

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 107640  
 v. :  
 :  
 CARLTON HILL, :  
 :  
 Defendant-Appellant. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: June 6, 2019**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-17-621278-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Jeffrey Schnatter and Fallon Radigan,  
Assistant Prosecuting Attorneys, *for appellee.*

Ruth Fischbein-Cohen, *for appellant.*

SEAN C. GALLAGHER, J.:

{¶ 1} Defendant-appellant Carlton Hill appeals from his convictions and sentence entered in the Cuyahoga County Court of Common Pleas. Upon review, we affirm.

**{¶ 2}** Appellant was charged in a 14-count indictment with offenses involving two different victims. At his arraignment, appellant was declared indigent and appointed counsel. He entered a not guilty plea to all counts.

**{¶ 3}** Pursuant to a plea agreement, appellant withdrew his former plea and entered a plea of guilty to Count 1, as amended, sexual battery, a felony of the third degree, having occurred on or about April 1, 2001, to June 30, 2001, and involving victim one; and a plea of guilty to Counts 11 and 12, each charging gross sexual imposition, a felony of the fourth degree, having occurred on or about May 12, 2017, and involving victim two. Because of the dates of these offenses, appellant was subject to sex-offender classification under both Megan's Law and the Adam Walsh Act. All remaining counts were nolle.

**{¶ 4}** At the change-of-plea hearing, the trial court conducted a thorough colloquy with appellant that complied with Crim.R. 11. The trial court informed appellant of the nature of the charges to which he was pleading, the maximum penalties for the charges, and the rights he would be waiving by entering a guilty plea. The court explained to appellant that at the time of sentencing, a hearing would be held to determine his sexual-offender status with regard to Count 1, which would require a determination of whether he is a sexually violent predator, a habitual offender, or a sexually oriented offender. The court also informed appellant that a different law applied to the offenses for gross sexual imposition because of the dates involved and that he would be found a Tier I offender by operation of law with regard to those offenses. The court informed appellant of his duties and the

registration requirements associated with the respective laws. Appellant expressed his satisfaction with the representation by his trial counsel. He continuously expressed his understanding during the hearing.

{¶ 5} Subsequent to entering his plea, appellant retained his own counsel and filed a motion to vacate his plea. The trial court conducted a hearing on the motion. Appellant testified that he works as a security guard and has a license. He stated he was concerned about his employment. He acknowledged that there were a number of pretrials that he attended during the pendency of the case. He claimed he was rushed into the plea agreement and that he did not know about the registration requirements until the change-of-plea hearing. He acknowledged that the court went through all of the registration requirements. He stated he was nervous and was not in his right mind when he entered his guilty pleas, and he maintained his innocence. Appellant's wife testified appellant was frantic when he called her on the day of his change-of-plea hearing. Because of attorney-client privilege, appellant's previous counsel provided limited testimony at the hearing. In addition to the testimony provided, the trial court considered appellant's motion and his affidavit, the response by the prosecutor, and the plea transcript. The trial court denied the motion.

{¶ 6} At sentencing, the parties stipulated to a finding that appellant is a "sexually-oriented offender" as related to Count 1. Appellant was classified by operation of law as a Tier I sex offender on Counts 11 and 12. The trial court imposed a prison term of 18 months on each count, with all counts run concurrent to each

other. The trial court imposed mandatory postrelease control of five years. Appellant was declared indigent, and court costs were waived.

{¶ 7} Appellant timely filed this appeal. He raises three assignments of error for review.

{¶ 8} Under his first assignment of error, appellant claims the trial court erred by imposing the maximum prison term of 18 months on Counts 11 and 12. He argues that the trial court failed to consider the relevant factors under R.C. 2929.12 and that the sentence is not supported by the record. Appellant points to mitigating factors in the record, which he argues were ignored by the trial court and support a shorter sentence.

{¶ 9} When sentencing a defendant, a trial court must consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors listed in R.C. 2929.12. *State v. Rouse*, 8th Dist. Cuyahoga No. 107379, 2019-Ohio-708, ¶ 9. Pursuant to R.C. 2929.12, a court sentencing a felony offender “has discretion to determine the most effective way to comply with the purposes and principles of sentencing.” R.C. 2929.12(A). In exercising that discretion, the sentencing court must consider the seriousness, recidivism, and mitigating factors set forth in R.C. 2929.12. *Id.* However, the court is not required to make specific findings on the record regarding its consideration of those factors. *State v. Townsend*, 8th Dist. Cuyahoga No. 107458, 2019-Ohio-1442, ¶ 13; *see also State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31. Furthermore, a trial court is not required “to make findings or give their reasons for

imposing maximum, consecutive, or more than the minimum sentence.” *State v. Sergent*, 148 Ohio St.3d 94, 2016-Ohio-2696, 69 N.E.3d 627, ¶ 34, quoting *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus.

