[Cite as *State v. Thompkins*, 2022-Ohio-1563.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

BRENSTON T. THOMPKINS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case Nos. 21 CO 0024, 21 CO 0025

Criminal Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case Nos. 2020 CR 0148, 2020 CR 0206

BEFORE:
David A. D'Apolito, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:
Affirmed.

Atty. Vito Abruzzino, Columbiana County Prosecutor, *Atty. Ryan P. Weikart*, and *Atty. Abbey M. Minamyer,* Assistant Prosecuting Attorneys, Columbiana County Prosecutor's Office, 105 South Market Street, Lisbon, Ohio 44432, for Plaintiff-Appellee

Atty. Brian A. Smith, Brian A. Smith Law Firm, LLC, 123 South Miller Road, Suite 250, Fairlawn, Ohio 44333, for Defendant-Appellant.

Dated: May 5, 2022

D'APOLITO, J.

{¶1} Appellant, Brenston Thompkins, appeals from the July 9, 2021 judgments of the Columbiana County Court of Common Pleas, Case Nos. 2020 CR 148 and 2020 CR 206, sentencing him for breaking and entering and trespass in a habitation following guilty pleas. In these consolidated appeals, Appellant argues the trial court abused its discretion in denying his pre-sentence motion to withdraw his guilty plea, in Case No. 2020 CR 148, and alleges his consecutive sentence is not supported by the record. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶2} In Case No. 2020 CR 148, Appellant was indicted on June 10, 2020 by the Columbiana County Grand Jury on one count of breaking and entering, a felony of the fifth degree, in violation of R.C. 2911.13(A).[1]

{¶3} On July 17, 2020, a bench warrant was issued for Appellant's failure to appear at his arraignment to which he later pled not guilty through appointed counsel. A recognizance bond was reinstated on August 6, 2020. On August 24, 2020, Appellant waived his right to a speedy trial. A final status conference was set for November 30, 2020. A trial by jury was scheduled for December 15, 2020.

{¶4} Appellant failed to appear for the November 30, 2020 final status conference and a bench warrant was issued necessitating cancellation of the trial by jury. The recognizance bond was reinstated on December 21, 2020. On February 1, 2021, Appellant again failed to appear for a status conference and a bench warrant was issued for his arrest. On April 2, 2021, Appellant filed a motion to reinstate his original recognizance bond which the trial court denied five days later.

{¶5} On April 19, 2021, Appellant withdrew his former not guilty plea and entered an oral and written guilty plea to the charge as contained in the indictment. The trial court

[1] The charge was sought after East Liverpool police officers discovered Appellant on or about March 3, 2020 trespassing inside the unoccupied residence of Beth Hargreaves and stealing items from the home. The occupant of the residence had recently passed away. Entry was made through a window which was observed and reported by a neighbor.

accepted his guilty plea after finding it was made in a knowing, intelligent, and voluntary manner pursuant to Crim.R. 11. The court scheduled a sentencing hearing for July 1, 2021 and reissued a recognizance bond with conditions. On July 1, 2021, the sentencing hearing was continued. The next day, Appellant filed a motion to withdraw his guilty plea. On July 9, 2021, the trial court denied Appellant's motion to withdraw following a hearing and sentenced Appellant to six months in prison.

{¶6} Appellant filed a timely appeal, Case No. 21 CO 0024.

{¶7} In Case No. 2020 CR 206, Appellant was secretly indicted on June 10, 2020 by the Columbiana County Grand Jury on one count of trespass in a habitation, a felony of the fourth degree, in violation of R.C. 2911.12(B).[2]

{¶8} On July 17, 2020, a bench warrant was issued for Appellant's failure to appear at his arraignment to which he later pled not guilty through appointed counsel. A recognizance bond was reinstated on August 6, 2020. A scheduling conference was held on August 21, 2020. A final status conference was set for November 30, 2020. A trial by jury was scheduled for December 15, 2020.

