[Cite as *State v. Easterly*, 2023-Ohio-4517.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

TAWHON WILLIE EASTERLY,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 23 MA 0044

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2022 CR 00180

BEFORE:
David A. D'Apolito, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:
Affirmed.

Atty. Gina DeGenova, Mahoning County Prosecutor, and *Atty. Edward A. Czopur*, Assistant Prosecuting Attorney, for Plaintiff-Appellee and

Atty. Martin E. Yavorcik, for Defendant-Appellant.

Dated: December 8, 2023

D'Apolito, P.J.

{¶1} Appellant, Tawhon Willie Easterly, appeals from the March 2, 2023 judgment and the March 6, 2023 amended judgment of the Mahoning County Court of Common Pleas sentencing him to an agreed upon seven-year prison term for intimidation and an accompanying firearm specification following a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). On appeal, Appellant takes issue with the representation provided by his trial counsel. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶2} On April 14, 2022, Appellant was indicted by the Mahoning County Grand Jury on five counts: count one, having weapons while under disability, a felony of the third degree in violation of R.C. 2923.13(A)(2), (3), and (B); count two, intimidation, a felony of the third degree in violation of R.C. 2921.03(A) and (B), with a 54-month firearm specification under R.C. 2941.145(D); count three, obstructing official business, a felony of the fifth degree in violation of R.C. 2921.31(A) and (B), with a 54-month firearm specification under R.C. 2941.145(D); count four, burglary, a felony of the second degree in violation of R.C. 2911.12(A)(2) and (D), with notice of a prior conviction specification under R.C. 2929.13(F)(6); and count five, tampering with evidence, a felony of the third degree in violation of R.C. 2921.12(A)(1) and (B). Appellant retained counsel, pled not guilty, and waived his right to a speedy trial.

{¶3} Appellant subsequently entered into plea negotiations with Appellee, the State of Ohio. A change of plea hearing was held on February 1, 2023. Appellant withdrew his former not guilty plea and entered a guilty plea pursuant to *Alford* to count two, intimidation, with a 54-month firearm specification, in exchange for the State dismissing the remaining charges.[1] (2/1/2023 Plea Hearing Tr., p. 2-4); (2/1/2023 Written Plea of Guilty, p. 1). The terms of the agreement also included an agreed upon sentence

[1.] Appellant, while being pursued by police officers, fired a gun into the air multiple times in order to try to get the officers to stop pursuing him. (2/1/2023 Plea Hearing Tr., p. 3). The gun was recovered and contained Appellant's DNA. (*Id.*) This gave rise to the intimidation charge and the firearm specification. (*Id.*)

of 30 months on the intimidation charge, consecutive to the 54-month firearm specification, for a total of seven years in prison. (2/1/2023 Plea Hearing Tr., p. 2-3); (2/1/2023 Written Plea of Guilty, p. 3). The agreement reveals Appellant was "satisfied with [his] Legal Counsel and that [Appellant] fully understand[s] the nature of the charge(s) and/or specification(s) against [him] and the elements contained therein." (2/1/2023 Written Plea of Guilty, p. 2).

{¶4} At the plea hearing, trial counsel noted that the agreement resulted, in part, from Appellant having been diagnosed with PTSD, panic attacks, anxiety, and a low IQ. (2/1/2023 Plea Hearing Tr., p. 4).

{¶5} The trial court then engaged in a colloquy with Appellant. (*Id.* at p. 6-19). The court asked Appellant if he had any questions regarding the agreement. (*Id.* at p. 6). Appellant replied, "No, sir." (*Id.*). Appellant acknowledged going through the agreement with his trial counsel and that his attorney answered all his questions. (*Id.* at p. 6-7). The record reflects Appellant gave appropriate responses to the court's questions with respect to the crimes to which he was pleading, his ability to not plead guilty, his statutory and constitutional rights, and his implementation of an *Alford* plea. (*Id.* at p. 7-19). The court asked Appellant if he had any remaining questions. (*Id.* at p. 18). Appellant replied, "No, sir." (*Id.*).

{¶6} The trial court asked Appellant how he wished to plead to count two. (*Id.* at p. 19). Appellant responded, "I'm entering an *Alford* plea of guilty." (Emphasis added) (*Id.*). The court asked Appellant how he wished to plead to the firearm specification. (*Id.*). Appellant responded, "Your Honor, I enter an *Alford* plea of guilty." (Emphasis added) (*Id.*).

{¶7} The trial court accepted Appellant's *Alford* plea, finding it was made in a knowing, intelligent, and voluntary manner pursuant to Crim.R. 11. (*Id.* at p. 20); (2/1/2023 Judgment Entry). The court found Appellant guilty on count two and the accompanying firearm specification, dismissed the remaining counts, and deferred sentencing.[2] (*Id.*).

