[Cite as *State v. Pyles*, 2016-Ohio-1079.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
DAVID PYLES	:	Case No. 15-CA-26
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Fairfield County Court of Common Pleas, Case No. 14-CR-482
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	March 11, 2016

APPEARANCES:

For Plaintiff-Appellee

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Fairfield County Prosecuting Attorney

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Assistant Prosecuting Attorney
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For Defendant-Appellant

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Baldwin, J.

{¶1} Appellant David Pyles appeals a judgment of the Fairfield County Common Pleas Court convicting him of two counts of rape (R.C. 2907.02(A)(1)(b)), two counts of sexual battery (R.C. 2907.03(A)(5)) with specifications that the victim was less than thirteen years of age, and three counts of gross sexual imposition (R.C. 2907.05(A)(4)). Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant was indicted by the Fairfield County Grand Jury on December 19, 2014, with two counts of rape, two counts of sexual battery, and three counts of gross sexual imposition for acts committed against his 11-year-old daughter. After waiving his right to a jury trial, the case proceeded to bench trial in the Fairfield County Common Pleas Court. The parties to the appeal agreed on the statement of facts, set forth in appellant's brief as follows:

> There is little, if any, dispute as to the facts in this case. By all accounts, Mr. Pyles confessed repeatedly to the offenses alleged in the indictment. First, Mr. Pyles confessed to his pastor when confronted with the allegations. Next, Mr. Pyles confessed in a recorded statement - to the detective investigating the allegations. Finally, in a series of letters to his wife and sister, Mr. Pyles confessed to the crimes after his arrest and during his incarceration awaiting trial. Further evidence supported the convictions by way of testimony from the victim of the offenses and an eye-witness account provided by the wife of Mr. Pyles.

> According to the record below, Mr. Pyles repeated inserted his finger into the anus of the victim. [See, generally, March 18-19, 2015 Tr. At 266.] The record further demonstrates that Mr. Pyles rubbed his penis between the labial lips of the victim on several occasions. [See, generally, March 18-19, 2015 Tr. At 267.] It is shown from the testimony below that the victim in the case was the daughter of Mr. Pyles and age eleven or twelve when these incidents occurred. [See, generally, March 18-19, 2015 Tr. At 21.]

{¶3} Brief of appellant, p. 6.

{¶4} Appellant was convicted of all charges. After merging several counts, the court sentenced appellant to total term of imprisonment of 37 years.

{¶5} Appellant assigns two errors appeal:

{¶6} "I. THE TRIAL COURT COMMITTED HARMFUL ERROR IN ACCEPTING THE JURY WAIVER OF THE DEFENDANT-APPELLANT.

{¶7} "II. THE DEFENDANT-APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL."

I.

{¶8} In his first assignment of error, appellant argues that the court should not have accepted his waiver of his right to jury trial because he was misinformed by his attorney as to the possible penalties he faced if convicted. In support of his argument, he points to the following statement made by counsel at the sentencing hearing, "David has had unrealistic expectations, in my opinion, as to how this case will be resolved. The Court will shortly hear from him that he is asking the Court to place him on community control. I have advised him, and I'll acknowledge to the Court, that I don't think that is

something that will happen." Sent. Tr. 25. He argues that he was misinformed by counsel because in fact rape carries a mandatory term of imprisonment, and thus his jury waiver was invalid. He argues that there is no indication in the record that he was informed of the potential consequences of his jury waiver with regards to sentencing.

{¶9} A defendant must have some knowledge of the nature of the right to jury trial to make a valid waiver. *State v. Fitzpatrick*, 102 Ohio St.3d 321, 326-27, 810 N.E.2d 927, 934-35, 2004-Ohio-3167, ¶ 43. However, "[t]here is no requirement for a trial court to interrogate a defendant in order to determine whether he or she is fully apprised of the right to a jury trial." *Id.,* citing *State v. Jells*, 53 Ohio St.3d 22, 559 N.E.2d 464, paragraph one of the syllabus (1990). A defendant need not have a complete or technical understanding of the right to a jury trial in order to waive it. *Id.* at ¶44. A defendant is sufficiently informed to make an intelligent waiver if he was aware that a jury is composed of twelve members of the community, that he may participate in the selection of the jurors, the verdict of the jury must be unanimous, and a judge alone will decide his guilt or innocence should he waive his right to a jury trial. *Id*.

