[Cite as *State v. Collins*, 2015-Ohio-1886.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
DEFIANCE COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE, **CASE NO. 4-14-14**

v.

JOHN R. COLLINS, **O P I N I O N**

DEFENDANT-APPELLANT.

STATE OF OHIO,

PLAINTIFF-APPELLEE, **CASE NO. 4-14-15**

v.

JOHN R. COLLINS, **O P I N I O N**

DEFENDANT-APPELLANT.

STATE OF OHIO,

PLAINTIFF-APPELLEE, **CASE NO. 4-14-16**

v.

JOHN R. COLLINS, **O P I N I O N**

DEFENDANT-APPELLANT.

Appeals from Defiance County Common Pleas Court
Trial Court Nos. 11 CR 11085, 13 CR 11683, and 13 CR 11753

Judgments Affirmed

Date of Decision: May 18, 2015

APPEARANCES:

W. Alex Smith **for Appellant**

Russell R. Herman **for Appellee**

WILLAMOWSKI, J.

{¶1} Defendant-appellant, John R. Collins ("Collins"), brings this consolidated appeal from the judgments of the Common Pleas Court of Defiance County, Ohio, in three separate trial court cases, each with distinct facts and charges. For ease of discussion, we sometimes refer to them as "the tampering case"—Defiance County case number 11 CR 11085, appeal number 4-14-16; "the pandering case"—Defiance County case number 13 CR 11683, appeal number 4-14-14; and "the bribery case"—Defiance County case number 13 CR 11753, appeal number 4-14-15.[1]

[1] Because three separate trial court records are before us, we designate "R.1" to refer to the record from the Defiance County case number 11 CR 11085, "R.2" to refer to the record from the Defiance County case

{¶2} On appeal Collins alleges that the trial court erred by overruling his motion to suppress in the pandering case, as well as by accepting his guilty pleas in the pandering case. Collins further alleges that his trial counsel was ineffective, resulting in his guilty pleas in the pandering case not being voluntarily made. Although no assignments of error are raised with respect to the tampering case or the bribery case, they are the subject of this appeal due to a plea agreement, which conditioned sentencing based on the resolution of the pandering case. For the reasons that follow, we affirm the trial court's judgments.

I. Factual and Procedural Background

{¶3} The facts relevant to this appeal indicate that on March 4, 2011, Collins was indicted in case number 11 CR 11085 on one count of tampering with evidence, a felony of the third degree in violation of R.C. 2921.12(A)(1). On July 20, 2011, Collins entered a plea of no contest to an amended charge of attempted tampering with evidence, a felony of the fourth degree. The trial court accepted his plea and found him guilty of the amended charge of attempted tampering with evidence. Following a presentence investigation, the trial court sentenced Collins to a "reserved" term of seventeen months in prison, subject to "Reporting Intensive Supervision Probation for a period of four (4) years." (R.1 at 12.)

{¶4} At some time in March or April 2013, the Ohio Internet Crimes Against Children (ICAC) task force identified an IP address belonging to Collins

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number 13 CR 11683, and "R.3" to refer to the record from the Defiance County case number 13 CR 11753.

as sharing and downloading known child pornography images, videos, and stills in a "peer to peer system." (Hr'g Tr. at 12, 28, Sept. 17, 2014; State's Ex. 10.) As a result, in May 2013, an investigator from the ICAC task force contacted the Defiance County Sheriff's Office with information indicating that Collins was in possession of child pornography movies. A subsequent search of Collins's residence resulted in seizing a laptop computer with video files that depicted minors participating or engaging in sexual activity, masturbation, or bestiality.

{¶5} On May 21, 2013, the State moved for a revocation of Collins's community control in case 11 CR 11085, alleging that Collins violated "one or more conditions of Probation/Community Control." (R.1 at 14.) Collins waived a probable cause hearing on the State's motion. (R.1 at 18.)

{¶6} On June 6, 2013, Collins was charged in case number 13 CR 11683 with twenty-five counts of pandering sexually oriented matter involving a minor, a felony of the second degree in violation of R.C. 2907.322(A)(1) or R.C. 2907.322(A)(2). (R.2 at 1.) Collins pled not guilty to the charges.

