

demonstrated, the judgment of the trial court is affirmed.

Procedural History

{¶ 2} On August 30, 2022, Walters was indicted on three counts of menacing by stalking and one count of violating a protection order. He pled not guilty. On September 23, 2022, counsel for Walters entered an appearance and filed a demand for discovery. On October 18, 2022, a bill of particulars, a witness and exhibit list, and an identification of discovery were filed by the State. On December 2022, the judge initially assigned to the case recused himself, and the matter was reassigned to a different judge for all further proceedings. On January 13, 2023, the matter was set for trial on March 22, 2023.

{¶ 3} On March 20, 2023, defense counsel filed a motion to withdraw and, the following day, he requested a continuance of the trial date so Walters's substitute counsel would have sufficient time to prepare for trial. On March 21, 2023, the court issued an entry continuing trial, noting that it was presiding over an attempted murder trial. On April 21, 2023, substitute counsel for Walters entered an appearance. On August 21, 2023, a scheduling order set the matter for trial on October 4, 2023.

{¶ 4} On August 25, 2023, Walters filed a motion to dismiss for an alleged violation of his speedy trial rights. He argued that almost a year had passed since he was indicted and that, although the State was allowed to go beyond "the 270 days for speedy trial," the extension of 66 days in this case did not fit within the definition of a "reasonable period." Defense counsel asserted that R.C. 2945.73 had been amended on April 4, 2023, in a manner that violated the ex post facto clause of the United States Constitution and that the modification to R.C. 2945.73(C)(2), which allowed an additional 14 days after a motion

to dismiss is filed to litigate the case, should be applied to Walters.

{¶ 5} On August 29, 2023, the State opposed Walters's motion to dismiss, noting that a number of tolling events had occurred. The State further requested that, if the court found that the speedy trial time had expired, the matter be immediately set for trial within 14 days. On August 31, 2023, the court overruled Walters's motion to dismiss without analysis.

{¶ 6} On October 4, 2023, Walters filed a motion in limine seeking to prohibit P.M. from testifying as a state's witness because, according to Walters, P.M. had been disclosed as a State's witness only 18½ hours before the start of the trial. The same day, Walters also filed a second motion to dismiss for an alleged violation of his speedy trial rights.

{¶ 7} The court overruled the motion in limine and the motion to dismiss. Then, pursuant to a negotiated plea agreement, Walters pled guilty to one count of menacing by stalking and the other counts were dismissed; the court sentenced Walters to five years of community control sanctions as jointly recommended by the State and defense counsel. The court ordered Walters to have no contact with the victim and to maintain employment. The judgment entry of conviction was filed on October 5, 2023.

{¶ 8} Walters filed a pro se motion to withdraw his guilty plea on November 1, 2023. He attached an affidavit from defense counsel to his motion. The court declined to consider Walter's pro se motion because he was represented by counsel.

{¶ 9} On November 7, 2023, defense counsel filed a motion to withdraw as counsel, which the court overruled. On December 27, 2023, defense counsel filed a

motion to withdraw the guilty plea on Walters's behalf. Walters filed an affidavit separately. The State opposed the motion to withdraw on February 5, 2024, and a hearing on the motion occurred the same day. On February 14, 2024, the court overruled the motion to withdraw the plea.

{¶ 10} Walters appeals.

Assignments of Error and Arguments

{¶ 11} Walters asserts two assignments of error:

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S RIGHT TO SPEEDY TRIAL.

THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA.

{¶ 12} Walters addresses the assignments of error together in his brief. He asserts that he did not knowingly or "intellectually" enter his guilty plea because he was unaware that, by pleading guilty, he waived his right to challenge on appeal the trial court's denial of his motion to dismiss for a speedy trial violation. According to Walters, the trial court did not explain this to him in the plea colloquy. Walters also argues that defense counsel's performance was deficient and fell below an "objective standard of reasonableness."

