[Cite as *State v. Fips*, 2026-Ohio-4275.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO, :

Plaintiff-Appellee, :

No. 111900

v. :

QUENTIN FIPS, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED
RELEASED AND JOURNALIZED: October 29, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-636185-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Andrew M. Boyko, Assistant Prosecuting Attorney, *for appellee*.

Edward F. Borkowski, Jr., *for appellant*.

MICHAEL JOHN RYAN, J.:

{¶ 1} This case is before us on remand by the Supreme Court of Ohio in *State v. Fips*, 2026-Ohio-1207, in which the Court reversed this court's decision in *State v. Fips*, 2023-Ohio-2295 (8th Dist.) ("*Fips I*").

{¶ 2} In *Fips I*, the defendant-appellant Quentin Fips ("Fips") raised three assignments of error. In Fips's first assignment of error, he contended that the trial court erred by denying his motion to suppress. The majority agreed with Fips, reversed on that issue, and, therefore, did not consider his remaining two assignments of error. The Supreme Court has reversed this court's resolution of the first assignment of error and has remanded the case to our court for us to consider Fips's second and third assignments of error.

{¶ 3} For the reasons set forth below, we affirm in part but reverse in part and remand solely for resentencing.

Factual and Procedural History

{¶ 4} The following facts gave rise to the charges in this case.

{¶ 5} On December 10, 2018, Officer Garron Rose, a patrol officer with the Village of Linndale, stopped a vehicle being driven by Fips at approximately midnight on the belief that Fips was driving with an inoperable headlight. An officer in training, Officer Peltz, was with Officer Rose. Officer Rose was wearing a body camera that recorded the encounter. Two videos from the body camera were entered into evidence.

{¶ 6} After stopping Fips, Officer Rose approached the driver's side to speak with him. The officer told Fips that he was being pulled over because one of his headlights was out. Fips appeared surprised that a light was out. Officer Rose asked Fips for his driver's license. Fips told him he did not have it on him but told him he did have a license and insurance and provided his name. Fips then asked which light

was out and directed Officer Rose to look at a control on the car. Officer Rose looked and responded "aah." Officer Rose then asked Fips for his social security number and name. Fips provided the information, and Officer Rose told him to "just hang tight for a minute."

{¶ 7} While Officer Rose had been talking to Fips, Officer Peltz walked to the front of Fips's vehicle to look at the lights. Seconds after Officer Rose told Fips to "hang tight," Officer Peltz said, "The headlights on." Officer Rose responded, "It wasn't on, right?" Officer Peltz replied, "It was the fog light that was out." Seconds later, Officer Peltz said, "Or the fog light was on, the headlight was out." Officer Rose responded "Oh," and then proceeded to give Fips's information to dispatch. Officer Peltz can be heard on the body-camera recording saying, "It's weird." The video demonstrates that Officer Rose was aware that he may have been mistaken about the headlight prior to calling in Fips's information to dispatch.

{¶ 8} Officer Rose learned from dispatch that Fips had a warrant for a weapons offense and that Fips had failed to reinstate his driver's license. After learning that, Officer Rose approached Fips's vehicle, asked him to exit, and performed a pat-down search of Fips's person, after which Fips was handcuffed. As Fips was being handcuffed, he asked Officer Rose, "You said my front headlight was out?" Officer Rose responded, "Yes. You know you got a warrant out of Parma, right?" Fips denied knowing about the warrant and questioned the officer about it. Officer Rose said he would get more information about it from dispatch. The police had Fips get in the police cruiser.

{¶ 9} A third officer arrived on scene, and Officer Rose told him that the warrant, "supposedly for a weapons offense," was being verified. Officer Peltz was still bemused by the situation and said, "I don't understand the headlight." Officer Rose agreed saying, "Yeah, his headlight was out and then I pull him over and his headlight is on."

{¶ 10} The police then searched Fips's vehicle, including his center console, glove box, and trunk. They found a digital scale, and after finding it, Officer Rose said, "There's probably something in here somewhere." The police also found a gun box and gun cleaning supplies, but no weapon. The body-camera videos entered into evidence do not show the police finding the subject contraband, despite their expansive search. Elsewhere in the record (as stated by the assistant prosecuting attorney during his recitation of the facts to the trial court at the no-contest plea hearing), it was revealed that the police subsequently saw a plastic bag "peeking out" from the center console and recovered it. It contained a white powder that was later confirmed to be 47 grams of crack cocaine. After the police conducted their search, Officer Rose asked dispatch if the warrant was "good" and dispatch indicated it was.

