

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

IN RE D.D.

:

No. 116253

[A Minor Child]

:

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: October 22, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL25105039

Appearances:

Gregory T. Stralka, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Douglas Craig Daugherty, Assistant
Prosecuting Attorney, *for appellee.*

TIMOTHY W. CLARY, J.:

{¶ 1} Appellant D.D. (d.o.b. 9/23/2008) contends that his constitutional right to effective counsel was violated when his defense counsel failed to act in his best interest. For the following reasons, we affirm.

I. Factual and Procedural History

{¶ 2} This case stems from an incident that allegedly occurred on March 9, 2024, between D.D. and K.D. (d.o.b. 4/10/2013), that led to the State charging D.D.

with two counts, that if were committed by an adult, would constitute gross sexual imposition. D.D. denied the charges, and the juvenile court conducted a trial. At trial, after the pleadings were amended and the court noted a stipulation between the parties, the following comments were made:

ASSISTANT PROSECUTING ATTORNEY (“APA”): And also, at this time, there hasn’t been a plea offer requested. But if there was a request, we would go down to our supervisors now and mark their file.

THE COURT: I mean, I’m not gonna touch that. Either you guys — you guys have all been around enough to know, so — right? Okay. Anything from this side?

ASSISTANT PUBLIC DEFENDER: Yes, your Honor. At this time, I would make an oral motion in limine to exclude any testimony regarding any other alleged acts outside of the scope of the allegations here in this complaint that regard [D.D.]. . . .

Nov. 13, 2025 trial, tr. 6.

{¶ 3} The court then heard testimony from the eyewitness A.W., the alleged victim K.D., and K.D.’s mother. D.D. did not present any evidence, and the court denied D.D.’s Crim.R. 29 motion. At the close of trial, the juvenile court stated that it found A.W.’s testimony credible, determined that the State had met its burden, and adjudicated D.D. delinquent on both counts. The juvenile court subsequently held a disposition hearing at which it committed D.D. to one year of community control and classified him as a Tier I sex offender/child victim offender. According to the trial court’s July 30, 2026 corrected journal entry, the court’s decision to classify D.D. as a sex offender related to

[t]he nature of the sexually[-]oriented offense or the child-victim oriented offense committed by [D.D.]; whether [D.D. showed] any

genuine remorse or compunction for the offense[s]; the public interest and safety; the factors set forth in division (K) of section 2950.11 of the Revised Code[;] the factors set forth in divisions (B) and (C) of section 2929.12 of the Revised Code; the offense[s] and the victim; [and] the results of any treatment provided to the child and of any follow-up professional assessment of the child.

{¶ 4} Upon consideration of the above factors, the court found

that [D.D.] ha[d] been adjudicated delinquent for having committed a sexually[-]oriented offense and/or a child-victim oriented offense and that the juvenile was at least [14] or [15] years old and ha[d] previously been adjudicated delinquent for having committed a sexually[-]oriented or child[-]victim offense. The child [wa]s therefore classified a Juvenile Offender Registrant.

July 30, 2026 corrected journal entry, p. 2. Pursuant to the imposed classification, D.D. was required to register as a sex offender/child victim offender.

{¶ 5} D.D. filed a timely notice of appeal and now presents a sole assignment of error:

The appellant’s constitutional right to effective assistance of counsel was violated when such counsel failed to act in the best interests of the appellant.^[1]

II. Legal Analysis

{¶ 6} D.D. contends that defense counsel should have “requested a mark” to see if the State would present a plea offer and defense counsel’s failure to do so constituted ineffective assistance of counsel. D.D. argues that the impact of not seeking a plea offer was compounded by defense counsel’s decision not to call any witnesses on his behalf. Accordingly, D.D. argues that he did not have the ability to

¹ On March 16, 2026, D.D. filed a timely notice of appeal. This court dismissed the appeal for lack of a final, appealable order. The juvenile court issued a corrected journal entry — a final order — and this court reinstated D.D.’s appeal on August 13, 2026.

weigh accepting a plea agreement or deciding to proceed to trial. D.D. argues that a plea agreement would have resulted in charges that did not require mandatory reporting as a sex offender.