{¶ 13} The State responds that Walters's brief is "non-compliant both in form and substance" because Walters fails to cite any authority regarding the alleged violation of his speedy trial rights, his argument regarding ineffective assistance "is not reflective of the titled assignments of error," and the citation format used by Walters does not comply

with the Ohio Supreme Court writing manual. Substantively, the State asserts that Walters's argument regarding his motion to dismiss for a speedy trial violation is barred by res judicata, because he did not appeal from his conviction, and the final appealable order that is the subject of this appeal was addressed only to the denial of Walters's motion to withdraw his guilty plea. The State further asserts that the transcript of the hearing on Walters's motion to withdraw his plea was "dispositive" on the issue of withdrawal.

Applicable Law

{¶ 14} Withdrawal of a plea is governed by Crim.R. 32.1, which states: "A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea." "A 'manifest injustice' comprehends a fundamental flaw in the path of justice so extraordinary that the defendant could not have sought redress from the resulting prejudice through another form of application reasonably available to him or her." *State v. Brooks*, 2010-Ohio-1682, ¶ 8 (2d Dist.), citing *State v. Hartzell*, 1999 WL 95776 (2d Dist. Aug. 20, 1999).

{¶ 15} " '[A] guilty plea waives all appealable errors that may have occurred in the trial court, unless such errors precluded the defendant from knowingly, intelligently, and voluntarily entering the guilty plea.' " *State v. Portis*, 2014-Ohio-3641, ¶ 8 (2d Dist.), quoting *State v. Blessing*, 2013-Ohio-392, ¶ 14 (2d Dist.), citing *State v. Kelley*, 57 Ohio St.3d 127 (2001), paragraph two of the syllabus. We have previously held:

Due process requires that a defendant's guilty plea be knowing,

intelligent, and voluntary. *Boykin v. Alabama*, 395 U.S. 238 . . . (1969); see also *State v. Inskip*, 2d Dist. Champaign No. 2016-CA-2, 2016-Ohio-7098, ¶ 12. A trial court's compliance with Crim.R. 11(C) ensures that a plea comports with due process. *State v. McElroy*, 2d Dist. Montgomery No. 28974, 2021-Ohio-4026, ¶ 14; *State v. Russell*, 2d Dist. Clark No. 10-CA-54, 2011-Ohio-1738, ¶ 6.

Crim.R. 11(C)(2)(c) requires the trial court to inform the defendant of the constitutional rights he is waiving by entering a plea. These rights are the right to a jury trial, the right to confront witnesses, the right to compulsory process, the right against self-incrimination, and the right to require the State to establish guilt beyond a reasonable doubt. Since constitutional rights are involved, strict compliance with this portion of the rule is required. *State v. Jones*, 2d Dist. Greene No. 2020-CA-12, 2020-Ohio-4767, ¶ 10, citing *State v. Thompson*, 2d Dist. Montgomery 28308, 2020-Ohio-211, ¶ 5. A failure of strict compliance requires a finding that the plea is not consistent with due process; prejudice, under this circumstance, is presumed, and the plea must be invalidated. *Id.*, citing *State v. Miller*, 159 Ohio St.3d 447, 2020-Ohio-1420, . . . ¶ 16, *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, . . . ¶ 31-32.

Crim.R. 11(C)(2)(a) requires the trial court to determine that the plea is being made voluntarily, that the defendant understands the nature of the charge, the maximum penalty involved, and, if applicable, that the

defendant is not eligible to be sentenced to a term of community control sanctions. Crim.R. 11(C)(2)(b) requires the trial court to determine that the defendant understands the effect of the plea and that the trial court, upon acceptance of the plea, may proceed to sentencing. Since Crim.R. 11(C)(2)(a) and (b) do not implicate constitutional rights, a trial court's partial compliance with these portions of the rule, as opposed to strict compliance, does not necessarily require that the plea be vacated. Instead, the defendant must establish that the failure of strict compliance has caused prejudice. *State v. Dangler*, 162 Ohio St.3d 1, 2020-Ohio-2765, . . . ¶ 16. In this context, prejudice is measured by whether the defendant would have entered the plea if there had been full compliance with, as applicable, Crim.R. 11(C)(2)(a) or (b). *Id.* at ¶ 23. But, a trial court's complete failure to comply with either Crim.R. 11(C)(2)(a) or (b) eliminates the defendant's burden to establish prejudice.

