

[Cite as *State v. Webb*, 2015-Ohio-553.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :
Plaintiff-Appellee : C.A. CASE NO. 26198
v. : T.C. NO. 13CR1025/1
GARY GLENN WEBB, JR. : (Criminal appeal from
Defendant-Appellant : Common Pleas Court)

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OPINION

Rendered on the 13th day of February, 2015.

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DONOVAN, J.

{¶ 1} On April 9, 2013, defendant-appellant Gary Glenn Webb, Jr. was indicted for three counts of murder, two counts of aggravated robbery, one count of felonious assault, and one count of having weapons while under disability. All of the counts were accompanied by firearm specifications. At his arraignment on April 17, 2013, Webb stood mute, and the trial court entered a plea of not guilty on his behalf.

{¶ 2} On April 29, 2013, Webb filed two separate suppression motions. In his first motion, Webb sought to exclude any incriminating statements he made to the police upon being arrested. In the second motion, Webb argued that his on-scene identification by the victim's girlfriend should be suppressed. A hearing was held on said motions on August 21, 2013. On October 28, 2013, the trial court overruled both of Webb's motions to suppress.¹

{¶ 3} On March 20, 2014, Webb withdrew his plea of not guilty and entered a guilty plea pursuant to one count of murder, one count of aggravated robbery, one count aggravated burglary, and one count having a weapon while under disability. In exchange for his guilty plea, Webb was sentenced to an aggregate prison term of eighteen years to life. Specifically, Webb was sentenced to fifteen years to life for murder, with an additional three years to be served consecutively for the firearm specification. Webb was also sentenced to eleven years each for aggravated burglary and aggravated robbery, and three years for having a weapon while under disability, to be served concurrently to the murder count. Pursuant to the plea agreement, the remaining charges were dismissed.

{¶ 4} Webb filed a timely notice of appeal with this Court on April 29, 2014, and

¹Webb subsequently filed two supplementary motions to suppress, but the trial court did not rule on either motion prior to his guilty plea. Therefore, the supplementary motions are considered to be denied, and Webb waived the right to appeal any of the trial court's pre-trial rulings by virtue of his guilty plea. See *State v. Wheeler*, 2d Dist. Montgomery No. 24112, 2011-Ohio-3423, ¶ 2.

counsel was appointed to prosecute this appeal. On September 2, 2014, appointed counsel filed an *Anders* brief, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), wherein counsel argued that there were no meritorious issues to present on appeal. By magistrate's order on September 5, 2014, this court advised Webb that an *Anders* brief had been filed by his counsel and of the significance of an *Anders* brief. Webb was granted sixty days from September 5, 2014, to file a pro se brief assigning error for an independent review by this court. Webb has filed nothing with this court.

{¶ 5} Although appointed counsel represents that he can identify no arguably meritorious issues to present on appeal, he nevertheless identifies two potential assignments of error. The first potential assignment is as follows:

{¶ 6} “THE APPELLANT’S GUILTY PLEA WAS NOT MADE KNOWINGLY OR INTELLIGENTLY MADE [sic].”

{¶ 7} In his first potential assignment, appointed counsel argues that Webb's guilty plea was not made in a knowing, voluntary, and intelligent fashion.

{¶ 8} In order to satisfy the requirements of due process, a guilty plea must be knowingly, intelligently, and voluntarily made. *Boykin v. Alabama*, 395 U.S. 238, 242-243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The plea must be made with a full understanding of its consequences. *State v. Bowen*, 52 Ohio St.2d 27, 28, 368 N.E.2d 843 (1977). Before accepting a guilty plea, a trial court must substantially comply with the requirements of Crim.R. 11. *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990), citing *State v. Stewart*, 51 Ohio St.2d 86, 92-93, 364 N.E.2d 1163 (1977). “Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the

implications of his plea and the rights he is waiving.” *Nero*, at 108. Here the trial court did substantially comply with Crim.R. 11 during Webb’s plea hearing.

