[Cite as *State v. Smith*, 2026-Ohio-4366.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. MICHAEL SMITH Appellant	C.A. No. 31623 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR-2024-02-0418

DECISION AND JOURNAL ENTRY

Dated: November 4, 2026

HENSAL, Presiding Judge.

{¶1} Appellant, Michael Smith, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} In January 2024, a 13-year-old girl reported to Twinsburg police that she was raped by Mr. Smith. After an investigation, the Summit County Grand Jury indicted Mr. Smith on two counts of rape in violation of Revised Code Section 2907.02(A)(2), and one count of gross sexual imposition in violation Revised Code Section 2907.05(A)(1). Thereafter, the grand jury returned a supplemental indictment that charged Mr. Smith with one count of unlawful sexual conduct with a minor in violation of Revised Code Section 2907.04(A). Mr. Smith pleaded not guilty to the charges at arraignment.

{¶3} Mr. Smith ultimately entered into a plea agreement with the State where he pleaded guilty to all of the charges in the original indictment. The State moved to dismiss the supplemental

charge of unlawful sexual conduct with a minor. Prior to sentencing, the trial court ordered a presentence investigation report, a psychosexual evaluation, and a victim impact statement. The trial court imposed a total prison sentence of 14 to 17 and a half years imprisonment. Mr. Smith was classified as a Tier III Sex Offender.

{¶4} On appeal, Mr. Smith raises three assignments of error.

II.

ASSIGNMENT OF ERROR I

> [MR. SMITH'S] PLEA WAS NOT KNOWINGLY, INTELLIGENTLY, OR VOLUNTARILY MADE.

{¶5} In his first assignment of error, Mr. Smith asserts that his pleas were not knowing, intelligent, and voluntary.

{¶6} Appellate Rule 16(A)(7) provides that an appellant's brief shall include:

> An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

{¶7} While Mr. Smith generally asserts that the trial court did not adequately discuss the potential penalties associated with his pleas, he has not developed an argument in support of his assignment of error as required by Appellate Rule 16(A)(7). Where an appellant fails to develop an argument in support of his assignment of error, this Court will not create one for him. *See State v. Harmon*, 2013-Ohio-2319, ¶ 6 (9th Dist.), citing App.R. 16(A)(7) and *Cardone v. Cardone*, 1998 WL 224934, *8 (9th Dist. May 6, 1998). "If an argument exists that can support [an] assignment of error, it is not this [C]ourt's duty to root it out." *Cardone* at *8. Accordingly, as Mr. Smith has not developed an argument in support of his first assignment of error, we decline to create one on his behalf, and the first assignment of error is overruled.

ASSIGNMENT OF ERROR II

> [MR. SMITH] RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN ENTERING HIS PLEA.

{¶8} In his second assignment of error, Mr. Smith argues that trial counsel rendered ineffective assistance at the plea colloquy. Much like his first assignment of error, Mr. Smith has failed to set forth any meaningful analysis in support of his second assignment of error. As Mr. Smith has not developed an argument in support of his ineffective assistance claim, this Court declines to create one on his behalf. *See id.*; App.R. 16(A)(7). It follows that Mr. Smith's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

> [MR. SMITH] WAS SENTENCED CONTRARY TO LAW.

{¶9} In his third assignment of error, Mr. Smith argues that his sentence was contrary to law because the trial court imposed sentence on allied offenses of similar import.

{¶10} Revised Code Section 2941.25 provides as follows:

> (A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.
>
> (B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶11} The Supreme Court of Ohio has held that "[i]n determining whether offenses are allied offenses of similar import within the meaning of [Section] 2941.25, courts must evaluate three separate factors—the conduct, the animus, and the import." *State v. Ruff*, 2015-Ohio-995, paragraph one of the syllabus. The Supreme Court further held that "[u]nder [Section] 2941.25(B), a defendant whose conduct supports multiple offenses may be convicted of all the offenses if any

one of the following is true: (1) the conduct constitutes offenses of dissimilar import, (2) the conduct shows that the offenses were committed separately, or (3) the conduct shows that the offenses were committed with separate animus." *Ruff* at paragraph three of the syllabus. "At its heart, the allied-offense analysis is dependent upon the facts of a case because [Section] 2941.25 focuses on the defendant's conduct. The evidence at trial or during a plea or sentencing hearing will reveal whether the offenses have similar import." *Id*. at ¶ 26.

{¶12} When discussing the facts of this case at the sentencing hearing, the State noted that the two counts of rape in this case involved "two specific acts by Mr. Smith that were distinct [and] resulted in a different type of penetration." The State emphasized that the two counts of rape stemmed from "two separate decisions[]" that resulted in "[d]ifferent sexual acts." While Mr. Smith argued that the acts occurred on the same evening and were part of the same course of conduct, the trial court ultimately concluded that because the two counts of rape stemmed from two different types of sexual acts that were committed with a separate animus, the counts should not merge for sentencing purposes. The trial court imposed a prison sentence on both counts of rape and ordered that those sentences were to be served consecutively to each other, but concurrently with the sentence for gross sexual imposition.

{¶13} On appeal, Mr. Smith argues that the trial court erred by not merging the counts of rape because the animus was the same for those acts. Mr. Smith emphasizes that there was only one victim and the acts occurred on the same evening.

{¶14} Mr. Smith's argument is without merit. In *Ruff*, the Supreme Court recognized that "[i]f any of the following is true, the offenses cannot merge and the defendant may be convicted and sentenced for multiple offenses: (1) the offenses are dissimilar in import or significance—in other words, each offense caused separate, identifiable harm, (2) the offenses were committed

separately, or (3) the offenses were committed with separate animus or motivation." *Ruff*, 2015-Ohio-995, at ¶ 25. Furthermore, with respect to cases that involve distinct sexual acts, such as this, the Supreme Court has recognized that separate counts stemming from distinct sexual activity should not be merged for sentencing purposes because each count was committed with a separate animus. *State v. Nicolas*, 66 Ohio St.3d 431, 435 (1993). Here, the rape charges contained in counts one and two of the indictment stemmed from separate and distinct types of sexual activity. Given that the record established that Mr. Smith made two separate decisions that resulted in separate and distinct sexual acts, the trial court did not err in concluding that the two counts of rape should not merge for sentencing purposes.

{¶15} The third assignment of error is overruled.

III.

{¶16} Mr. Smith's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to

mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

FLAGG LANZINGER, J.
STEVENSON, J.
CONCUR.

APPEARANCES:

WESLEY C. BUCHANAN, Attorney at Law, for Appellant.

ELLIOT KOLKOVICH, Prosecuting Attorney, and AMANDA R. FILIPPI, Assistant Prosecuting Attorney, for Appellee.