

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

MARK A. WINLOCK, JR.,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0071

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2018 CR 00262

BEFORE:

Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed

Atty. Paul Gains, Prosecutor and *Atty. Ralph Rivera*, Assistant Prosecutor, Mahoning County Prosecutor's Office, 21 West Boardman Street, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Atty. Karen Oakley, P.O. Box 541111, Cincinnati, Ohio 45454, for Defendant-Appellant.

Dated:
September 15, 2021

Donofrio, J.

{¶1} Defendant-appellant Mark Winlock, Jr. appeals from a Mahoning County Common Pleas Court judgment accepting his guilty plea to murder with a firearm specification and sentencing him to 18 years to life in prison.

{¶2} Appellant was indicted in Mahoning County for aggravated murder, two counts of murder, and aggravated robbery, all with firearm specifications. On February 21, 2020, appellant, with counsel, entered his plea before the court and executed a plea agreement in which he agreed to plead guilty to one count of murder with a firearm specification. The plea agreement set forth the maximum sentence for the offenses, with a 15-year to life in prison maximum term for murder, and a 3-year maximum term for the firearm specification.

{¶3} On March 9, 2020, appellant filed a pro se motion to withdraw his guilty plea.

{¶4} On March 13, 2020, appellant's counsel, Attorneys Yarwood and Gentile, filed a motion to withdraw as counsel, citing a breakdown in the attorney-client relationship. They noted that appellant had filed a motion to withdraw his plea.

{¶5} On March 26, 2020, the trial court held a status hearing on the motions, with the prosecution, appellant, Attorneys Yarwood and Gentile, and Attorney Meranto, present. The court explained that Attorney Meranto was present because the court had reviewed counsel's motion to withdraw before the hearing and wanted to make sure that appellant had counsel. The court informed appellant that his motion to withdraw his guilty plea would not be decided at this point because he needed to discuss the motion with his new counsel to ensure that he understood the consequences of proceeding on the motion. Appellant represented that he had hired Attorney Oakley, but she was not present because the status hearing had been changed on the docket. The court noted that it had unsuccessfully attempted to contact Attorney Oakley.

{¶6} Appellant stated that he was meeting with Attorney Oakley later in the week. The court informed him that if Attorney Oakley did not enter an appearance by April 3, 2020, Attorney Meranto was going to be appointed as counsel. The court set the matter for a status conference during the week of April 6, 2020, and indicated that Attorney

Oakley could appear by telephone since she was located in Cincinnati, Ohio. The court told appellant that his motion to withdraw his guilty plea would not be determined until appellant had a chance to discuss it with Attorney Oakley. The court granted the motion to withdraw as counsel and requested that Attorney Meranto continue on “standby.” (Mar. 26, 2020 Tr. at 8-9.)

{¶7} On April 9, 2020, the trial court issued a judgment entry indicating that it had granted appellant until April 3, 2020 to retain new counsel, but as of April 9, 2020, new counsel had not been retained. The court thus appointed Attorney Meranto as counsel.

{¶8} On June 26, 2020, the trial court held the sentencing hearing, with appellant, Attorney Meranto, and the prosecution present. (June 26, 2020 Tr. at 1-16). The court explained that it did not consider appellant’s pro se motion to withdraw his guilty plea at the prior hearing because it was not filed through counsel and appellant was in the process of retaining new counsel. The court noted that it had explained at that time that if new counsel joined in appellant’s pro se motion, or brought such a motion before the court, then the court would consider it.

{¶9} Before proceeding to sentencing, the court inquired of Attorney Meranto as to the status of the motion to withdraw appellant’s guilty plea. Attorney Meranto stated that he had spoken to appellant’s prior counsel, reviewed appellant’s file, spoke to appellant’s parents, and spoke to appellant numerous times. He stated that his understanding was that appellant realized that it was not in his best interest to withdraw his plea and he would accept responsibility for his role in the incident. The court confirmed with appellant that this was his intention and appellant responded yes.

{¶10} The court sentenced appellant to 15 years to life in prison on the murder conviction, and 3 years in prison on the firearm specification, to run prior and consecutive to the murder sentence.