{¶ 10} Appellate courts generally afford deference to a trial court’s broad discretion in making sentencing decisions. *State v. Rahab*, 150 Ohio St.3d 152, 2017-Ohio-1401, 80 N.E.3d 431, ¶ 10. Under R.C. 2953.08(G)(2), “an appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law.”

{¶ 11} Here, the record reflects that the trial court considered both the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the relevant sentencing factors set forth in R.C. 2929.12 when sentencing appellant. At the sentencing hearing, the trial court heard from the prosecutor and the defendant’s attorney, who presented mitigating factors. Appellant’s pastor also spoke on appellant’s behalf. The court considered the presentence investigation report and noted appellant had a criminal history dating back to 1983, which included felony offenses. The court also considered the seriousness of the offenses involved, which pertained to two different victims. The trial court stated it considered the purposes and principles of sentencing on the record and in its journal entry.

{¶ 12} “[An] appellant’s sentence is not contrary to law simply because he disagrees with the way in which the trial court weighed the factors under R.C. 2929.11 and 2929.12 and applied these factors in crafting an appropriate sentence.” *State v. Frazier*, 2017-Ohio-8307, 98 N.E.3d 1291, ¶ 28 (8th Dist.). Appellant has failed to demonstrate by clear and convincing evidence that the record does not support the sentences imposed under the relevant statutes, or that his sentences are contrary to law. We overrule the first assignment of error.

{¶ 13} Under his second assignment of error, appellant claims his convictions are against the manifest weight of the evidence. Appellant’s convictions were entered upon his guilty pleas. “The plea of guilty is a complete admission of the defendant’s guilt.” Crim.R. 11(B)(1). By pleading guilty, a defendant surrenders his right to have the state prove his guilt beyond a reasonable doubt and waives his right to challenge the sufficiency or manifest weight of the evidence. *State v. Rice*, 8th Dist. Cuyahoga No. 106953, 2018-Ohio-5356, ¶ 7. Further, by pleading guilty, a defendant generally waives all appealable errors that may have occurred unless such errors are shown to have precluded the defendant from entering a knowing and voluntary plea. *State v. Downey*, 8th Dist. Cuyahoga No. 107363, 2019-Ohio-1438, ¶ 7. Our review of the record reflects that appellant’s guilty pleas were knowingly, voluntarily, and intelligently entered. Accordingly, his second assignment of error is overruled.

{¶ 14} Under his third assignment of error, appellant claims he received ineffective assistance of counsel. In order to substantiate a claim of ineffective

assistance of counsel, the appellant must show “(1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that but for counsel’s errors, the proceeding’s result would have been different.” *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, 920 N.E.2d 104, ¶ 200, citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraphs two and three of the syllabus. In guilty-plea cases, a defendant asserting a claim of ineffective assistance of counsel must show that there is a reasonable probability that, but for counsel’s errors, he would not have entered a guilty plea and would have insisted on going to trial. *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48, ¶ 89.

{¶ 15} Appellant argues that he did not wish to plead guilty and maintained his innocence. He claims that his initial counsel in the case was too busy to explain things and another attorney stood in for him at the change-of-plea hearing. Appellant states that he was not informed about the sexual-offender tiers prior to the hearing, and that he was led to plead in a case involving a victim who died in an unrelated incident.

{¶ 16} A review of the record reflects that appellant was represented by a very experienced attorney. Although another attorney stood in at the time of the change-of-plea hearing, appellant expressed his satisfaction with the representation provided. Further, the trial court fully explained the effects of a guilty plea as well

as the sex-offender registration requirements and appellant expressed his understanding. Upon our review, we do not find appellant has demonstrated deficient performance of counsel, nor do we find he has shown that there is a reasonable probability that, but for the claimed errors of counsel, he would not have pleaded guilty and would have insisted on going to trial. The third assignment of error is overruled.

{¶ 17} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and  
PATRICIA ANN BLACKMON, J., CONCUR