State v. Perdue, 2022-Ohio-722, ¶ 10-12 (2d Dist.).

{¶ 16} Crim.R. 11(C)(2)(b) does not require the trial court to inform a criminal defendant that a guilty plea will forfeit his ability to assign as error any claimed error in pretrial rulings. *State v. Satterwhite*, 2009-Ohio-6593, ¶ 47 (2d Dist.). “[T]he trial court’s duty under Crim.R. 11(C)(2)(b) ‘does not require the trial court to conduct [a] specific inquiry into the defendant’s understanding of the effect of a guilty plea on the appealability of adverse pre-trial rulings, where a defendant’s misunderstanding of that effect is not apparent from the record.’ ” *State v. Portis*, 2014-Ohio-3641, ¶ 10 (2d Dist.), quoting

Satterwhite at ¶ 48.

To satisfy the effect-of-plea requirement under Crim .R. 11(C)(2)(b), a trial court instead must inform the defendant, either orally or in writing, of the language in Crim.R. 11(B), which defines “effect of guilty plea” as “a complete admission of the defendant's guilt.” *State v. Jones*, 116 Ohio St.3d 211, 2007-Ohio-6093, . . . paragraph two of the syllabus, ¶ 23–24, 51; . . . Crim.R. 11(B)(1). “The information that a guilty plea is a complete admission of guilt, along with the other information required by Crim.R. 11, ensures that defendants enter pleas with knowledge of rights that they would forgo and creates a record by which appellate courts can determine whether pleas are entered voluntarily.” . . . “A defendant who has entered a guilty plea without asserting actual innocence is presumed to understand that he has completely admitted his guilt.” . . .

Id. at ¶ 11.

{¶ 17} A motion to withdraw a plea is addressed to the trial court's sound discretion, “which also involves issues of ‘the good faith, credibility and weight of the movant's assertions in support of the motion.’” *State v. Wroten*, 2023-Ohio-966, ¶ 15 (2d Dist.). Accordingly, we review for an abuse of discretion. *Id.* “ ‘Abuse of discretion’ has been defined as an attitude that is unreasonable, arbitrary or unconscionable.” *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990).

{¶ 18} Finally, “ [a] guilty plea waives the right to allege ineffective assistance of

counsel, except to the extent that the errors caused the plea to be less than knowing and voluntary.’ ” *State v. Frazier*, 2016-Ohio-727, ¶ 81 (2d Dist.), quoting *State v. Webb*, 2015-Ohio-553, ¶ 15 (2d Dist.). If a criminal defendant pleads guilty on the advice of counsel, he must demonstrate that the advice was not “within the range of competence demanded of attorneys in criminal cases.” (Citation omitted.) *Id.* To demonstrate that counsel was ineffective in permitting a defendant to plead guilty, as opposed to no contest, the defendant must establish that: the State would have agreed to a no-contest plea on the same terms; counsel failed to advise the defendant that a no-contest plea, unlike a guilty plea, would preserve the pretrial issue for appeal; and had defendant been so advised, the defendant would have rejected the plea offer. *Id.* at ¶ 82.

Walters’s Plea Hearing

{¶ 19} At the start of the plea hearing, the trial court noted that a second motion to dismiss had been filed, and defense counsel asserted that the case should be dismissed for violating his client’s rights to speedy trial as set forth in the Ohio and U.S. Constitutions. Defense counsel noted that, previously, surpassing 270 days had been a clear speedy-trial violation warranting dismissal, but the statute was modified to now give the court 14 days to set the matter for trial after a defendant files the motion to dismiss for a speedy-trial violation. Counsel noted that the court had previously overruled his motion to dismiss without setting the matter for trial. The State responded that the speedy trial time had not elapsed.

{¶ 20} The court observed that the State had cited the amended statute in its response to the motion to dismiss, but because the court “wasn’t familiar with that,” it

“didn’t rely on that” in overruling the motion. The court indicated that it had overruled the motion to dismiss “based on the number of tolling events that had occurred.”