{¶11} On July 9, 2020, appellant filed the instant notice of appeal. Attorney Oakley filed the brief as appellant’s counsel. She is the attorney who appellant stated he had retained, but who never entered an appearance in the trial court.

{¶12} In his sole assignment of error, appellant asserts:

The Appellant received ineffective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution, when

several prior counselors failed to prosecute the Appellant's motion to withdraw his plea.

{¶13} Citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), appellant contends that all of his attorneys rendered ineffective assistance of counsel when they failed to proceed on his motion to withdraw his guilty plea. Citing *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), he asserts that effective counsel has a duty to make reasonable investigations or to make a reasonable decision that makes investigations unnecessary. While acknowledging that counsel is not required to make arguments that lack merit, appellant notes that generally, an attorney who defers to a client's wishes does not render ineffective assistance of counsel. *State v. McNeill*, 83 Ohio St.3d 438, 451, 700 N.E.2d 596 (1998).

{¶14} Appellant contends that Attorneys Yarwood, Gentile, and Meranto deficiently performed when they refused to prosecute his motion to withdraw his guilty plea, even though he clearly told them he wanted to pursue it. He cites the court's statement that it would have considered the motion if counsel had joined in the motion, but none of them did. (Mar. 26, 2020 Tr. at 8-10); (June 26, 2020 Tr. at 3-4). Appellant also contends that Attorney Oakley deficiently performed because she "abandoned the Appellant and his motion to withdraw the plea." (Br. at 8). He asserts that he hired Attorney Oakley to pursue the motion to withdraw and she failed to enter an appearance, failed to appear for the hearing, and failed to prosecute the motion.

{¶15} Appellant asserts that the second prong of *Strickland* is met because he was prejudiced from counsels' failures to prosecute his motion as he was denied the opportunity to withdraw his guilty plea.

{¶16} In order to prove ineffective assistance of counsel, an appellant must satisfy a two-prong test. First, an appellant must establish that counsel's performance was deficient, and second, the deficient performance prejudiced the defense. *Strickland*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph two of the syllabus (1989). To show prejudice in the context of a guilty plea, the defendant must show that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. *State v. Xie*, 62 Ohio St.3d 521, 524, 584 N.E.2d 715 (1992).

{¶17} In addition, “[t]he mere fact that, if not for the alleged ineffective assistance of counsel, the defendant would not have entered a guilty plea is not sufficient to establish the requisite connection between the guilty plea and the ineffective assistance. Rather, ineffective assistance of trial counsel is found to have affected the validity of a guilty plea when it precluded a defendant from entering his plea knowingly and voluntarily.” *State v. Doak*, 7th Dist. Nos. 03CO15 and 03CO31, 2004-Ohio-1548, at ¶ 55, quoting *State v. Madeline*, 11th Dist. No.2000-T-0156, 2002-Ohio-1332. (Internal citations omitted). If one of the prongs for the ineffective assistance of counsel is not met, the Court need not review the other. *State v. Diehl*, 7th Dist. Harrison, No. 17 HA 0001, 2017-Ohio-7708, ¶ 34, citing *State v. Madrigal*, 87 Ohio St.3d 378, 389, 721 N.E.2d 52 (2000).

{¶18} Here, appellant does not complain that his guilty plea was invalid or that any error existed in the plea colloquy. Rather, he asserts counsel’s ineffectiveness by not joining in or arguing his pro se motion to withdraw his guilty plea. In *State v. Lett*, we held that a voluntarily entered guilty plea waives ineffective assistance of counsel claims except claims that counsel’s performance caused the waiver of a defendant’s trial rights and the entry of his plea to be less than knowing and voluntary. 7th Dist. No. 15 MA 0128, 2016-Ohio-4811, ¶ 52, citing *State v. Fatula*, 7th Dist. No. 07 BE 24, 2008–Ohio–1544 at ¶ 9 (quoting *State v. Kidd*, 2d Dist. No. 03CA43, 2004–Ohio–6784, ¶ 16. We found that a defendant may bring an ineffective assistance of counsel claim regarding a pre-sentence motion to withdraw his guilty plea in such cases. *Lett*, 2016-Ohio-4811, ¶ 52, citing *State v. Emerson*, 5th Dist. No. 14 CA 79, 2015-Ohio-2121, ¶ 25.