{¶8} A sentencing hearing was held on March 1, 2023. Appellant indicated he "took this plea 'cause of how much time [he] was facing, plus [he] feel[s] [he] just couldn't

[2] The parties waived a PSI.

get a fair trial, * * * due to the prosecution being biased and prejudiced." (3/1/2023 Sentencing Hearing Tr., p. 4). The trial court responded to Appellant that his sentiment is "inaccurate" and "not true." (*Id.*). The court said, "That's what I'm here for, is to guarantee that you get a fair trial. And I've never had anyone indicate that they haven't had a fair trial." (*Id.*). Trial counsel interjected by stating:

> If I may, Your Honor. [Appellant] was deeply concerned that the indictment was overcharging him. I did explain to him that, after negotiating and talking through some of those issues, the prosecutor agreed to dismiss those charges based upon the evidence we came up with in our investigation with our investigator, and that I understand his frustration and concern.
>
> If we would have gone to trial, it would have been on all the charges --

(*Id.* at p. 5).

{¶9} The trial court told Appellant:

> Yeah, your attorney has no - - she doesn't have anything to do with the prosecutor charging these offenses. And the grand jury, you know, found probable cause, and that's why you were indicted on these charges. But she [trial counsel], apparently did a great job for you in having Counts One, Three, Four and Five dismissed from the indictment.

(*Id.* at p. 5-6).

{¶10} Appellant replied, "Another thing, I just feel - - my mental health is - - y'all discriminating against my mental health." (*Id.* at p. 6).

{¶11} The following colloquy transpired before the trial court pronounced Appellant's sentence:

> [TRIAL COUNSEL]: I did produce records from the Social Security Administration to confirm his [Appellant's] mental health diagnosis. We would ask that, when imposing sentence, if the Court could direct that that

> mental health assessment be conducted by ODRC and appropriate treatment be given.
>
> THE COURT: Yeah, certainly. Absolutely.
>
> Okay. Is that it?
>
> [APPELLANT]: Yes.

(*Id.*).

{¶12} Appellant never requested, either orally or via a written motion, to withdraw his *Alford* plea.

{¶13} After considering the record, the oral statements, any victim impact statement, the purposes and principles of sentencing under R.C. 2929.11, the seriousness and recidivism factors under R.C. 2929.12, and the guidelines contained in R.C. 2929.13, the trial court adopted the agreed upon sentence jointly recommended by the parties following Appellant's *Alford* plea. (3/2/2023 Judgment Entry, p. 1); (3/6/2023 Amended Judgment Entry, p. 1). Specifically, the court sentenced Appellant to 30 months on count two, intimidation, and 54 months on the accompanying firearm specification, for a total of seven years in prison. (3/6/2023 Amended Judgment Entry, p. 2). The court notified Appellant that post-release control is mandatory for a period up to three years. (*Id.*).

{¶14} Appellant filed a timely appeal and raises one assignment of error.

ASSIGNMENT OF ERROR

> **THE TRIAL COURT ERRED IN ALLOWING A CONVICTION DESPITE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.**

{¶15} In his sole assignment of error, Appellant takes issue with the representation provided by his trial counsel and argues the trial court erred in allowing the conviction following his *Alford* plea.

{¶16} "[T]he Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial." *Strickland v. Washington*, 466 U.S. 668, 684, 104 S.Ct. 2052 (1984).

> In order to demonstrate ineffective assistance of counsel, Appellant must show that trial counsel's performance fell below an objective standard of reasonable representation, and prejudice arose from the deficient performance. *State v. Bradley*, 42 Ohio St.3d 136, 141-143, 538 N.E.2d 373 (1989), citing *Strickland* [*, supra*]. Both prongs must be established: If counsel's performance was not deficient, then there is no need to review for prejudice. Likewise, without prejudice, counsel's performance need not be considered. *State v. Madrigal*, 87 Ohio St.3d 378, 389, 721 N.E.2d 52 (2000).
>
> In Ohio, a licensed attorney is presumed to be competent. *State v. Calhoun*, 86 Ohio St.3d 279, 289, 714 N.E.2d 905 (1999). In evaluating trial counsel's performance, appellate review is highly deferential as there is a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. *Bradley* at 142-143, citing *Strickland* at 689. Appellate courts are not permitted to second-guess the strategic decisions of trial counsel. *State v. Carter*, 72 Ohio St.3d 545, 558, 651 N.E.2d 965 (1995).
>
> Even instances of debatable strategy very rarely constitute ineffective assistance of counsel. *See State v. Thompson*, 33 Ohio St.3d 1, 10, 514 N.E.2d 407 (1987). The United States Supreme Court has recognized that there are "countless ways to provide effective assistance in any given case." *Bradley* at 142, citing *Strickland* at 689.
>
> To show prejudice, a defendant must prove his lawyer's deficient performance was so serious that there is a reasonable probability the result of the proceeding would have been different. *Carter* at 558. "It is not enough for the defendant to show that the errors had some conceivable effect on

> the outcome of the proceeding." *Bradley*, 42 Ohio St.3d 136 at fn. 1, 538 N.E.2d 373, quoting *Strickland* at 693. Prejudice from defective representation justifies reversal only where the results were unreliable or the proceeding was fundamentally unfair as a result of the performance of trial counsel. *Carter*, 72 Ohio St.3d at 558, 651 N.E.2d 965, citing *Lockhart v. Fretwell*, 506 U.S. 364, 369, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993).
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> * * *
>
> [A]n ineffective assistance of counsel claim cannot be predicated upon supposition. *State v. Watkins*, 7th Dist. Jefferson No. 07 JE 54, 2008-Ohio-6634, ¶ 15. Likewise, proof of ineffective assistance of counsel requires more than vague speculations of prejudice. *Id.* ¶ 55, citing *State v. Otte*, 74 Ohio St.3d 555, 565, 1996-Ohio-108, 660 N.E.2d 711.