{¶ 11} Fips was indicted on one count each of drug trafficking and drug possession, felonies of the first degree. Both counts contained forfeiture specifications. Fips's trial counsel filed a motion to suppress in which he challenged the legality of the traffic stop, and after a hearing, the trial court denied the motion. Fips subsequently entered a no-contest plea to the charges, and the trial court found him guilty. The trial court sentenced Fips to a five-year prison term.

{¶ 12} Fips appealed to this court, raising the following three assignments of error for our review:

> I. The trial court erred by denying appellant's motion to suppress.
>
> II. Appellant's counsel provided ineffective assistance by not arguing that the officers' search of his vehicle was unlawful and by not moving for dismissal on speedy trial grounds.
>
> III. The trial court erred by sentencing appellant on allied offenses.

Law and Analysis

{¶ 13} As mentioned, in *Fips I*, this court reversed the trial court's judgment under Fips's first assignment of error. The State appealed to the Supreme Court of Ohio. The Court accepted the State's appeal for consideration of the following sole proposition of law: "When an officer is confronted with evidence of an unrelated crime during a reasonably valid traffic stop, the officer is not required to abandon the investigation if the officer later learns that the stop may have been premised on a reasonable mistake." *Fips*, 2026-Ohio-1207, at ¶ 9. The Court agreed with the State's proposition and now on remand, we consider Fips's second and third assignments of error pursuant to the Supreme Court of Ohio's mandate.

{¶ 14} In his second assignment of error, Fips contends that his trial counsel was ineffective for failing to challenge the officers' search of his vehicle and for failing to file a motion to dismiss on speedy-trial grounds.

{¶ 15} In order to establish a claim of ineffective assistance of counsel, the defendant must show that his or her trial counsel's performance was deficient in some aspect of his or her representation and that the deficiency prejudiced his or

her defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Pursuant to *Strickland*, our assessment of an attorney's representation must be highly deferential and we are to indulge "a strong presumption that counsel's conduct falls within the range of reasonable professional assistance." *Id.* at 689. 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. *State v. Smith*, 17 Ohio St.3d 98, 100 (1985).

{¶ 16} In order to satisfy the prejudice element for an ineffective-assistance claim following a plea, "'the defendant must show that there is a reasonable probability that, but for counsel's errors, he [or she] would not have pleaded [no contest] and would have insisted on going to trial.'" *State v. Ketterer*, 2006-Ohio-5283, ¶ 89, quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

{¶ 17} Fips contends that his trial counsel was ineffective for only challenging the initial stop. According to Fips, counsel should have also argued that the officers' search of the vehicle exceeded the scope of what was authorized under either the automobile exception to a warrantless search or an inventory search incident to arrest and tow.

{¶ 18} The record establishes that Fips had an active warrant for a weapons charge from Parma, Ohio. According to the trial court's questioning of Officer Rose at the suppression hearing, the officer arrested Fips based on that warrant and the police impounded Fips's vehicle because of the arrest. Although the officer's body-camera footage does not show when the crack cocaine was found, the State and

defense counsel stated on the record prior to and after the suppression hearing that the police conducted an inventory search and found the crack cocaine pursuant to that search.

{¶ 19} On this record, we are unable to conclude that defense counsel was ineffective for failing to challenge the search of the vehicle in the motion to suppress. From what the record establishes, before, during, and after the suppression hearing, defense counsel likely had a very good reason for challenging only the legality of the initial stop. Indeed, if defense counsel had also challenged the search of Fips's vehicle, then the State could have presumably presented evidence of the impoundment and that the crack cocaine was legally found during an inventory search prior to the impoundment.

{¶ 20} Although the officers could not search Fips's vehicle pursuant to the automobile exception to the warrant requirement, they could lawfully conduct the search pursuant to the inventory exception. The inventory exception to the warrant requirement of the Fourth Amendment permits the police to conduct a warrantless search to produce an inventory of the contents of an impounded vehicle. *South Dakota v. Opperman*, 428 U.S. 364, 376 (1976); *State v. Mesa*, 87 Ohio St.3d 105, 108-109 (1999). The rationale for excluding inventory searches from the warrant requirement is that inventory searches are an administrative or caretaking function, rather than an investigative function. *Opperman* at 369, fn. 5.

