

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-T-0055
NORRIS ANTHONY MILLS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2008 CR 0908.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Stephen A. Turner, Turner, May & Shepherd, 185 High Street, N.E., Warren, OH 44481-1219 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Norris Anthony Mills, appeals from the judgment entered by the Trumbull County Court of Common Pleas. For the reasons that follow, we affirm.

{¶2} On July 1, 2009, appellant entered a plea of guilty to an amended indictment charging him with aggravated burglary, in violation of R.C. 2911.11(A)(1), and two counts of aggravated murder, in violation of R.C. 2903.01(B) and R.C. 2903.01(A). Pursuant to a Crim.R 11 agreement, the state entered a nolle prosequi to

four repeat violent offender specifications and an additional count of aggravated murder which was included in the initial indictment. The trial court, following the jointly agreed-upon sentence between the state and appellant, sentenced appellant to ten years on the aggravated burglary charge, and 20 years to life on each aggravated murder charge, all to run concurrently.

{¶3} On December 3, 2010, appellant's assigned appellate counsel filed a motion to withdraw as counsel, which was held in abeyance by judgment entry of this court. In addition, counsel filed an "Anders" brief, asserting there was no non-frivolous issue for appellate review. In *Anders v. California* (1967), 386 U.S. 738, the United States Supreme Court outlined the proper steps to be followed in this situation: (1) counsel should act in the role of an active advocate for his client; (2) counsel should support his client to the best of his ability; (3) if counsel finds his client's case to be wholly frivolous, counsel should advise the court and request permission to withdraw; (4) the request to withdraw must be accompanied by a brief referring to anything in the record that might arguably support the appeal; (5) counsel should furnish the indigent client with a copy of counsel's brief and time must be allowed for the client to raise any points he chooses; (6) the court, not counsel, proceeds and decides whether the case is frivolous after a full examination of all the proceedings. *Anders*, supra, at 744.

{¶4} In his brief, counsel determined that the trial court substantially complied with the requirements of Crim.R. 11, stating that the record does not reflect any obvious and prejudicial errors in the trial court's acceptance of appellant's guilty plea. Counsel notes, however, that appellant's trial counsel may have provided ineffective assistance due to the period of four months between appellant's indictment and his acceptance of

the Crim.R. 11 agreement, and the lack of discovery in the case. Appellant's counsel served a copy of the brief to appellant, who did not file a pro se brief raising any assignments of error. Thus, this court will examine the validity of the Crim.R. 11 agreement, the assistance of trial counsel, sentencing, and any other area where error may be found.

{¶5} Crim.R. 11 Agreement

{¶6} A criminal defendant who enters a plea of guilty or no contest waives certain constitutional rights. Thus, the waiver must be made knowingly, intelligently, and voluntarily. *State v. Stewart* (1997), 51 Ohio St.2d 86, 92-93.

{¶7} Crim.R. 11(C) sets forth the procedure a trial judge must follow when accepting a guilty plea in a felony case:

{¶8} “***

{¶9} “(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

{¶10} “(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

{¶11} “(b) Informing the defendant of and determining 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.

{¶12} “(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant’s favor, and to require the state to prove the defendant’s guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.”

{¶13} When reviewing a guilty plea under Crim.R. 11, an appellate court uses a substantial compliance standard, meaning that “under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.” *State v. Nero* (1990), 56 Ohio St.3d 106, 108. (Citations omitted.) Before a guilty plea can be vacated, there must be a showing of prejudicial effect. *Stewart*, supra, at 93, citing Crim.R. 52(A).