{¶19} In this case, appellant entered his guilty plea before the court, and signed the plea agreement outlining his constitutional and non-constitutional rights and the waiver of such rights upon pleading guilty. Attorneys Gentile and Yarwood represented him at the plea hearing, where the trial court thoroughly reviewed appellant’s rights and the waiver of rights upon pleading guilty. Appellant entered his guilty plea after the thorough colloquy with the court, with counsel present, and after being informed of and waiving his trial rights. He makes no assertion concerning the validity of his plea.

{¶20} Further, before proceeding with sentencing, the trial court inquired of Attorney Meranto as to the status of appellant’s motion to withdraw his guilty plea. (June 26, 2020 Tr. at 4). Attorney Meranto reviewed the steps he had taken with regard to the

motion and represented to the court that he thought after these steps, appellant “understood and has come to the realization that that would not be in his best interests at all to withdraw his plea.” (June 26, 2020 Tr. at 4). The court inquired of appellant as to Attorney Meranto’s representations:

THE COURT: Are you informing me the Court at this time that you do not wish to withdraw your former plea?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And you have talked to Attorney Meranto about this matter as well?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you also talked to your family, I understand as well, correct?

THE DEFENDANT: Correct.

THE COURT: Okay, so we are going to proceed then to sentencing, correct?

THE DEFENDANT: Yes, Your Honor.

(June 26, 2020 Tr. at 5-6). Since appellant informed the court that he no longer wished to proceed on his motion to withdraw his guilty plea, none of his counsel were ineffective in failing to file, join in, or argue the motion. If the Court finds that there was no deficient performance, it need not address prejudice. *Diehl*, No. 17 HA 0001, 2017-Ohio-7708, at ¶ 34, citing *Madrigal*, 87 Ohio St.3d at 389, 721 N.E.2d 52 (2000).

{¶21} However, even if we would find deficient performance by any or all of his counsel, appellant cannot meet the prejudice prong of the *Strickland* test. In order to meet this prong, appellant must show that he would not have entered his guilty plea if counsel would not have deficiently performed. The discussion appellant had with the trial court before sentencing shows that it was not any failure by counsel to file, join in, or assert

argument on the motion to withdraw his guilty plea because appellant indicated on the record that he voluntarily withdrew his motion before sentencing. Thus, he cannot assert prejudice resulting from any action or inaction of counsel from failing to proceed on a motion that he voluntarily withdrew.

{¶22} Further, even if we review the actions of each of appellant's counsel, he still cannot show ineffectiveness. At the hearing on their motion to withdraw as counsel, Attorneys Yarwood and Gentile raised appellant's pro se motion and the court stated that it was not going to proceed on the motion since counsel was moving to withdraw and appellant's new counsel was not present. (Mar. 26, 2020 Tr. at 4). Thus, Attorneys Yarwood and Gentile did not deficiently perform because they raised the motion but were unable to act on it as per the court's directive.

{¶23} Attorney Meranto was present at the motions hearing. (Mar. 26, 2020 Tr. at 5). The court continued any hearing on appellant's motion to withdraw the guilty plea so that Attorney Oakley could enter an appearance and discuss the motion with him. The court explained that Attorney Meranto was present because it had received appellant's motion and wanted to ensure that appellant had counsel present to represent him. (Mar. 26, 2020 Tr. at 5). The court gave Attorney Oakley leave until April 3, 2020 to file a notice of appearance and stated that if she did not file a notice of appearance by then, Attorney Meranto would be appointed to represent appellant. (Mar. 26, 2020 Tr. at 6). Attorney Oakley did not file a notice of appearance or otherwise contact the court. Thus, the court appointed Attorney Meranto.