{¶9} Appellant failed to appear for the November 30, 2020 final status conference and a bench warrant was issued necessitating cancellation of the trial by jury. The recognizance bond was reinstated on December 22, 2020. On February 1, 2021, Appellant again failed to appear and a bench warrant was issued for his arrest. On April 2, 2021, Appellant filed a motion to reinstate his original recognizance bond which the trial court denied five days later.

{¶10} On April 19, 2021, Appellant withdrew his former not guilty plea and entered an oral and written plea of guilty to the charge as contained in the indictment. The trial court accepted his guilty plea after finding it was made in a knowing, intelligent, and voluntary manner pursuant to Crim.R. 11. The trial court scheduled a sentencing hearing for July 1, 2021 and reissued a recognizance bond with conditions. On July 1, 2021, the sentencing hearing was continued. On July 9, 2021, the trial court sentenced Appellant to 12 months in prison, consecutive to his six-month sentence imposed in Case No. 2020 CR 148, for a total of 18 months in prison.

[2] The charge was sought after Appellant trespassed in an East Liverpool apartment on or about June 25, 2019 while the resident, Amber Adkins, and her children were asleep.

{¶11} Appellant filed a timely appeal, Case No. 21 CO 0025.

{¶12} This court consolidated Appellant's appeals. Appellant raises two assignments of error for our review.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION TO WITHDRAW GUILTY PLEA WAS AN ABUSE OF DISCRETION.

{¶13} In his first assignment of error, Appellant argues the trial court abused its discretion in denying his pre-sentence motion to withdraw his guilty plea for breaking and entering in Case No. 2020 CR 148.

> Even though the general rule is that motions to withdraw guilty pleas before sentencing are to be freely allowed and treated with liberality, (* * *) still the decision thereon is within the sound discretion of the trial court. (* * *) Thus, unless it is shown that the trial court acted unjustly or unfairly, there is no abuse of discretion. (* * *) One who enters a guilty plea has no right to withdraw it. It is within the sound discretion of the trial court to determine what circumstances justify granting such a motion. (* * *) (Internal citations omitted.)

State v. Muldrow, 7th Dist. Mahoning Nos. 19 MA 0124 and 19 MA 0125, 2020-Ohio-4815, ¶ 15, quoting *State v. Xie*, 62 Ohio St.3d 521, 526, 584 N.E.2d 715 (1992).

> When reviewing whether a trial court abused its discretion in denying a pre-sentence motion to withdraw, an appellate court examines the following factors:
>
> (1) whether the state will be prejudiced by withdrawal; (2) the representation afforded to the defendant by counsel; (3) the extent of the Crim.R. 11 plea hearing; (4) whether the defendant understood the nature of the charges and potential sentences; (5) the extent of the hearing on the motion to withdraw; (6) whether the trial court gave full and fair consideration to the motion; (7) whether the timing of the motion was reasonable; (8) the

> reasons for the motion; and (9) whether the accused was perhaps not guilty or had a complete defense to the charge.

Muldrow, supra, at ¶ 16, quoting *State v. Jones*, 7th Dist. Columbiana No. 18 CO 0023, 2020-Ohio-3578, ¶ 12, citing *State v. Scott*, 7th Dist. Mahoning No. 08 MA 12, 2008-Ohio-5043, ¶ 13; *State v. Fish*, 104 Ohio App.3d 236, 661 N.E.2d 788 (1st Dist.1995). "No one factor is conclusive for the determination of whether the trial court should have granted the motion to withdraw." *Jones* at ¶ 13, citing *State v. Morris*, 7th Dist. Mahoning No. 13 MA 19, 2014-Ohio-882, ¶ 22; *see also State v. Peterseim*, 68 Ohio App.2d 211, 428 N.E.2d 863 (8th Dist.1980); *State v. Cuthbertson*, 139 Ohio App.3d 895, 746 N.E.2d 197 (7th Dist.2000).