{¶10} The following colloquy occurred between appellant and the court at the March 5, 2015, pretrial hearing prior to appellant signing a written waiver of his right to jury trial:

> THE COURT: All right. And just to be 100 percent certain about this, you understand that you have a right under the laws of the State of Ohio, since this is a criminal case, to have a jury trial; is that right?
>
> THE DEFENDANT: Yes, sir.

THE COURT: All right. And when I say that you have a right to have a jury trial, what that means is, is that you have a right to have 12 individuals selected from the pool of jurors, so to speak, people drawn from the community to sit in the jury box over there to listen to the evidence and make decisions about your case concerning what they believe was proven to them beyond a reasonable doubt. Do you understand all of that?

THE DEFENDANT: Yes, sir.

THE COURT: And you understand that if you waive, that is, give up, the right to a jury trial, then you would not have those jurors in the courtroom; that your attorney would present evidence, the Prosecutor would present evidence to myself; and I, as the Judge, would decide in my mind what has been proven to me beyond a reasonable doubt; and then make any other legal decisions that might be necessary in the case as well. Do you understand all of that?

THE DEFENDANT: Yes, sir.

{¶11} Pretrial Tr., p.5-6.

{¶12} The court need not ensure that the defendant is aware of all potential penalties when accepting a jury waiver. Unlike a guilty plea colloquy, where conviction is a virtual certainty after a plea is entered, a waiver of a jury trial simply determines whether a decision regarding guilt or innocence will be made by a jury or by the judge. Therefore, the possible penalties are only marginally relevant at that point, and appellant cites this court to no law requiring the court to inform the defendant of potential consequences of conviction before accepting a jury waiver. Further, the statement relied on by appellant

to demonstrate that his counsel did not accurately inform him of the possible penalties was not made until sentencing. At the time the court accepted the jury waiver, the court had no indication that appellant might be confused as to the availability of a sentence of community control.

{¶13} The first assignment of error is overruled.

II.

{¶14} In his second assignment of error, appellant argues that his counsel was ineffective for not informing him that community control was not a sentencing option. He argues that this misinformation rendered him unable to make an informed decision as to waiving his right to jury trial and as to the consideration of any plea bargain possibilities.

{¶15} A properly licensed attorney is presumed competent. *State v. Hamblin*, 37 Ohio St.3d 153, 524 N.E.2d 476 (1988). Therefore, in order to prevail on a claim of ineffective assistance of counsel, appellant must show counsel's performance fell below an objective standard of reasonable representation and but for counsel's error, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674(1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). In other words, appellant must show that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. *Id*.

{¶16} Appellant has not demonstrated that he was prejudiced by any possible misinformation regarding the impossibility of a community control sanction.

{¶17} As to the waiver of his right to a jury trial, appellant has not demonstrated that had he proceeded to trial before a jury instead of the judge, the result of the

proceeding would have been different. As he set forth in his statement of facts, appellant repeatedly confessed to the acts alleged in the indictment, and the conviction was supported by the testimony of the victim and an eyewitness account by his wife.

{¶18} Further, appellant has not pointed this Court to anything in the record that demonstrates the contents or availability of a plea offer which he rejected based upon a lack of knowledge that a prison sentence would be mandatory for a rape conviction, and appellant has therefore not demonstrated prejudice. See *State v. Wenker,* 9th Dist. Summit No. 25185, 2011-Ohio-786, ¶27.

{¶19} The second assignment of error is overruled.

{¶20} The judgment of the Fairfield County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Hoffman, P.J. and

Wise, J. concur.