{¶7} On or about August 19, 2013, Collins wrote a letter from the Correction Center of Northwest Ohio to an individual in Hicksville, Ohio. (Hr'g Tr. at 12-13, May 19, 2014; State's Ex. 12.) In the letter, Collins asked the individual to assist him in the defense of the pandering case. (*Id.*) Collins specifically requested that the individual's eleven-year-old son make a statement or a report that he was the person who had downloaded the illegal material found

on Collins's computer. (*Id.*) In exchange for this statement, Collins promised to give the individual a truck or a "chevelle." (*Id.*) The addressee of the letter brought the letter to the attention of the Defiance County Sheriff's Office. As a result, on September 6, 2013, Collins was charged in case number 13 CR 11753 with one count of bribery, a felony of the third degree in violation of R.C. 2921.02(C). (R.3 at 1.) Collins pled not guilty.

{¶8} On March 13, 2014, Collins filed a motion to suppress in the pandering case, requesting a suppression of the laptop found during a search of his residence and his statements made during the search on or about May 17, 2013. (R.2 at 32.) Following a hearing, the trial court denied the motion.

{¶9} On May 19, 2014, the trial court conducted a combined revocation and change of plea hearing, concerning all three cases. Following that hearing, the trial court issued a judgment entry in the tampering case, which indicated that Collins "knowingly, voluntarily and intelligently" waived his right to a final adjudicatory hearing on the community control violation. (R.1 at 25.) Furthermore, Collins "tendered an admission to violating certain terms of community control supervision," which resulted in the trial court's finding that the violation of the terms and conditions of his community control occurred, as alleged by the State in its motion for a revocation of the community control. (*Id.*) On the same date, the trial court issued a judgment entry in the bribery case, which indicated that Collins pled guilty to the charge in the indictment. (R.3 at 20.) The

trial court accepted the guilty plea and found Collins guilty of bribery, a felony of the third degree in violation of R.C. 2921.02(C). (*Id.*) Upon an agreement with the State, the final disposition of the tampering case and the sentencing in the bribery case were continued until after resolution of the pandering case. (Hr'g Tr. at 4, May 19, 2014.) The agreement stated,

> in the event that the Defendant is acquitted of all charges in 11683 [the pandering case], the State would recommend that the sanction for the probation violation as well as the sentence for 11753 [the bribery case] essentially be a time served type of, as far as actual imprisonment and that the balance of any prison term in those cases would be reserved. We would recommend that it be reserved. That is if he is completely acquitted of any charges in 11683.
>
> If he's convicted of any or all the offenses charged in 11683 then the State is free to make whatever sentence recommendation, um, basically open sentencing at that point, assuming we don't later come up with some resolution that encompasses everything, but that's where we're at right now.

(*Id.* at 4-5.)

{¶10} On July 14, 2014, one day before the scheduled jury trial in the pandering case, the parties appeared before the trial court and indicated that they had reached an agreement as to the charges in this case. The State agreed to dismiss the original indictment, which charged Collins with twenty-five counts of pandering sexually oriented matter involving a minor, each a felony of the second degree in violation of R.C. 2907.322(A)(1) or R.C. 2907.322(A)(2). (Hr'g Tr. at 3-4, July 14, 2014.) In exchange, Collins would plead guilty to a newly prepared Bill of Information, charging him with ten counts of pandering sexually oriented

matter involving a minor, each a felony of the fourth degree in violation of R.C. 2907.322(A)(5). (*Id.*; R.2 at 65.) The State indicated that it would recommend a ten-year aggregate term for all charges in the Bill of Information and it would remain silent as to judicial release. (Hr'g Tr. at 4, July 14, 2014.) Collins then tendered a plea of guilty to the Bill of Information, which the trial court accepted following a Crim.R. 11 hearing. (R.2 at 66.) The trial court ordered a presentence investigation and continued the case for sentencing. (*Id.*) The trial court also ordered Collins to submit to a psychiatric evaluation at Court Diagnostic and Treatment Center for an examination in mitigation of penalties in all three cases. (R.1 at 26; R.2 at 67; R.3 at 21.)

