

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2009 CA 54
v.	:	T.C. NO. 2008CR839
ARNULFO S. CARATACHEA	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 16th day of July, 2010.

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Defendant-Appellant

FROELICH, J.

{¶ 1} In January 2009, Arnulfo Sotelo Caratachea pled guilty in the Greene County

Court of Common Pleas to complicity to trafficking in heroin, a first degree felony.¹ In exchange for the plea, the State dismissed seven additional charges: one count each of engaging in a pattern of corrupt activity, conspiracy to commit engaging in a pattern of corrupt activity, complicity to trafficking in heroin, complicity to trafficking in cocaine, and possession of cocaine, and two counts of possession of criminal tools. The trial court sentenced Caratachea to a mandatory term of ten years in prison.

{¶ 2} In July 2009, Caratachea moved to file a delayed appeal, which we granted. Caratachea's appointed appellate counsel subsequently filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, wherein counsel represented that, after a thorough examination of the record, he was unable to discover any errors by the trial court that were prejudicial to Caratachea. Counsel proposed two potential assignments of error – that Caratachea's plea was not knowing, intelligent, and voluntary and that the sentence was improper and excessive – but argued that such arguments were frivolous.

{¶ 3} By magistrate's order of November 20, 2009, we informed Caratachea that his counsel had filed an *Anders* brief and of the significance of such a brief. We invited Caratachea to file a pro se brief assigning errors for review. In response, Caratachea submitted an "Amendment Brief", setting forth three assignments of error.

{¶ 4} The case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

¹Although the indictment included a major drug offender specification and the prosecutor indicated that the guilty plea included that specification, the specification was not mentioned in the court's judgment entry.

I

{¶ 5} In his first assignment of error, Caratachea claims that his guilty plea was not made knowingly, intelligently, and voluntarily in accordance with Crim.R. 11(C)(2). He states that his plea “was induced without full understanding, mainly since it is clear and recorded that I cannot understand English very well.”

{¶ 6} In order for a plea to be knowing, intelligent, and voluntary, the trial court must comply with Crim.R. 11(C). *State v. Greene*, Greene App. No. 2005 CA 26, 2006-Ohio-480, ¶8. “Crim.R. 11(C)(2) requires the court to (a) determine that the defendant is making the plea voluntarily, with an understanding of the nature of the charges and the maximum penalty, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions; (b) inform the defendant of and determine that the defendant understands the effect of the plea of guilty and that the court, upon acceptance of the plea, may proceed with judgment and sentencing; and (c) inform the defendant and determine that he understands that, by entering the plea, the defendant is waiving the rights to a jury trial, to confront witnesses against him, to have compulsory process for obtaining witnesses, and to require the state to prove his guilt beyond a reasonable doubt at a trial at which he cannot be compelled to testify against himself.” *State v. Brown*, Montgomery App. No. 21896, 2007-Ohio-6675, ¶3. See, also, *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶27.

{¶ 7} The Supreme Court of Ohio has urged trial courts to literally comply with Crim.R. 11. *Clark* at ¶29. However, because Crim.R.11(C)(2)(a) and (b) involve non-constitutional rights, the trial court need only substantially comply with those

requirements. E.g., *State v. Nero* (1990), 56 Ohio St.3d 106, 108; *Greene* at ¶9. The trial court must strictly comply with Crim.R. 11(C)(2)(c), as it pertains to the waiver of federal constitutional rights. *Clark* at ¶31.

{¶ 8} We have reviewed the transcript of the plea hearing and find nothing to support Caratachea's contention that his plea was not made knowingly, intelligently, and voluntarily, either due to his inability to understand English or otherwise. According to the transcript, an English-Spanish interpreter was provided for Caratachea during the plea hearing, and the interpreter had assisted defense counsel in consulting with Caratachea. Before addressing Caratachea directly, the trial court inquired about the interpreter's qualifications.² The interpreter stated under oath that he/she has been speaking Spanish for approximately 15 years, he/she has had training with VocalLink for legal and medical interpretation, he/she has provided interpreter services in several counties and has interpreted in court more than 30 times. The interpreter stated that he/she had interpreted in primarily criminal cases, but had also done custody hearings, divorce hearings, and voir dire. The interpreter was not related to or close friends with anyone involved in Caratachea's case. The interpreter understood that he/she was to be a neutral party to facilitate communication and not to offer advice or opinions; the interpreter agreed to interpret verbatim from the English language to the Spanish language. The parties expressed they were satisfied with the interpreter's qualifications; the interpreter was sworn before the court proceeded

²The interpreter did not identify him/herself at the plea hearing, and we are unable to discern the interpreter's gender.

further. Evid.R. 604; R.C. 2301.12.³ The record does not reflect any deficiencies in the interpreter's performance nor does Caratachea point to any.

{¶ 9} In addition, the record reflects that the trial court complied with Crim.R. 11(C) and that Caratachea's plea was knowing, intelligent, and voluntary. During the trial court's questioning of Caratachea about his desire to plead guilty, Caratachea stated that he had signed a petition to enter a plea of guilty, that it had been read to him by his attorney, that he had understood it and agreed with it, and that he had fully consulted with his attorney regarding the petition. Caratachea informed the court that he was 18 years old, had three years of schooling, and was not able to read or write English well. Upon telling the court that he was not a United States citizen, the trial court informed Caratachea that his conviction may have certain consequences, such as deportation, exclusion for re-entry, and denial of naturalization. Caratachea expressed that he understood and wished to proceed.