{¶24} Attorney Meranto appeared with appellant at the sentencing hearing. (June 26, 2020 Tr. at 3-4). The court inquired into the status of appellant's motion to withdraw his guilty plea and Attorney Meranto stated that he had reviewed the motion, appellant's case, spoke to appellant's former counsel, and discussed the motion and its consequences with appellant and his parents. He indicated that appellant did not want to proceed with the motion. When the court asked appellant, he affirmed that he did not wish to go forward on his motion. Accordingly, Attorney Meranto did not deficiently perform as counsel because he performed his requested and required duties. He spoke to appellant's former counsel, reviewed appellant's case, discussed the motion and its consequences with appellant and his family, and then represented that appellant did not

wish to proceed on the motion to withdraw his guilty plea. Appellant confirmed before the court that he did not wish to go forward on this motion.

{¶25} As to Attorney Oakley, we have previously held that counsel who represents a defendant both at trial and on appeal may argue her own ineffective assistance of counsel on direct appeal. *State v. Dillard*, 7th Dist. Jefferson No. 12 JE 29, 2014-Ohio-439, ¶ 21, citing *State v. Harris*, 7th Dist. Belmont No. 00 BA 26, 2002-Ohio-2411, ¶ 23. Thus, there is no issue with Attorney Oakley arguing her own ineffectiveness on appeal. Further, even if her inactions of failing to appear and failing to represent appellant constituted deficient performance, appellant cannot prove resulting prejudice because he had the advice of counsel throughout the proceedings and particularly on his motion to withdraw his guilty plea. Appellant does not assert that his plea or the plea colloquy were invalid, and he voluntarily chose not to proceed on the motion to withdraw his guilty plea.

{¶26} Moreover, appellant's motion to withdraw his guilty plea itself is without merit. Appellant's only assertion in the motion is that his counsel did not advise him of "a line of defenses, *State v. Young*, 2004 Ohio 5794. It is an abuse of discretion not to allow before trail[sic] a withdrawal of a guilty plea where a defense is asserted. *State v. Casale*, 34 Ohio App.3d 339, [518NE2D 579 (8th Dist. 1986)]." In *Young*, the defendant asserted on appeal that the trial court erred in overruling his presentence motion to withdraw his guilty plea because he established a valid defense and his counsel was ineffective. 2d. Dist. Greene No. 2004-Ohio-5794, ¶¶ 1, 15-16. The Second District Court of Appeals held that the trial court erred in denying the motion because Young presented evidence suggesting a substantial basis for a presentence withdrawal of his guilty plea that was more than a mere change of heart. *Id.* at ¶ 15. The Court also gave "some credence" to Young's assertion that his counsel did not reasonably inquire into issues that went to the defense he wished to assert. *Id.* at ¶16.

{¶27} In the instant case, appellant does not assert how *Young* is similar to his case. Further, he does not identify any kind of defense or substantial basis for withdrawing his guilty plea. Moreover, Attorney Meranto indicated on the record that he reviewed appellant's motion and its consequences with him and appellant told him that he did not wish to proceed with the motion. (June 26, 2020 Tr. at 4). Appellant affirmed this

representation to the court and indicated that he wished to proceed with sentencing. (June 26, 2020 Tr. at 4-5).

{¶28} In his reply, appellant submits that he was not represented “at all times” as appellee indicated in its response. He contends that he was unrepresented from “March 13, 2020 through April 9, 2020.” We find no merit to this assertion. March 13, 2020 is the date when Attorneys Yarwood and Gentile filed their motion to withdraw as counsel. The court did not hold a hearing on the motion until March 26, 2020. At that hearing, the court allowed Attorneys Yarwood and Gentile to withdraw, but had Attorney Meranto present at the hearing to make sure that appellant had representation during “this crucial part of his case.” The court indicated that attempts had been made to contact appellant’s new counsel, but were unsuccessful. After appellant’s retained counsel failed to file a notice of appearance by the court’s deadline, and otherwise failed to appear, the court officially appointed Attorney Meranto to his case. Attorney Meranto was familiar with appellant’s case as he had been present throughout at the court’s request. Therefore, appellant had counsel present throughout the proceedings.

{¶29} Accordingly, appellant’s sole assignment of error lacks merit and is overruled.

Waite, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.