{¶11} A joint sentencing hearing in all three cases was held on September 17, 2014. At the hearing, Collins's attorney indicated that he had reviewed the possibility of new evidence to determine whether a motion to withdraw the guilty pleas was justified. (Hr'g Tr. at 5, Sept. 17, 2014.) He found "no basis to justify a motion to withdraw the pleas. No new evidence that would justify such a motion." (*Id.* at 6.) A long discussion between the trial court and Collins occurred during the sentencing hearing. Collins denied being responsible for downloading the illegal files into his computer and claimed that he had only seen three of the videos found there. (*Id.* at 15-34.) The trial court indicated that it respected the State's recommendation of a cumulative ten-year term for all the offenses. But the trial court found that term "not appropriate or warranted under the circumstances." (*Id.*

at 35.) Therefore, the trial court sentenced Collins to a basic prison term of seventeen months at the Ohio Department of Rehabilitation and Correction for each of the ten counts of pandering sexually oriented matter involving a minor, to be served consecutively, for a cumulative 170-month prison term in case 13 CR 11683. Furthermore, the trial court revoked the community control in the tampering case, 11 CR 11085, ordering the previously-imposed prison term to be served concurrently with the 170-month term in the pandering case. Finally, the trial court sentenced Collins to a thirty-month term on the bribery case, 13 CR 11753, to be served consecutively to the pandering case.

{¶12} Collins appeals raising two assignments of error for our review.

II. Assignments of Error

I. THE TRIAL COURT ERRED WHEN THEY OVERRULED THE MOTION TO SUPPRESS EVIDENCE IN VIOLATION OF THE 4TH AND 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I SECTION 14 OF THE OHIO CONSTITUTION

II. THE DEFENDANT-APPELLANT'S PLEA WAS NOT VOLUNTARILY AND KNOWINGLY GIVEN AND THE APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AND VIOLATION OF HIS RIGHTS UNDER THE SIXTH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION IN ARTICLE I. § 10 OF THE CONSTITUTION OF THE STATE OF OHIO.

III. Analysis

Second Assignment of Error—Plea of Guilty

{¶13} We begin by addressing the second assignment of error, which raises two issues with respect to the guilty pleas. First, Collins asserts that the trial court erred in accepting his guilty pleas because they were not voluntarily and knowingly given. In support, he cites certain excerpts from the plea hearing, alleging that they show that he did not "really wish to go forward," he was reluctant to enter the pleas, and he was "not in his clear mind" at the plea hearing. (App't Br. at 11.) Second, Collins argues that his trial counsel was ineffective for failure to move to withdraw the guilty pleas after they had been entered. Each of these claims requires a different standard of review. Therefore, we address them separately.

1. Voluntary and Knowing Nature of the Plea

{¶14} Collins asserts that the trial court erred in finding that his pleas were voluntarily and knowingly given. When the trial court makes the determination as to whether a plea is voluntary and knowing, it must "address[] the defendant personally" and decide whether the defendant understands "the nature of the charges and of the maximum penalty involved * * * ." Crim.R. 11(C)(2). Furthermore, the trial court must inform the defendant and determine "that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence," as

well as that the defendant is waiving certain rights. *Id.* Thus, the Ohio Supreme Court has recognized that " '[a] plea may be involuntary either because the accused does not understand the nature of the constitutional protections he is waiving * * * or because he has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt.' " *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, 810 N.E.2d 927, ¶ 56 (2004), quoting *Henderson v. Morgan*, 426 U.S. 637, 645, 96 S.Ct. 2253, 49 L.Ed.2d 108, fn. 13 (1976). "In determining whether a defendant understood the charge, a court should examine the totality of the circumstances." *Id.*; *accord State v. Shaffer*, 3d Dist. Marion No. 9-99-41, 1999-Ohio-922, 1999 WL 1018629, *3.