{¶ 7} The State counters that there is no guarantee — especially where D.D. had a prior sex-related case — that a plea agreement would have been offered or, if the State had presented a plea offer, that the proposed charges would not have resulted in mandatory sex-offender registration.

{¶ 8} The U.S. and Ohio Constitutions provide that defendants in all criminal proceedings shall have the assistance of counsel for their defense. U.S. Const., amend. VI, Ohio Const., art. I, § 10. The United States Supreme Court has recognized that “the right to counsel is the right to effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668 (1984).

{¶ 9} To establish a claim of ineffective assistance of counsel, a defendant must prove (1) his counsel was deficient in some aspect of his representation, and (2) there is a reasonable probability that, were it not for counsel’s errors, the result of the trial would have been different. *Id.* Our review of ineffective-assistance-of-counsel claims requires us to give great deference to counsel’s performance. *Id.* at 689. “A reviewing court will strongly presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *State v. Pawlak*, 2014-Ohio-2175, ¶ 69 (8th Dist.). The failure to prove either prong of the *Strickland* two-part test makes it unnecessary

for a court to consider the other prong. *State v. Madrigal*, 2000-Ohio-448, ¶ 49, citing *Strickland* at 697.

{¶ 10} “A criminal defendant can show prejudice, and thereby satisfy *Strickland*’s second element, only where he has a meaningful choice between potential sentences.” *State v. Lawson*, 1996 Ohio App. LEXIS 5631, *6 (8th Dist. Dec. 12, 1996). Absent a plea offer, no meaningful choice of conduct exists. A defendant has no right to receive a plea offer, and the State has no obligation to present a plea offer. *State v. Smith*, 2025-Ohio-3113, ¶ 11 (12th Dist.). Moreover, there is no constitutional right to a plea bargain. *State v. Williams*, 89 Ohio App.3d 288, 294 (10th Dist. 1993), citing *Weatherford v. Bursey*, 429 U.S. 545, 561 (1977).

{¶ 11} Here, the State did not present a plea offer, and for reasons unknown defense counsel did not request a mark. While the APA’s comment suggests that the State may have considered a plea offer, if requested, there is no way to know if the offer would have included charges that did not require mandatory sex-offender registration or if D.D. would have accepted the proffered plea. D.D. cannot demonstrate that “but for” defense counsel’s alleged error, the outcome would have been different and favorable to him, and we will not speculate on that matter. See *State v. Lawson*, 1996 Ohio App. LEXIS 5631, *6 (“[B]ecause no plea offer existed, Lawson cannot demonstrate that “but for” counsel’s alleged error, the outcome would have been both different and more favorable. There is no basis upon which to establish what would have happened had Lawson engaged in plea negotiations and we will not reverse his conviction on pure speculation.”); *State v. Lewis*, 1998

Ohio App. LEXIS 3429, *10 (10th Dist. July 21, 1998) (“Since there is no indication in the record of any plea negotiations, appellant had no choice as to any sentencing possibilities and counsel did not deny him the opportunity to plead to a potentially lesser sentence.”).

{¶ 12} Similarly, defense counsel’s decision not to call witnesses on D.D.’s behalf was not ineffective assistance of counsel. Ohio courts have consistently held that “counsel’s decision whether to call a witness falls within the rubric of trial strategy and will not be second-guessed by a reviewing court.” *State v. Fisher*, 2020-Ohio-670, ¶ 20 (8th Dist.), quoting *State v. Pickens*, 2014-Ohio-5445, ¶ 203. Further, D.D. has not identified anyone else whom he would have called in his defense or shown by a reasonable probability how the outcome would have differed if he had done so. Defense counsel’s decision not to call a defense witness was considered trial strategy and not demonstrative of ineffective assistance of counsel.

{¶ 13} Accordingly, we overrule D.D.’s assigned error.

{¶ 14} Judgment affirmed.

It is ordered that appellee recover from appellant the 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, juvenile division, to carry this judgment into execution.

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

TIMOTHY W. CLARY, JUDGE

MICHAEL JOHN RYAN, P.J., and
EILEEN A. GALLAGHER, J., CONCUR