{¶ 21} Inventory searches of lawfully impounded vehicles are reasonable under the Fourth Amendment when performed in accordance with standard police

procedure and when the evidence does not demonstrate that the procedure involved is merely a pretext for an evidentiary search of the impounded vehicle. *Blue Ash v. Kavanagh*, 2007-Ohio-1103, ¶ 11. The Ohio Supreme Court has stated that when a search of a car was conducted prior to impounding the car, courts "must determine whether the car was lawfully impounded or whether the impoundment was merely a pretext for an evidentiary search of the impounded car." *State v. Leak*, 2016-Ohio-154, ¶ 23.

{¶ 22} In this case, the officers could lawfully impound Fips's car for two reasons. Village of Linndale Cod.Ord. 303.08(7) and (9) provide that a police officer may impound a motor vehicle when, inter alia, the vehicle "is left unattended . . . due to the removal of an ill, injured or arrested operator" or "has been operated by any person who is driving without a lawful license . . . ."

{¶ 23} Although the officers found the scale while searching Fips's car prior to impounding it, which appears to have been conducted without reasonable suspicion or probable cause, the record establishes that they would have likely discovered it lawfully, along with the crack cocaine, during the inventory search. "The inevitable discovery doctrine has been applied where evidence inevitably would have been discovered during an inventory search." *State v. Burke*, 2010-Ohio-3597, ¶ 23 (8th Dist.). "Although explicit testimony concerning the procedure is not required, the evidence must show that law enforcement would inevitably have discovered the evidence apart from the unlawful conduct." *Id.*, citing *State v. Ewing*, 2010-Ohio-1385, ¶ 26 (10th Dist.).

{¶ 24} We disagree with Fips that the officer's comment during the search that "there's probably something in here somewhere" demonstrated the pretextual nature of the inventory search. The police arrested Fips based on an entirely different reason — an outstanding warrant for his arrest based on a weapons charge. And the crack cocaine was subsequently discovered when the officers searched Fips's car pursuant to a lawful inventory search, which only occurred because they arrested him and impounded his car.

{¶ 25} Further, in considering claims of ineffective assistance of counsel, courts presume that counsel's conduct falls within the wide range of reasonable professional assistance. *State v. Conway*, 2006-Ohio-2815, ¶ 101. "Debatable strategic and tactical decisions may not form the basis of a claim for ineffective assistance of counsel, even if a better strategy had been available." *State v. Samatar*, 2003-Ohio-1639, ¶ 90 (10th Dist.). "Counsel is not required to file a motion to suppress if doing so would be a futile act." (Citations omitted.) *State v. Antio*, 2022-Ohio-1398, ¶ 19, (8th Dist.). The same logic applies to raising issues within a motion to suppress.

{¶ 26} Again, had defense counsel challenged the search of Fips's car, the State could have presented evidence of the valid arrest, police procedures regarding impounding a vehicle, and the inventory search. Fips is asking us to *presume* that his counsel's performance was deficient, but the standard for a claim of ineffective assistance of counsel requires just the opposite, that is, "trial counsel is entitled to a

strong presumption that all decisions fell within the wide range of reasonable, professional assistance." *State v. Sallie*, 81 Ohio St.3d 673, 675 (1998).

{¶ 27} Based upon the record in this case, we cannot say that defense counsel's decision to challenge only the initial stop was not "within the range of reasonable, professional assistance." *Id.* Indeed, it is highly likely that in this case, defense counsel made a sound strategic and intentional choice when deciding to challenge only the initial scope of the stop. "Judicial scrutiny of counsel's performance is to be highly deferential, and reviewing courts must refrain from second-guessing the strategic decisions of trial counsel." *State v. Carter*, 72 Ohio St.3d 545, 558 (1995). Based on the foregoing, we also do not find that a reasonable probability existed that the motion to suppress would have been granted based on a challenge to the search of Fips's vehicle.

{¶ 28} Accordingly, we find that defense counsel was not ineffective for failing to challenge the search of Fips's vehicle based on the automobile and inventory-search exceptions to the warrant requirement.

{¶ 29} Fips also contends that trial counsel was ineffective for failing to seek a dismissal of the case on speedy-trial grounds. We find no merit to his claim.

{¶ 30} "Generally, the failure to raise the violation of speedy-trial rights in the trial court constitutes a waiver of the defense on appeal." *State v. Mango*, 2016-Ohio-2935, ¶ 18 (8th Dist.). A defendant may, however, raise a speedy trial claim in the context of a claim of ineffective assistance of counsel. *Id.*, citing *Cleveland v. White*, 2013-Ohio-5423, ¶ 7 (8th Dist.).