{¶14} On July 1, 2010, the trial court held a hearing where appellant appeared with his counsel. After a review of the trial court’s colloquy with appellant, we determine that he knowingly and voluntarily entered a plea to the three charges brought against him. At the hearing, the court explained the charges against him, the potential penalties of each charge, and the possibility of post-release control. Appellant indicated he understood the seriousness of the offenses, the potential sentences to each charge, and that a prison term is mandatory. Next, the trial court discussed the rights appellant was waiving and what the state would have to prove beyond a reasonable doubt for each count at trial. Specifically, the trial court discussed his right to a jury trial, his right to confront witnesses, and his right not to testify. Appellant indicated to the trial court he understood each one of the rights he was waiving. Appellant further indicated that no

promises or threats had been made to him and that he was satisfied with his counsel. The court then received a factual basis for each count from the state. Finally, the court verified appellant's signature on the "Finding on Guilty Plea to Amended Indictment" document. Appellant stated he signed the document freely and voluntarily and understood what was contained in the document. After a thorough and independent review of the record, we hold that appellant's guilty plea was entered into knowingly, voluntarily, and intelligently. Thus, there are no arguable legal points on the merits in this matter.

{¶15} Ineffective Assistance of Counsel

{¶16} Appellant's counsel raises the possibility that appellant was provided ineffective assistance of counsel at the trial level. In the context of a plea hearing, an appellant raising such a contention must prove that counsel's assistance was deficient and such deficiency prejudiced the appellant "in that there is a reasonable probability that, but for counsel's error, the defendant would not have pled guilty." *State v. DelManzo*, 11th Dist. No. 2009-L-167, 2010-Ohio-3555, at ¶33. (Citation omitted.) "Rather, ineffective assistance of trial counsel is found to have affected the validity of a guilty plea when it precluded a defendant from entering his plea knowingly and voluntarily." *State v. Madeline* (March 22, 2002), 11th Dist. No. 2000-T-0156, 2002 Ohio App. LEXIS 1348, at *10. (Citation omitted.) The record is devoid of any such indication of deficiency. As indicated supra, appellant's plea was made knowingly and voluntarily.

{¶17} Appellant's counsel additionally raises the four-month period between the indictment and the acceptance of the Crim.R. 11 agreement and the lack of formal

discovery as potential concerns with trial counsel. However, there is no evidence that the time period or the lack of discovery prejudiced appellant, especially since appellant voluntarily confessed to the crime. During sentencing, he explained his reasons for confessing and then apologized for taking so long to turn himself in. Further, during his plea hearing, appellant explicitly indicated he was satisfied with counsel. There are no substantive issues in this regard.

{¶18} Sentencing

{¶19} It is not the practice of this court or any other appellate court to review sentences that are jointly agreed upon by the state and the defendant. *State v. Kimble*, 11th Dist. No. 2005-T-0085, 2006-Ohio-6096, at ¶27. “Once a defendant stipulates that a particular sentence is justified, the sentencing judge need not independently justify the sentence.” *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, paragraph three of the syllabus. Pursuant to R.C. 2953.08 (D)(1), “[a] sentence imposed upon a defendant is not subject to review under this section [concerning felony sentencing on appeal] if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.”

{¶20} The logic behind such a refusal to review remains, even after *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-806: “The General Assembly intended a jointly agreed-upon sentence to be protected from review precisely because the parties agreed that the sentence is appropriate.” *Porterfield*, supra, at ¶25. The “Finding on Guilty Plea to the Amended Indictment” signed by appellant indicates that the state and defendant jointly agreed to the prison term. This sentence was imposed by the trial court and was within the statutory requirements of felony and murder sentencing. R.C.

2929.14 and R.C. 2929.02. Thus, this court will not disturb the agreement between the parties and, accordingly, any assignment of error relating to sentencing is wholly frivolous.

{¶21} Other Areas of Potential Error

{¶22} After a thorough and independent review of the record, including the transcript of the proceedings, the finding on guilty plea, and other submissions, we find no error in this case. Thus, there are no arguable legal points on the merits of this matter. Counsel's motion to withdraw previously held in abeyance is hereby granted, and the judgment of the Trumbull County Court of Common Pleas is affirmed.

DIANE V. GRENDALL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.