{¶14} "We have often held that mere change of heart forms an insufficient basis on which to withdraw a guilty plea." *State v. Perez*, 7th Dist. Mahoning No. 12 MA 110, 2013-Ohio-3587, ¶ 10, citing *State v. Johnston,* 7th Dist. Columbiana No. 06CO64, 2007-Ohio-4620, ¶ 32; *State v. Kramer,* 7th Dist. Mahoning No. 01 CA 107, 2002-Ohio-4176, ¶ 50.

Whether the State will be prejudiced

{¶15} Appellant claims the State would not have been prejudiced by the plea withdrawal. The record reveals Appellant's motion to withdraw was filed almost three months after his guilty plea and almost one week prior to sentencing. The record also reveals a clear pattern of delays attributable to Appellant, including failing to appear on numerous occasions. The State correctly points out that constant delays burden already crowded court dockets and provide more time for a witness's memory to fade. *See generally State v. Kennedy*, 7th Dist. Mahoning No. 07 MA 9, 2008-Ohio-1538, ¶ 24. These delays are compounded by the fact that Appellant acknowledged on the record to committing the breaking and entering offense. (4/15/2021 Change of Plea Hearing T.p., 9-11, 16-18); (7/8/2021 Sentencing Hearing T.p., 12-13). This factor weighs in favor of the State.

The representation afforded to the defendant by counsel

{¶16} The record establishes that Appellant was represented by competent counsel throughout these cases and was satisfied with the representation. At the plea hearing, the trial court asked Appellant if he was satisfied with the representation of his

counsel. (4/15/2021 Change of Plea Hearing T.p., 16). Appellant responded, "Yes." (*Id.*) The court also asked Appellant several times if his attorney went over all documents with him and answered all of his questions. (*Id.* at 6-10, 15-16). Appellant replied, "Yes." (*Id.*) Further, counsel was able to reach an agreement with the State which resulted in a reduced term of incarceration. Thus, Appellant was represented by competent counsel and suffered no prejudice with respect to his attorney's representation. This factor weighs in favor of the State.

The extent of the Crim.R. 11 plea hearing

{¶17} A review of the plea hearing transcript shows that the trial court complied with all requirements of a Crim.R. 11 hearing. (4/15/2021 Change of Plea Hearing T.p., 4-21). Appellant was advised of all of his constitutional rights he would be giving up by entering a guilty plea and the possible penalties. (*Id.* at 10-11, 14-16). The court also correctly advised Appellant regarding post-release control. (*Id.* at 12-13).

{¶18} At the plea hearing, Appellant admitted that he reviewed the agreement with his attorney and had no questions. (*Id.* at 6-10, 15-16). Appellant fully understood the total minimum and maximum sentences that he faced. (*Id.* at 10-11). At no point during the plea hearing did Appellant claim he was forced into entering a guilty plea nor did he profess his innocence at that time. This factor weighs in favor of the State.

Nature of the charges and possible punishment

{¶19} At the plea hearing, the trial court explained the nature of the charges and the maximum possible penalties to Appellant. (4/15/2021 Change of Plea Hearing T.p. 9-11). Appellant indicated that he understood the nature of the charges and the maximum possible penalties. (*Id.* at 10-11). This factor weighs in favor of the State.

The extent of the motion to withdraw hearing

{¶20} "Courts have held that if a trial court invites and hears oral arguments on a motion to withdraw a guilty plea at the sentencing hearing, immediately before imposing sentence, this can constitute a full and fair hearing on that motion." *State v. Collins,* 7th Dist. Belmont No. 18 BE 0047, 2020-Ohio-3356, ¶ 24, citing *State v. Griffin*, 8th Dist. Cuyahoga No. 82832, 2004-Ohio-1246, ¶ 18, citing *State v. Holloman*, 2d Dist. Greene

No. 2000CA82, 2001 WL 699533 (June 22, 2001), *State v. Mooty*, 2d Dist. Greene No. 2000CA72, 2001 WL 991976.