{¶ 31} Fips contends that after he was arrested in December 2018 for the charges in this case, federal authorities took custody of him and he remained in their custody for the following two years. Further, Fips contends that he provided a notice of availability while he was in federal custody. Fips cites *State v. Payne*, 2014-Ohio-4326 (9th Dist.), as analogous to his case. Initially, we note that *Payne* had a different procedural posture than this case; that is, Payne raised the issue at the trial-court level via a motion to dismiss and the trial court granted his motion, finding that "the State made no effort to bring Payne to trial within 270 days of his arrest pursuant to R.C. 2945.71(C)(2)." *Id.* at ¶ 3. The State appealed, and the court of appeals affirmed the trial court's decision.

{¶ 32} Further, *Payne* was decided on the basis of the defendant's statutory speedy-trial rights. A guilty plea generally waives a defendant's right to challenge his or her conviction on statutory speedy-trial grounds. *State v. Kelley*, 57 Ohio St.3d 127 (1991), paragraph one of the syllabus; *State v. Robinson*, 2022-Ohio-1311, ¶ 60 (8th Dist.). However, this court has held that a defendant does not waive his or her constitutional right to a speedy-trial by pleading guilty. *Robinson* at ¶ 61.

{¶ 33} Whether a defendant's constitutional right to a speedy trial has been violated is determined by applying the balancing test set forth by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 530-533 (1972). The factors to be considered include (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his speedy trial right; and (4) prejudice to the defendant. *State v. Castro*, 2014-Ohio-2398, ¶ 22 (8th Dist.), citing *Barker* at 530.

{¶ 34} However, a defendant must meet the "threshold requirement" of a "presumptively prejudicial" delay in order to trigger a *Barker* analysis. *State v. Shepherd*, 2012-Ohio-5415, ¶ 31 (8th Dist.), citing *State v. Duncan*, 2012-Ohio-3683, ¶ 8 (8th Dist.). "'Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.'" *Duncan* at ¶ 8, quoting *Barker* at 530-531. Courts have generally held that "a delay approaching one year becomes 'presumptively prejudicial.'" *State v. Winn*, 2012-Ohio-5888, ¶ 44 (8th Dist.), quoting *Doggett v. United States*, 505 U.S. 647, 651, fn. 1 (1992).

{¶ 35} Fips was arrested in December 2018 and entered his no-contest plea in August 2022. He therefore has met the threshold requirement to establish that the delay in this case was presumptively prejudicial, and we consider the other *Barker* factors.

{¶ 36} Regarding the reason for the delay, according to Fips, the majority of the delay occurred because he was in federal custody after his arrest in this case until September 2021, and while in federal custody, he made inquiries about his right to a speedy trial. The Interstate Agreement on Detainers Act was enacted "to encourage the expeditious and orderly disposition of . . . charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints" across all member states. R.C. 2963.30, Article I.

{¶ 37} In accordance with the act, a federal prisoner must be brought to trial within 180 days following the delivery of written notice to the appropriate trial court

and prosecutor's office accompanied by "a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner." R.C. 2963.30, Article III(a). Article III(b) requires the prisoner to send written notice requesting final disposition to the "warden, commissioner of corrections, or other official having custody of him." This official is then required to send written notice to the appropriate locations along with a report listing the information in Article III(a).

{¶ 38} This court has held that "substantial compliance with R.C. 2963.30 is the appropriate prism through which to view prisoners' actions to determine whether they properly avail themselves of the 180-day period." *State v. Barrett*, 2010-Ohio-5139, ¶ 11 (8th Dist.), citing *State v. Quinones*, 2006-Ohio-4096, ¶ 17 (8th Dist.). "'Substantial compliance' requires the defendant to do 'everything that could be reasonably expected.'" *Id.*, quoting *State v. Ferguson*, 41 Ohio App.3d 306, 311 (1st Dist. 1987).

{¶ 39} Here, on the day the case was set for trial, Fips mentioned that he had been in federal custody for two years and asked the court about his statutory right to a speedy trial. Although there is no indication in the record that Fips provided the required notice to the State or the trial court, Fips told the court that he had done so. Defense counsel told the trial court that he had "looked into it" and he would

discuss the matter more with Fips. At that time, the State still had a plea offer open. The trial court took a recess so that Fips could discuss matters with his counsel. When the parties reconvened on the record, defense counsel indicated that Fips wished to enter a no-contest plea.