State v. Rivers, 7th Dist. Mahoning No. 17 MA 0078, 2019-Ohio-2375, ¶ 20-23, 27.

> An *Alford* plea occurs when "a defendant pleads guilty yet maintains actual innocence of the charges." *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 13. Under Ohio law, an *Alford* plea is properly accepted where the record demonstrates: (1) the defendant's plea was not the result of coercion, deception or intimidation; (2) defense counsel was present at the time the plea was entered; (3) defense counsel's representation was competent in light of the circumstances of the indictment; (4) the plea was entered with an understanding of the underlying charges; and (5) the defendant was motivated by a desire for a lesser penalty, a fear of the consequences of a jury trial, or both. *State v. Timmons*, 7th Dist. Mahoning No. 18 MA 0046, 2019-Ohio-2723, ¶ 7, citing *State v. Piacella*, 27 Ohio St.2d 92, 271 N.E.2d 852 (1971), syllabus.

State v. Hill, 7th Dist. Belmont No. 18 BE 0037, 2019-Ohio-4079, ¶ 5.

{¶17} "A guilty plea, including an *Alford* plea, waives all appealable errors, including claims of ineffective assistance of counsel, except to the extent that the errors

precluded the defendant from knowingly, intelligently, and voluntarily entering his or her guilty plea." *State v. Clark*, 2d Dist. Darke No. 2021-CA-1, 2021-Ohio-2531, ¶ 26.

{¶18} In this case, Appellant stresses his "trial counsel was ineffective for allowing [him] to enter his *Alford* plea when the record suggests he was not doing so knowingly, intelligently, or voluntarily." (6/6/2023 Appellant's Brief, p. 7). As stated, Appellant never requested, either orally or via a written motion, to withdraw his *Alford* plea. "Under Crim.R. 52(B), plain error exists only where there is an obvious deviation from a legal rule that affected the outcome of the proceeding." *State v. Jackson*, 7th Dist. Columbiana No. 19 CO 0050, 2021-Ohio-1157, ¶ 25, citing *State v. Toney*, 7th Dist. Mahoning No. 18 MA 0081, 2020-Ohio-5044, ¶ 8-9.

{¶19} The record reveals neither plain error nor ineffective assistance of counsel. *See State v. Baldwin*, 9th Dist. Summit No. 29176, 2019-Ohio-2542, ¶ 7, citing *State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, ¶ 22 ("noting that in demonstrating plain error, '(t)he accused is (* * *) required to demonstrate a reasonable *probability* that the error resulted in prejudice—the same deferential standard for reviewing ineffective assistance of counsel claims.') (Emphasis in original.)"

{¶20} Appellant's *Alford* plea was properly accepted because the record demonstrates: (1) Appellant's plea was not the result of coercion, deception or intimidation; (2) Appellant's trial counsel was present at the time the plea was entered; (3) trial counsel's representation was competent in light of the circumstances of the indictment; (4) the plea was entered with an understanding of the underlying charges; and (5) Appellant was motivated by a desire for a lesser penalty, a fear of the consequences of a jury trial, or both. *See Hill*, *supra*, at ¶ 5.

{¶21} Appellant was indicted on five counts, three of which included specifications, but ended up entering an *Alford* plea to only one count with an accompanying firearm specification. Although Appellant believed he was "overcharged," his trial counsel clearly mitigated that issue with an agreed reduction in charges and prison sentence.

{¶22} There is no evidence that Appellant did not understand the plea process or that his plea was not made in a knowing, intelligent, and voluntary manner. As addressed, Appellant answered all the questions posed to him by the trial court in a manner that

demonstrated his understanding of the plea and sentence. Appellant was asked by the court several times if he understood the nature of the proceedings and if he wished to proceed. Each time, Appellant responded in the affirmative. The agreement reveals Appellant was "satisfied with [his] Legal Counsel and that [Appellant] fully understand[s] the nature of the charge(s) and/or specification(s) against [him] and the elements contained therein." (2/1/2023 Written Plea of Guilty, p. 2).

{¶23} Upon consideration, there is no showing that but for the performance of Appellant's trial counsel, he would not have entered an *Alford* plea. The record demonstrates neither plain error nor ineffective assistance of trial counsel.

CONCLUSION

{¶24} For the foregoing reasons, Appellant's sole assignment of error is not well-taken. The March 2, 2023 judgment and the March 6, 2023 amended judgment of the Mahoning County Court of Common Pleas sentencing Appellant to the agreed upon seven-year prison term for intimidation and the accompanying firearm specification following a guilty plea pursuant to *Alford* are affirmed.

Waite, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the 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.