{¶ 21} After the court overruled Walters’s motion in limine regarding the exclusion of P.M.’s testimony, defense counsel informed the court that the State’s plea offer at that time was for Walters to plead to one fourth-degree felony menacing by stalking, with a joint recommendation of community control, in exchange for which the other charges would be dismissed. Defense counsel indicated that Walters “would be interested in that plea” if the court “would honor the community control sanctions,” because the presence of P.M. at trial and the court’s willingness to let her testify presented “a completely different dynamic than we faced before.”

{¶ 22} After a recess, the court indicated that the parties had presented the court with a written plea agreement, the terms of which the State then put on the record: in exchange for Walters’s guilty plea to Count I, menacing by stalking, a fourth-degree felony, the other counts would be dismissed with a joint recommendation of community control. Walters would waive a presentence investigation and be placed on community control immediately, and he would enter into a consent agreement extending the victim’s protection order for five years. The State set forth the following facts:

Between . . . November 30, 2021 and June 2022, [Walters] engaged in a pattern of stalking behavior involving [the victim], her friends, family, and coworkers. His behavior included over 20 incidents in the time period set forth ranging from criminal damaging to trespassing and protection order violations. Several incidents involved spray painting of garage doors and

house siding and slashing tires and throwing bricks through windows.

During the course of the investigation it was discovered that . . . Walters hired one or more individuals to damage housing of individuals associated with [the victim].

{¶ 23} During the plea colloquy, Walters indicated that he understood the terms of the plea agreement and that he chose to proceed. Walters advised the court that he was not under the influence of drugs or alcohol and that he understood the nature of the case and the facts as read on the record by the prosecutor. Walters identified his signature on the plea form and stated that he had had time to review the document with defense counsel. The court specifically advised Walters that, in exchange for his guilty plea to Count I, the remaining counts in the indictment would be dismissed, and the court agreed to follow the recommendation regarding community control. Walters again acknowledged his understanding. He indicated that no promises or threats had been made to him and that he was entering his plea voluntarily. Walters acknowledged his understanding that, upon his plea and the dismissal of the remaining counts, the court would proceed directly to sentencing. The court advised Walters of the possible consequences of violating community control and ascertained his understanding. The court advised Walters of the constitutional rights he would waive by entering his plea, and the State reviewed the elements it would be required to prove at trial. After again acknowledging his understanding of the proceedings, Walters pled guilty. The court found that Walters had knowingly, voluntarily, and intelligently waived his rights and found him guilty of menacing by stalking.

{¶ 24} Walter's plea form, which he acknowledged having reviewed with defense counsel, stated:

By pleading guilty, I admit committing the offense and admit the facts set forth in the indictment. . . . I understand my right to appeal a maximum sentence; my other limited appellate rights and that any appeal must be filed within 30 days of my sentence. . . .

Hearing on Walters's Motion to Withdraw his Plea

{¶ 25} With regard to the circumstances surrounding his plea, Walters testified at the hearing on the withdrawal of his plea that, after the jury was selected on the date set for trial, he spoke to defense counsel; he waived any attorney-client privilege as to that communication for purposes of the hearing on the motion to withdraw. Walters stated that his "major question" at that time for defense counsel was, "Can I file an appeal regarding the speedy trial matter?" According to Walters, he repeatedly asked and was repeatedly told by counsel that he would retain the right to appeal that issue.

{¶ 26} Walters testified that, if he had been advised that his guilty plea would foreclose his appellate rights on the issue of a speedy trial, he would have gone to trial; he also testified that they had been prepared to go to trial. Walters stated that his counsel had been ineffective in advising him that he could appeal the speedy-trial issue. Walters asked to withdraw his guilty plea and enter a plea of no contest.

{¶ 27} On cross-examination, Walters reiterated that he had entered the plea based on counsel's advice that he could appeal the speedy-trial issue. Walters stated that he did not remember if he had read the plea form or been asked by the court if he

had done so. Walters testified that he remembered having “papers in front of [him]” but not language in the plea form regarding a limited right to appeal. When asked how he was able to specifically remember his discussion with counsel about the effect of his plea but not the contents of the plea form, Walters responded, “I had discussed this with my Counsel on multiple occasions. That’s how I remember the speedy trial issue.” Also, according to Walters, he “was having a PTSD moment” at the time of the plea hearing: he remembered people coming in and the jury being selected, but he did not remember much after that. Walters also did not remember if he brought his “PTSD moment” to the court’s attention.