{¶ 40} In order to demonstrate that counsel provided ineffective assistance of counsel by failing to file a motion to dismiss for speedy-trial violations, the defendant must show that the motion would have been successful and the case would likely have been dismissed. *White*, 2013-Ohio-5423, at ¶ 7 (8th Dist.). "Counsel cannot be [ineffective] for failing to file a fruitless motion." *State v. Cottrell*, 2012-Ohio-4583, ¶ 8 (4th Dist.). On this record, there is no indication that Fips complied, substantially or otherwise, with the notice requirements of R.C. 2963.30. Fips's mere assertion that he did is insufficient. Fips has failed to demonstrate that his counsel was ineffective for failing to file a motion to dismiss based on a speedy-trial violation. Thus, he has also failed to demonstrate that he was prejudiced by counsel's failure to raise the issue because he has not demonstrated a reasonable probability that the trial court would have granted a motion to dismiss on speedy-trial grounds.

{¶ 41} The second assignment of error is overruled.

{¶ 42} In accordance with the Ohio Supreme Court's mandate, we next consider Fips's third assignment of error wherein he contends that the trial court erred by not merging his convictions for drug trafficking and drug possession at sentencing.

{¶ 43} Fips was convicted of one count of drug trafficking under R.C. 2925.03(A)(2) and one count of drug possession under R.C. 2925.11(A); the convictions related to the same drugs. This court has held that convictions under those statutory sections are allied offenses. *State v. Young*, 2010-Ohio-3402, ¶ 39 (8th Dist.); *State v. Moore*, 2010-Ohio-3305, ¶ 48 (8th Dist.); *State v. Seljan*, 2009-Ohio-340, ¶ 15-17 (8th Dist.), citing *State v. Cabrales*, 2008-Ohio-1625, paragraph two of the syllabus.

{¶ 44} Here, at the plea hearing, the trial court indicated its belief that the convictions would merge for the purpose of sentencing. The defense agreed; the State disagreed. The trial court stated, "So, really, my position is that they merge for purposes of sentencing understanding the State would object to that."

{¶ 45} At sentencing, the trial court imposed a five-year prison term as follows:

> The Court's going to find that a prison sentence of five years is the sentence the Court would hand down with respect to this case. You'll receive a five-year term of incarceration at Lorain Correctional Institution. It's a mandatory term that you're going to serve. So there's no judicial release or early release because . . . it's a mandatory term of incarceration.

{¶ 46} The trial court's judgment of conviction imposed a five-year sentence on each count, to be served concurrently.

{¶ 47} Although it appeared to be the trial court's intention to merge the convictions, the judgment of conviction sentenced Fips on each count, albeit

concurrently. This court has addressed the concurrent nature of terms in instances where counts should merge, stating:

> Even though the trial court sentenced appellant to concurrent terms for each conviction, "a defendant is prejudiced by having more convictions than are authorized by law." *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, [¶] 31. Further, a no contest plea does not relieve this court of its obligation to ensure that appellant's sentence is authorized by law. *Id.* at [¶] 26. Therefore, this case must be remanded to the trial court for resentencing where the state shall decide on which charge appellant should be convicted and sentenced. *State v. Williams*, 124 Ohio St.3d 381, 2010-Ohio-147, 922 N.E.2d 937, paragraph three of the syllabus.

Moore, 2010-Ohio-3305, at ¶ 49 (8th Dist.); *see also Young*, 2010-Ohio-3402, at ¶ 40 (8th Dist.).

{¶ 48} The trial court erred by sentencing Fips to concurrent terms on counts that should have merged.

{¶ 49} The third assignment of error is sustained.

Conclusion

{¶ 50} Finding that trial counsel was not ineffective by failing to raise the scope of the police's warrantless search of his vehicle, we affirm Fips's convictions. Finding that the trial erred in sentencing Fips to concurrent terms on counts that should have merged, we remand for the limited purpose of resentencing Fips pursuant to the State's election on the drug trafficking and drug possession, which are allied offenses of similar import.

{¶ 51} Judgment affirmed in part and reversed in part; case remanded to the trial court for proceedings consistent with this opinion.

It is ordered that appellant and appellee share 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 conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for further proceedings.

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

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MICHAEL JOHN RYAN, JUDGE

MICHELLE J. SHEEHAN, A.J., and
KATHLEEN ANN KEOUGH, P.J., CONCUR