{¶15} While Collins argues on appeal that he was "confused and unsure of what [was] going on" (App't Br. at 14), he does not allege either of the bases recited in *Fitzpatrick*: that he did not understand the nature of the constitutional protections he was waiving or that he did not understand the charges. Our review of the record does not disclose any errors with respect to those rights. Collins attested that he understood "what these charges of Pandering Sexually Oriented Matter Involving Minors as Felonies of the Fourth Degree are about and what the State would have to prove to convict [him] of those." (Hr'g Tr. at 14, July 14, 2014.) Likewise, he attested that he understood the possible penalties and the rights that he was giving up. (*Id.* at 15-20.) Collins unanswered "Yes" or "Yeah"

to every single question about the rights that he was giving up. (*Id.*) In the end the trial court asked,

> THE COURT: In light of all the things I've told you about. All the rights you give up by entering guilty pleas, the possible penalties involved for these Fourth Degree Felonies and the fact again the Court's not legally required to go along with the sentence recommendation, taking all those things into account; do you believe that pleas here are in your best interest?
>
> THE DEFENDANT: Yeah.
>
> THE COURT: Are those pleas then of your own free will?
>
> THE DEFENDANT: Yeah.
>
> THE COURT: Did anybody tell you how to answer the questions that I've asked you here today?
>
> THE DEFENDANT: No.

(*Id.* at 20-21.) This colloquy supports a conclusion that the pleas were voluntarily and knowingly entered.

{¶16} Collins does not assert, and nowhere in the record does it appear, that the pleas were involuntary because he was coerced into entering them. Yet, Collins claims that the pleas were not fully knowingly and voluntarily entered because of certain comments made at the plea hearing. In particular, Collins points to a part of an exchange in which the trial court asked, "Mr. Collins, do you understand what the lawyers are talking about here?" to which he responded,

"Kind of, I guess." (*Id.* at 5.) Collins asserts that this statement shows "reluctance and confusion" as to his wish to enter the pleas. (App't Br. at 11.)

{¶17} A review of the trial transcript puts the statement "Kind of, I guess," in the following context. At the beginning of the hearing, the State indicated that, as part of the plea agreement it would recommend a ten-year aggregate term for all charges in the Bill of Information and it would remain silent as to judicial release. (Hr'g Tr. at 4, July 14, 2014.) The trial court and the State further discussed judicial release, restitution, sexual registration status, a waiver of the indictment, and a waiver of the twenty-four hour service requirement. (*Id.* at 5.) Immediately following this discussion, the trial court asked,

> THE COURT: Mr. Collins, do you understand what the lawyers are talking about here?
>
> THE DEFENDANT: Kind of, I guess.
>
> THE COURT: You either do or you don't.
>
> THE DEFENDANT: Uh --
>
> THE COURT: I mean, you've been talking with your lawyer now for hours this afternoon. The matter's been pending for a year.
>
> THE DEFENDANT: I -- I understand that.
>
> THE COURT: We've had multiple pretrial conferences. I --
>
> THE DEFENDANT: I was just listening to what you said on the judicial thing. Are you saying that you won't to be opposed to granting me judicial after the five years, is that what --

(*Id.* at 5-6.) The trial court proceeded to a lengthy explanation of the judicial release and the State's recommendations, after which Collins affirmed his understanding of it. (*Id.* at 6-8.) Therefore, it appears that Collins's doubts concerned his understanding of the State's position on judicial release and that they were resolved before the entry of the guilty pleas. Reviewing this conversation, we conclude that Collins's answer, "Kind of, I guess," does not contradict the trial court's finding that the pleas were knowingly and voluntarily entered.

{¶18} Another example of Collins's asserted reluctance is his statement on the record that he was "just not in a clear mind," made during the following exchange:

THE COURT: Are you a United States citizen?

THE DEFENDANT: Yes.

THE COURT: I'm sorry?

THE DEFENDANT: Yes.

THE COURT: Are you under the influence right now of alcohol, drugs, medication anything like that?

THE DEFENDANT: No.

THE COURT: Are you clear in your own mind as to the effect of entering these pleas?

THE DEFENDANT: Not really.

THE COURT: What don't you understand?

THE DEFENDANT: I'm just not in a clear mind. That's why I need a psych evaluation, isn't it?

THE COURT: Um, as I said the matter is --

THE DEFENDANT: I'm not -- I'm not clear.

THE COURT: -- The matter's been pending for a year. Um, and it's set for jury trial tomorrow. I don't care whether you enter pleas or not. If you don't feel that you have an adequate understanding of what's going on here, um, I guess your lawyer can make a request for a psychological evaluation. I'll decide whether there's any reason [to] do that or not, um --

THE DEFENDANT: Just go on with what we were doing.