{¶ 28} When asked if he inquired of the court regarding his appellate rights, Walters stated, “I relied on the advice of my attorney which that’s what I’m supposed to do.” He did not recall the court specifically advising him that he could appeal. He stated that there was no discussion of a no contest plea. When asked if he was aware that the witness, P.M., had been present for trial, Walters responded that he did not see the witness list or know who was present in the courtroom; he indicated that he had been aware that another of the State’s witnesses had health issues. The prosecutor asked Walters if he wanted to withdraw his guilty plea because he thought the State would not be able to get witnesses to trial, and Walters responded, “I believe that’s accusatory.”

{¶ 29} Noting that he had practiced for 35 years, defense counsel stated at the hearing that he had never been in a situation “where it came up as it did in this matter” about a no-contest plea versus a guilty plea and the appellate rights that a defendant waived if improperly advised by counsel. According to defense counsel, Walters had

indicated “throughout the entire process” that he wanted to appeal; counsel acknowledged that he had “taken that from him” because he had improperly advised Walters and provided ineffective assistance.

{¶ 30} The State argued that defense counsel and Walters lacked credibility. It asserted that there had never been any discussion or offer of a no-contest plea and that the State would not have agreed to a no-contest plea, especially given that Walters was guaranteed community control. The State noted that P.M. and another witness who was ill had appeared for trial the day of the plea, and that months later, when Walters sought to withdraw his plea, “the State may certainly have difficulties getting those same witnesses to a trial” due to health issues and a possible lack of good information about their whereabouts. The State expressed doubt that, with his lengthy experience, defense counsel “didn’t know about the appellate rights” and asserted that it would be severely prejudiced if Walters’s guilty plea were withdrawn. The State noted the “very high standard” applicable to a motion to withdraw a plea after sentencing and asked the court to overrule the motion.

{¶ 31} Defense counsel responded that the difference between a no-contest plea and a guilty plea “was never discussed” and that a guilty plea “was just put in the plea form” by the prosecutor. But defense counsel acknowledged going over the plea form with his client. According to defense counsel, a manifest injustice would occur if Walters were not allowed to withdraw his plea, because Walters “will be saddled and burdened with this against him for the rest of his life,” noting that menacing by stalking is an offense of violence and not “sealable.” Defense counsel indicated that Walters was willing to

immediately plead no contest on the same terms if the court granted the motion to withdraw.

{¶ 32} The State responded that it was not offering and would not offer a no-contest plea in this case, and any “belief that a no-contest plea could immediately be entered is absolutely false.” The State noted that a felony of the third degree (violation of a protection order) was dismissed when Walters entered his plea to a felony of the fourth degree menacing by stalking.

{¶ 33} After arguments by counsel, the court commented that Walters and defense counsel asserted that the motion to withdraw the plea was not based on a failure to discuss the effect of a guilty plea on Walters’s appeal, but rather an affirmative misstatement by counsel that Walters would have the right to appeal. The court continued:

We’re talking about him [Walters] specifically asking you [counsel] and you specifically telling him, yes, you can appeal on a guilty plea. I’m not calling you a liar. I just, to me a lawyer with your experience, again, I think it’s very reasonable that perhaps you would neglect to talk about appellate issues upon a plea offer but to be specifically asked if he could appeal after a guilty plea and you specifically saying, yes, to me that’s a whole other thing.

That’s so much more, in other words, let me just summarize it by this; in other words, you’re not confessing an act of omission. Judge, I just forgot to tell him about what he might or might not be able to do on appeal,

versus an act of commission, specifically telling him, yes, you can plead guilty and, yes, you can appeal the Judge's speedy trial ruling. I just find that hard to believe that that conversation was had. It just doesn't ring true to me with an attorney of your experience. It just doesn't.