{¶ 10} Caratachea stated that he was represented by counsel, had been advised of his constitutional rights, and was satisfied with his counsel's services. Counsel had answered all of Caratachea's questions, and the two had discussed his rights and the guilty plea through an interpreter. The court informed Caratachea of his constitutional rights and that he would be waiving those rights if he entered a guilty plea. Caratachea stated that he understood and wanted to go forward with the plea.

{¶ 11} Caratachea denied that he had been coerced into entering a plea or that he had any disability that might affect his ability to make "free and voluntary choices." Caratachea

³The judge's thorough questioning of the interpreter may be somewhat eased as interpreters become qualified pursuant to Sup.R. 81.

further denied taking any drugs or alcohol that might affect his ability to understand the plea hearing.

{¶ 12} The court confirmed that Caratachea was pleading to Count V of the indictment (complicity to trafficking in heroin), which carried a mandatory ten-year prison term, and that all other counts and specifications would be dismissed. Caratachea expressly consented to that agreement and denied that any other promises had been made to him. Caratachea agreed that the facts as stated by the prosecutor to support the charge were the facts to which he wished to enter a plea of guilty and that he was guilty. Caratachea understood that maximum prison term and fine that could be imposed, including that the ten-year prison term was mandatory, did not allow for good time credit, and was subject to bad time. The court informed Caratachea that it would be required to suspend his driver's license. The court further told Caratachea that he would be subject to a mandatory term of five years of post-release control and the consequences of violating post-release control. Caratachea agreed that he wished to waive a presentence investigation and to proceed with sentencing at that time.

{¶ 13} With this information, Caratachea again expressed that he wished to plead guilty. Caratachea entered a plea of guilty, and the court found that it was made knowingly, intelligently, and voluntarily. Based on the record, we find no evidence that Caratachea's plea was not made knowingly, intelligently, and voluntarily.

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

II

{¶ 15} In his second assignment of error, Caratachea claims that his ten-year

mandatory sentence was excessive and improper. Caratachea states that the sentence was improper “because I was instructed by counsel that it was the least I could receive which is not lawfully true.”

{¶ 16} Caratachea pled guilty to complicity to trafficking in heroin in an amount equal to or exceeding 250 grams, in violation of R.C. 2925.03(A)(1) and R.C. 2923.03(A)(2), a first degree felony. According to the prosecutor’s statement of the facts supporting this charge, an individual named Ihab Hamed delivered 494.94 grams of heroin to a confidential informant working for the ACE Task Force. Later that day, the Task Force took steps to arrange the delivery of the payment of \$40,000 to the individual who provided the heroin to Mr. Hamed; Caratachea showed up to accept payment for the delivery of 494.94 grams of heroin.

{¶ 17} The criminal penalty for trafficking in heroin is set forth in R.C. 2925.03(6). Where the amount of heroin equals or exceeds 250 grams, “trafficking in heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.” R.C. 2925.03(6)(g).

{¶ 18} The maximum prison term for a first degree felony is ten years. R.C. 2929.14(A)(1). Accordingly, under R.C. 2925.03(6)(g), an offender who commits trafficking in heroin in an amount equal to or greater than 250 grams, such as Caratachea, must be sentenced to a mandatory prison term of ten years. The court may also elect to impose an additional term for the major drug offender specification; in this case, the trial

court did not.

{¶ 19} Caratachea's sentence was neither excessive nor improper.

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

III

{¶ 21} In his third assignment of error, Caratachea asserts that his trial counsel rendered ineffective assistance by "failing to defend me and object to a ten year sentence." Caratachea argues that his trial attorney "quickly settled" his case without obtaining the best deal for him.

{¶ 22} To establish ineffective assistance of counsel, it must be demonstrated both that trial counsel's conduct fell below an objective standard of reasonableness and that the errors were serious enough to create a reasonable probability that, but for the errors, the result of the trial would have been different. *Strickland v. Washington* (1984), 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674; *State v. Bradley* (1989), 42 Ohio St.3d 136. Trial counsel is entitled to a strong presumption that his or her conduct falls within the wide range of reasonable assistance. *Strickland*, 466 U.S. at 688. Deficient performance means that claimed errors were so serious that the defense attorney was not functioning as the "counsel" that the Sixth Amendment guarantees. *State v. Cook* (1992), 65 Ohio St.3d 516, 524.

{¶ 23} Upon review of the record, we find no arguable claim of ineffective assistance of counsel. Counsel correctly informed Caratachea that he would be subject to a mandatory ten-year prison sentence for conspiracy to trafficking in heroin, and the trial court imposed that sentence.

{¶ 24} In addition, although Caratachea complains that his trial attorney “simply want[ed] to ‘get it over with quick’” when he negotiated Caratachea’s plea, Caratachea had seven other felony charges dismissed in exchange for the plea. And, although Caratachea could have received an additional prison term under the major drug offender specification, the prosecutor informed the court that Caratachea would not receive any additional time under that specification and none was imposed.

{¶ 25} The third assignment of error is overruled.

IV

{¶ 26} In addition to reviewing the assignments of error raised by Caratachea in his pro se brief, we have conducted an independent review of the trial court’s proceedings and have found no potential assignments of error having arguable merit.

V

{¶ 27} The judgment of the trial court will be affirmed.

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

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Hon. Stephen A. Wolaver