THE COURT: I'm sorry?

THE DEFENDANT: I said go on with what we was [sic] doing.

THE COURT: Well, as I said I don't care whether you plead not [sic] -- that's neither here nor there to me. My issue is it's my job to make sure that you understand the significance of what you're doing that you're entering your plea knowing what you're doing and that's the issue. Do you understand these proceedings?

THE DEFENDANT: I understand.

THE COURT: Is it still your desire to tender these guilty pleas pursuant to this plea agreement?

THE DEFENDANT: Yeah.

(*Id.* at 21-23.) The above exchange might resemble an attempt to claim mental disability or incompetency. Yet, no such claim is made on appeal. Rather, the appeal focuses on the voluntary and knowing nature of the pleas. While the above

exchange might possibly be relevant to a mental incompetency claim had such claim been made, it does not support a claim that Collins was not advised of the full extent of the charges and the constitutional protections he was waiving. We additionally note that the psychological evaluation was not requested in order to verify whether Collins was competent or "in a clear mind," but rather, it was requested in order to mitigate possible penalties. (R.1 at 26; R.2 at 67; R.3 at 21.) Accordingly, we do not find that Collins's comments invalidate the trial court's finding that the pleas were knowingly and voluntarily entered.

{¶19} Collins next asserts that he "dispute[d] the facts as recited" by the State. (App't Br. at 13.) Collins refers to a discussion during which he indicated that the facts stated by the State were "[n]ot exactly" what happened. (Hr'g Tr. at 24, July 14, 2014.) In particular, Collins seemed surprised that the State discussed "just ten" out of twenty-five counts of pandering sexually oriented matter. (*Id.* at 25.) Collins seemed satisfied after the State's explanation:

> MR. MURRAY: The ten is just the negotiated plea agreement. There were hundreds of images on these computers, or on a specific computer as we shared with counsel. But as a proposed resolution we agreed to just, um, utilize ten as opposed to twenty-five.
>
> THE DEFENDANT: All right. I just -- I wanted to know why.
>
> THE COURT: So you understand what they say you did --
>
> THE DEFENDANT: Yeah, I understand.

(*Id.* at 25-26.)

{¶20} Another instance of allegedly "disput[ing] the facts" is the following statement:

> THE DEFENDANT: Well, and taking a plea deal it doesn't mean it's true. It just means I'm taking your deal because I don't have no choice because if I go to trial and lose, I'll get life. Right? So I'm really not left with any options but to take this deal.
>
> THE COURT: * * * Again, I don't care if you plead or don't plead, do you want to enter this plea? Do you either acknowledge that you were in possession of materials which would qualify or in the alternative do you want to tender this plea because you believe it to be in your best interest?
>
> THE DEFENDANT: It's in my best interest.

(*Id.* at 26-27.) On appeal, Collins alleges, "A judge should not have to work this hard to get the defendant to enter his plea." (App't Br. at 14.) While we acknowledge that the trial court worked hard to ensure that all Collins's wishes, questions, and explanations are fully entered in the record, nowhere in the trial transcript is there any indication that Collins did not want to enter the pleas. Accordingly, the trial court did not have to work hard to get Collins to enter his pleas. In spite of the several comments quoted above, there is no evidence in the record that Collins entered his pleas under duress or without the understanding of the nature of the charges or the constitutional protections he was waiving.

{¶21} In conclusion, our review of the record under the totality of the circumstances supports the trial court's finding that Collins's pleas were voluntarily and knowingly entered.

2. Ineffective Assistance of Counsel

{¶22} Collins asserts that "Mr. Horvath was ineffective when he did not file a motion to withdraw the plea." (App't Br. at 14.) In order to prevail on a claim of ineffective assistance of counsel, a criminal defendant must first show that the counsel's performance was deficient in that it fell "below an objective standard of reasonable representation." *State v. Keith*, 79 Ohio St.3d 514, 534, 684 N.E.2d 47 (1997). Second, the defendant must show "that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial." *Id.*, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In the record before us, there is no evidence that Collins's trial counsel acted deficiently by failing to move to withdraw the guilty pleas.