{¶21} The record reveals Appellant was given a sufficient hearing on the motion to withdraw his plea. Appellant appeared with counsel for sentencing. At the start of the hearing, Appellant's representative indicated Appellant's desire to go forward with the motion to withdraw his guilty plea in the breaking and entering case only, Case No. 2020 CR 148. (7/8/2021 Sentencing Hearing T.p. 3, 5). The trial judge inquired as to Appellant's reasons for the withdrawal, which appear to be that he misunderstood the plea. (*Id.* at 4).

{¶22} At the hearing on the motion to withdraw/sentencing, the court heard statements from Appellant, defense counsel, and the State prior to sentencing. (*Id.* at 3-14). In making his argument, Appellant referenced an alleged conversation he had with a police officer regarding burglary. (*Id.* at 12-13). Appellant stated "[w]hen I was caught in the house, nobody was there." (*Id.* at 13). Although Appellant admitted to the commission of the breaking and entering offense, he now claims he is not guilty of breaking and entering because he later learned that nobody was living in the house at issue. (*Id.* at 4, 12-13). It appears Appellant is confusing R.C. 2911.12(A)(1)-(3) "Burglary," dealing with an "occupied structure" versus R.C. 2911.13(A) "Breaking and entering," dealing with an "unoccupied structure." Appellant was indicted for breaking and entering, not burglary. Also, the trial judge clarified that "the plea was to breaking and entering not burglary." (*Id.* at 5).

{¶23} In response, the State noted that Appellant is "no stranger to plea agreements in the criminal system" as he has entered over 20 criminal pleas in Columbiana County and further stressed that Appellant was simply trying to "game the system." (*Id.* at 6, 8). The State stressed that "to sit here and say [Appellant] was confused by the plea agreements, or the process, or that he was overcome by emotion and fear is just not supported by the record." (*Id.* at 8).

{¶24} The trial judge found no basis for withdrawing the plea. (*Id.* at 13-14). The judge noted the colloquy between the court and Appellant at the plea hearing and revealed that the plea was knowing, intelligent, and voluntary. (*Id.*)

{¶25} Based on the foregoing, Appellant appears to have had a mere change of heart, which is not sufficient to justify permitting him to withdraw his plea. *See State v. Jones*, 7th Dist. Mahoning No. 18 MA 0121, 2020-Ohio-4816, ¶ 15. This factor weighs in favor of the State.

Whether the trial court gave full and fair consideration to the motion

{¶26} As stated, Appellant was given a sufficient hearing on the motion to withdraw his plea. The trial court heard from all parties prior to sentencing Appellant. The court considered Appellant's reasons for withdrawing his plea. The trial judge recalled the plea hearing and was confident as to Appellant's understanding of his guilty plea and that it was made knowingly, intelligently, and voluntarily. (7/8/2021 Sentencing Hearing T.p. 13-14). Considering the record in its entirety, the court gave full and fair consideration to Appellant's plea withdrawal request before denying it and sentencing him. This factor weighs in favor of the State.

Whether the timing of the motion was reasonable

{¶27} Appellant's guilty plea was filed on April 19, 2021. Appellant's motion to withdraw his guilty plea was not filed until almost three months later on July 2, 2021, about one week before sentencing. While Appellant's motion was arguably timely, i.e., about one week before sentencing, this alone is insufficient to warrant granting the motion. *See State v. Walcot*, 8th Dist. Cuyahoga No. 99477, 2013-Ohio-4041, ¶ 22. Indeed, no one factor is conclusive in a trial court's determination on a pre-sentence motion to withdraw a guilty plea. *Id; Fish* at 240. Given the other factors weighing against the granting of Appellant's motion, we find this factor insignificant. *Id.*

The reasons for the motion

{¶28} As addressed, Appellant was represented by competent counsel throughout these cases. He understood the nature of the charges and the maximum penalties. The trial court heard and considered Appellant's claim that he is not guilty of breaking and entering because he later learned that nobody was living in the house at issue. (7/8/2021 Sentencing Hearing T.p., 4, 12-13). Again, it appears Appellant is confusing burglary ("occupied structure") with breaking and entering ("unoccupied

structure"). Appellant was indicted for breaking and entering, not burglary. Also, the trial judge clarified that "the plea was to breaking and entering not burglary." (*Id.* at 5). Appellant's foregoing claim is irrelevant. Also any claim that Appellant's plea was entered due to fear or panic is unsubstantiated by the record. Appellant entered his guilty plea knowingly, intelligently, and voluntarily. Furthermore, there is no evidence that Appellant's due process rights were violated in any manner. This factor weighs in favor of the State.

