¶ 60} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

DEENA R. CALABRESE, JUDGE

MICHELLE J. SHEEHAN, A.J., and
MICHAEL JOHN RYAN, J., CONCUR