{¶23} We have recently rejected a very similar argument in *State v. Panning*, 3d Dist. Van Wert No. 15-14-05, 2015-Ohio-1423, where we analyzed:

> In the instant case, * * * there is no evidence that Panning had ever asked attorney Gordon to move for a withdrawal of his guilty plea. In fact, Panning does not even allege that he wanted to withdraw his plea. He suggests that his trial counsel should have, sua sponte, requested the plea withdrawal, in spite of the fact that Panning wanted to enter the plea in order to avoid spending "the rest of [his] life in prison," the desire which he confirmed at his initial sentencing hearing and reiterated at resentencing. * * * Without any evidence that Panning had, at any point, requested that his plea be withdrawn

> and that his counsel ignored the request, we cannot find that attorney Gordon's assistance fell "below an objective standard of reasonable representation" for failure to move for the plea withdrawal. *Keith,* 79 Ohio St.3d at 534, 684 N.E.2d 47. Accordingly, Panning has failed to satisfy the first prong of the test for ineffective assistance of counsel.
>
> We further note that Panning does not allege that there existed any grounds for plea withdrawal other than a mere change of heart, which is insufficient. *See State v. Pettaway*, 3d Dist. Seneca No. 13-14-20, 2015-Ohio-226, ¶ 35; *State v. Broderdorp*, 3d Dist. Seneca No. 13-11-11, 2011-Ohio-4894, ¶ 25. Therefore, he has no basis to claim that he was prejudiced by his counsel's "failure to perform a futile act." *State v. Siler*, 11th Dist. Ashtabula No. 2010-A-0025, 2011-Ohio-2326, ¶ 64 (rejecting a claim of ineffective assistance of counsel for failure to move to withdraw plea where there was "nothing in the record to suggest that had his counsel moved to withdraw the plea * * * , the court would have allowed the motion"); *see also State v. Johnson*, 8th Dist. Cuyahoga No. 99620, 2013-Ohio-5744, ¶ 15-20 (rejecting a claim of ineffective assistance of counsel for failure to move to withdraw the defendant's guilty plea in light of the statements at sentencing in which he proclaimed his innocence where nothing showed that "a motion to withdraw would have been successful because it was premised on nothing more than a change of heart").

Id. at ¶ 11-12.

{¶24} The instant case calls for the same conclusion as the one we reached in *Panning*. There are no allegations that Collins ever wanted to withdraw his pleas. On the contrary, Collins attested that the he wanted to enter the pleas because it was in his "best interest." (Hr'g Tr. at 27, July 14, 2014.) While Collins claimed innocence at sentencing, arguing that someone else was responsible for downloading the illegal content to his computer, at no point did he

make a statement on the record that he did not want to be sentenced in accordance with his guilty pleas. (*See* Hr'g Tr. at 16-17, 29-34, Sept. 18, 2014.)

{¶25} On appeal Collins fails to assert any "reasonable and legitimate basis" as required for a plea withdrawal under *State v. Xie*, 62 Ohio St.3d 521, 584 N.E.2d 715 (1992), paragraph one of the syllabus. He merely criticizes his trial counsel for not performing an act, although "there was 'nothing in the record to suggest that had his counsel moved to withdraw the plea * * * , the court would have allowed the motion.' " *Panning* at ¶12, quoting *Siler* at ¶ 64; *see also State v. Cookson*, 2d Dist. Montgomery No. 13368, 1993 WL 189921, *9-10 (June 1, 1993) (rejecting allegations of ineffective assistance of counsel for failure to move for a plea withdrawal following the defendant's claim of innocence made at sentencing, because "nowhere in the sentencing hearing did appellant state that he wanted to withdraw his guilty plea[,] although he protested his innocence when the trial court asked him if he had anything to say").

{¶26} Accordingly, we reject Collins's contention that his trial counsel was ineffective for failure to move to withdraw his guilty pleas.