Whether the accused was not guilty or had a complete defense to the charge

{¶29} To overcome a trial court's decision to deny a motion to withdraw a guilty plea, a defendant must factually substantiate his claim of a meritorious defense or innocence. *State v. Williams*, 7th Dist. Mahoning No. 09-MA-74, 2010-Ohio-1292, ¶ 35. Here, Appellant cannot factually substantiate a meritorious defense or innocence. Rather, as stated, Appellant acknowledged and pled guilty to the elements of breaking and entering at the change of plea hearing. (4/15/2021 Change of Plea Hearing T.p., 9-11, 16-18). Appellant also acknowledged committing a breaking and entering offense at the motion to withdraw/sentencing hearing. (7/8/2021 Sentencing Hearing T.p., 12-13). The record reveals the trial court heard and considered Appellant's claims and did not find them compelling. Appellant did not challenge his entry into the house at the motion to withdraw/sentencing hearing. Thus, any attempt by appellate counsel to create a new defense theory is not properly before us. *See generally State v. Weaver,* 7th Dist. Belmont No. 12 BE 21, 2013-Ohio-430, ¶ 2, 22. This factor weighs in favor of the State.

{¶30} Applying the foregoing factors, we find that they overwhelmingly weigh in favor of the State. The record is devoid of any evidence that the trial court abused its discretion in denying Appellant's pre-sentence motion to withdraw his guilty plea in Case No. 2020 CR 148.

{¶31} Appellant's first assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT'S IMPOSITION OF CONSECUTIVE SENTENCES ON APPELLANT WAS NOT SUPPORTED BY THE RECORD.

{¶32} When reviewing a felony sentence, an appellate court must uphold the sentence unless the evidence clearly and convincingly does not support the trial court's findings under the applicable sentencing statutes or the sentence is otherwise contrary to law. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, ¶ 1; R.C. 2953.08(G)(2)(a)-(b).

{¶33} Regarding consecutive sentences, R.C. 2929.14(C)(4) states:

> (4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:
>
> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

R.C. 2929.14(C)(4)(a)-(c).

> It has been held that although the trial court is not required to recite the statute verbatim or utter "magic" or "talismanic" words, there must be an

> indication that the court found (1) that consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger posed to the public, and (3) one of the findings described in R.C. 2929.14(C)(4)(a), (b), or (c). *State v. Bellard*, 7th Dist. Mahoning No. 12-MA-97, 2013-Ohio-2956, ¶ 17. The court need not give its reasons for making those findings however. *State v. Power*, 7th Dist. Columbiana No. 12 CO 14, 2013-Ohio-4254, ¶ 38. A trial court must make the consecutive sentence findings at the sentencing hearing and must additionally incorporate the findings into the sentencing entry. *State v. Williams*, 7th Dist. Mahoning No. 13-MA-125, 2015-Ohio-4100, ¶ 33-34, citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37.

State v. Thomas, 7th Dist. Mahoning No. 18 MA 0025, 2020-Ohio-633, ¶ 41.

{¶34} The record includes evidence of Appellant's criminal background, inability to follow court directives, and continued criminal conduct while on bond. Here, Appellant was convicted in two separate cases (Case Nos. 2020 CR 148 and 2020 CR 206) of two separate offenses (breaking and entering and trespass in a habitation). The indictments reveal different dates and different victims situated almost one year apart. Thus, these offenses do not constitute a continuous course requiring concurrent sentences.