{¶ 9} The trial court informed Webb of the facts underlying the charges against him, the maximum sentence that he faced, and the constitutional rights that he waived by foregoing a trial. Prior to accepting the plea, the trial court asked Webb whether he understood what he was doing, whether he was acting of his own free will and not as the result of any promises aside from those incorporated in the plea agreement, and whether he wanted the court to accept the plea. Webb responded to all of these questions in the affirmative. Webb acknowledged that he had discussed his case with his attorney, including the elements of the offenses with which he was charged and his potential defenses. Webb stated that his attorney had gone over the plea forms with him and that he was satisfied with his attorney’s representation. Significantly, the trial court also informed Webb that by pleading guilty, he waived the right to appeal the court’s disposition with respect to any of his pre-trial motions, including his motions to suppress.

{¶ 10} Upon review, we conclude that the record reflects that Webb knowingly, intelligently, and voluntarily entered into the plea agreement, which provided significant benefits to him. The State dismissed several of the felony charges against Webb, which allowed him to face a significantly lesser sentence than if he had been convicted of all of the charges against him. Moreover, the trial court ordered that the sentences imposed for the remaining counts of aggravated burglary, aggravated robbery, and having a weapon while under disability were to run concurrent to the eighteen years to life sentence for the murder conviction with the firearm specification. Accordingly, Webb’s first potential assignment of

error is without merit.

{¶ 11} Webb's second and final potential assignment of error is as follows:

{¶ 12} "APPELLANT'S COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO PRESERVE THE APPELLANT'S RIGHT TO APPEAL THE DENIAL OF THE MOTION TO SUPPRESS."

{¶ 13} In his second potential assignment, Webb contends that his trial counsel provided ineffective assistance by allowing him to plead guilty rather than no contest, thus failing to preserve his right to appeal the trial court's decision overruling his motion to suppress.

{¶ 14} A claim of ineffective assistance of trial counsel requires both a showing that trial counsel's representation fell below an objective standard of reasonableness, and that the defendant was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A reviewing court "must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. The prejudice prong requires a finding that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different, with a reasonable probability being "a probability sufficient to undermine confidence in the outcome." *Id.* at 694; *see also State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989).

{¶ 15} A guilty plea waives the right to allege ineffective assistance of counsel, except to the extent that the errors caused the plea to be less than knowing and voluntary. *State v. Spates*, 64 Ohio St.3d 269, 595 N.E.2d 351 (1992); *see State v. Huddleson*, 2d Dist. Montgomery No. 20653, 2005-Ohio-4029, ¶ 9. The reviewing court must therefore

determine whether the trial court substantially complied with Crim.R. 11 in accepting the plea. *Nero*, at 108. If the rule was complied with, the plea was knowing, voluntary, and intelligent. *Id.*

{¶ 16} In our analysis of Webb's first potential assignment, we found that the trial court substantially complied with Crim.R. 11. Prior to entering his plea, Webb was advised of the charges, the possible sentences, and the constitutional and non-constitutional rights he was waiving by pleading guilty. The trial court also specifically informed Webb that by pleading guilty, he was waiving his right to appeal any of the court's rulings with respect to his pre-trial motions, including his motion to suppress. At no point did Webb express any confusion regarding any of the information provided by the trial court in its Crim.R. 11 colloquy. Rather, Webb affirmatively stated that he understood the rights he was waiving, including his right to appeal the trial court's pre-trial rulings. Thus, we conclude that Webb's potential assignment alleging that he received ineffective assistance is without merit.

{¶ 17} Additionally, in the performance of our duty, under *Anders v. California*, to conduct an independent review of the record, we have found no potential assignments of error having arguable merit. We conclude that this appeal is wholly frivolous. Therefore, the judgment of the trial court is Affirmed.

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FAIN, J. and HALL, J., concur.

Copies mailed to:

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 Gary Glenn Webb, Jr.
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