{¶27} Some additional instances of the trial counsel's alleged ineffectiveness are raised, but they are not supported by the record. (*See* App't Br. at 15.) Furthermore, those allegations pertain to events that occurred prior to entering the guilty pleas. A claim of ineffective assistance of counsel is waived by a guilty plea, unless the counsel's conduct affected the voluntary nature of the

plea. *State v. Mata*, 3d Dist. Allen No. 1-04-54, 2004-Ohio-6669, ¶ 13, citing *State v. Spates*, 64 Ohio St.3d 269, 272, 1992-Ohio-130, 595 N.E.2d 351 (1992). There is no allegation that those other instances of the trial counsel's alleged ineffectiveness resulted in the pleas of guilty being not voluntarily given. Therefore, those claims are waived on appeal.

{¶28} Additionally, some claims are made regarding the fact that Collins "did not know what an Alford plea was and its availability." (App't Br. at 14.) Yet, Collins does not argue that the trial counsel was ineffective for failure to advise him about an Alford plea, or that the alleged failure resulted in the involuntary nature of Collins's pleas. The trial court did advise Collins about "a criminal case called Alford versus North Carolina," in which the defendant entered a plea because it was "under all the circumstances in his best interest." (Hr'g Tr. at 26, July 14, 2014.) Accordingly, we do not find a prejudicial error with respect to the allegation that Collins "did not know what an Alford plea was and its availability." (App't Br. at 14.)

{¶29} Considering all of the above, and applying a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," we find that Collins has failed to satisfy his burden of proving ineffective assistance of counsel, which would result in his guilty pleas being involuntary. *See State v. Cassano*, 96 Ohio St.3d 94, 2002-Ohio-3751, 772 N.E.2d 81, ¶ 108, quoting *Strickland* at 669; *Mata* at ¶ 13.

{¶30} For all of the forgoing reasons, we overrule the second assignment of error.

First Assignment of Error—Denial of Motion to Suppress

{¶31} In this assignment of error, Collins challenges the trial court pre-plea ruling on the motion to suppress. But it is well-established that a defendant who "voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel 'may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.' " *Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, 810 N.E.2d 927, at ¶ 78, quoting *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973), *abrogated on other grounds as stated in Walker v. Ricci*, D. New Jersey No. 08–1378 (DMC), 2010 WL 1838409, *6 (May 6, 2010). We have previously held:

> A plea of guilty is a complete admission of guilt. Crim.R. 11(B)(1). A defendant who enters a plea of guilty waives the right to appeal all nonjurisdictional issues arising at prior stages of the proceedings, although the defendant may contest the constitutionality of the plea itself. *Ross v. Common Pleas Court of Auglaize Cty.* (1972), 30 Ohio St.2d 323, 59 O.O.2d 385, 285 N.E.2d 25. "Thus, by entering a guilty plea, a defendant waives the right to raise on appeal the propriety of a trial court's suppression ruling." *State v. McQueeney,* 148 Ohio App.3d 606, 2002-Ohio-3731, 774 N.E.2d 1228, ¶ 13.

State v. Kuhner, 154 Ohio App.3d 457, 2003-Ohio-4631, 797 N.E.2d 992, 994, ¶ 4 (3d Dist.); *see also State v. Smith*, 3d Dist. Allen No. 1-04-06, 2004-Ohio-4004, ¶ 9 (overruling an assignment of error because "by virtue of pleading guilty, * * *

appellant has waived his right to appeal the trial court's denial of his motion to suppress identification evidence"); *State v. Jackson*, 7th Dist. Mahoning No. 13 MA 121, 2014-Ohio-2249, ¶ 16 ("assignments of error on pretrial motion practice are precluded after a guilty plea unless the defendant asserts a jurisdictional defect, raises the constitutionality of the statute defining the offense, or implicates the voluntary, knowing, or intelligent character of the plea").

{¶32} Having determined in our analysis of the second assignment of error that Collins's pleas were voluntary and knowing, we hold that Collins waived his right to raise on appeal the propriety of the trial court's suppression ruling. Accordingly, we overrule the first assignment of error.

IV. Conclusion

{¶33} Having reviewed the arguments, the briefs, and the record in this case, we find no error prejudicial to Appellant in the particulars assigned and argued. The judgments of the Common Pleas Court of Defiance County, Ohio are therefore affirmed.

Judgments Affirmed

SHAW and PRESTON, J.J., concur.

/hlo