{¶35} Appellant has accumulated numerous criminal convictions (at least 23) throughout his adult life. The trial court referenced Appellant's criminal history contained in the partial PSI while the State provided a summary of Appellant's extensive criminal history. Appellant failed to appear several times during the pendency of these matters. Appellant was arrested, convicted, abused drugs, and violated probation while on bond in these matters. The timing of Appellant's criminal conduct occurring after his plea while out on bond was addressed by the State. Also, Appellant had numerous opportunities to address his drug issues but has continuously failed while on probation.

{¶36} The trial court's findings regarding Appellant's extensive criminal record were addressed at the sentencing hearing and supported by the record. Specifically, at the sentencing hearing, the trial court stated the following:

> THE COURT: Thank you.
>
> Mr. Thompkins, I've considered the record. I've considered the information presented at this hearing. I've considered the partial presentence investigation report that's been presented to me. I have considered the principles and purposes of sentencing under Revised Code 2929.11. I balanced the seriousness and recidivism factors of Revised Code 2929.12.
>
> Based upon the partial presentence investigation, Mr. Thompkins, you do have - - it appears to me that you do have a significant - - very significant past criminal record, which I don't need to dwell on.
>
> You've obviously been to prison before. When placed on community control, you failed to appear, and probation violations have been filed.
>
> I'm hearing now, today, about additional offenses that have occurred even since when I released you on your own recognizance. So it seems like, Mr. Thompkins, this is just a simple matter of a continuing course of criminal conduct. It's unfortunate that you haven't gotten the drug treatment that you admit that you need.
>
> But really, Mr. Thompkins, I'm not in a position to put you on community control, again, given the severity of these offenses.
>
> * * *
>
> * * * Order that the prison sentence be served in the 206 consecutively to the 148 case.
>
> In imposing consecutive sentences, I find that it's necessary to protect the public - - to punish the offender, to protect the public from future crimes.

> Consecutive sentences are not disproportionate to the seriousness of his conduct and the danger that he poses to the public.
>
> I also find the defendant's history of criminal conduct demonstrates consecutive sentences are necessary to protect the public from future crime by the defendant.

(7/8/2021 Sentencing Hearing T.p. 19-21).

{¶37} Thus, at the sentencing hearing, the trial court found that "the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public[.]" R.C. 2929.14(C)(4). The court also found at the sentencing hearing that Appellant's "history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender." R.C. 2929.14(C)(4)(c).

{¶38} In its sentencing entry, the trial court stated:

> The Defendant's definite prison term in this case shall be served consecutively to the sentence imposed against the Defendant in Columbiana County Case No. 2020 CR 148. Pursuant to R.C. 2929.14, this Court finds that consecutive prison sentences are necessary to punish the offender, to protect the public from future crimes, and that consecutive sentences are not disproportionate to the seriousness of the Defendant's conduct and the danger he poses to the public. This Court also finds that the Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant.

(7/9/2021 Sentencing Entry, Case No. 2020 CR 206, p. 1; *see also* 7/9/2021 Sentencing Entry, Case No. 2020 CR 148).

{¶39} The record before us indicates that the trial court complied with R.C. 2929.14(C)(4) at the sentencing hearing and in its sentencing entries. *See Thomas, supra,* at ¶ 41. As a result, there is not clear and convincing evidence that Appellant's

consecutive sentence is unsupported by the record or that it is otherwise contrary to law. *See* R.C. 2953.08(G)(2); *State v. Johnson*, 6th Dist. Sandusky No. S-20-033, 2021-Ohio-2254, ¶ 23.

{¶40} Appellant's second assignment of error is without merit.

CONCLUSION

{¶41} For the foregoing reasons, Appellant's assignments of error are not well-taken. The July 9, 2021 judgments of the Columbiana County Court of Common Pleas are affirmed.

Donofrio, P.J., concurs.

Waite, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgments of the Court of Common Pleas of Columbiana County, Ohio, are 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.