{¶ 34} Defense counsel noted that, pursuant to the ethical rules, if he believed Walters was untruthful in his testimony, he would be bound to disclose that fact to the court and withdraw from the case. Defense counsel also apologized that he had made an error in his statements to his client and indicated his awareness that Walters had the right to file a grievance against him.

{¶ 35} The court recalled that they had been in the middle of the first day of trial when the plea was entered and that Walters had been "vulnerable to being found guilty" of a third-degree felony, whereas the plea offer was to a fourth-degree felony "with a guarantee of probation." which the Court accepted. The court also pointed out that Walters was not claiming to be innocent or wrongly convicted; rather, he was asserting that he might be able to avoid conviction altogether if he were allowed to withdraw his guilty plea and then appeal the speedy trial issue.

{¶ 36} Defense counsel pointed out that, under the revised speedy-trial statute, when counsel filed his motion to dismiss on speedy-trial grounds and served the motion on the State, the State had 14 days from that pleading "to have cured that defect no matter how long [ago] the right of speedy trial had expired"; he also noted that the State's response to the motion to dismiss had acknowledged the 14-day cure provision. The court pointed out, however, that if the court found that the 270-day speedy-trial time had

not expired, the filing of a motion to dismiss did not require the court to set the case within 14 days. Apparently believing that the speedy-trial time had run prior to the filing of the motion to dismiss and understanding that any time that passed after the motion was filed tolled against Walters, defense counsel indicated that he waited until the morning of trial to raise the speedy-trial issue again, thinking that the motion would be granted at that time because the court had not cured the speedy-trial violation using “the 14 day supplement.”

{¶ 37} Finally, the court stated that, when it advises a defendant of his right to appeal his conviction and sentence, it “never discusse[s] with the Defendant at the time of a guilty plea that his rights to appeal prior Court’s rulings would be waived by a guilty plea,” but the court recognized that the plea form contains this information. The court indicated that it would take the matter under advisement

The Trial Court’s Decision on Motion to Withdraw the Plea

{¶ 38} The court found that Walters had failed to satisfy his burden of establishing a manifest injustice and overruled his motion to withdraw his plea. The court noted that, pursuant to the plea agreement, Walters had secured the dismissal of a third-degree felony violation of a protection order offense, which was the most serious offense with which he had been charged, the dismissal of two other felony counts, and a guarantee that he would be placed on community control in lieu of a prison term. The court concluded that, “[u]nder no circumstances can this plea agreement be construed as a manifest injustice” to Walters.

{¶ 39} The court also observed that Walters did not move to withdraw his plea

because he claimed to be innocent, because new or favorable evidence had been discovered, or because of “some other issue integral to his guilt or innocence.” Rather, Walters’s motion was based upon a desire to appeal the court’s speedy-trial rulings, which it characterized as “a much less weighty and compelling reason.” The court concluded that Walters’s inability to appeal an unfavorable ruling, while a negative consequence of his guilty plea, did not constitute “a clear or openly unjust act,” especially in light of the benefits he received from the plea agreement. The court cited the public policy interest in maintaining finality after a guilty plea and noted that Walters had “an alternative remedy” of filing a petition for post-conviction relief.

Analysis

{¶ 40} In *State v. Collins*, 2022-Ohio-452 (1st Dist.), upon which Walters relies, Collins moved to withdraw his guilty pleas two weeks after sentencing on the basis that his pleas had not been knowing, intelligent and voluntary, because he was unaware that his pleas waived his right to appeal the denial of his motion to suppress. He further argued that defense counsel had been ineffective for failing to so advise him. *Id.* at ¶ 5. Collins asked the trial court to allow him to withdraw his guilty pleas and enter pleas of no contest to all charges in the indictment, apparently recognizing that the State was unlikely to offer the plea deal dismissing some of the charges if Collins would not agree to plead guilty. *Id.*

{¶ 41} At a hearing on the motion to withdraw, defense counsel testified that she had advised Collins, after the hearing on the motion to suppress, that if he wanted to appeal that ruling, he would have to plead no contest. According to defense counsel, a

plea hearing was scheduled for a month after the suppression ruling; at the plea hearing (at which counsel was present), Collins pled guilty, although it had been his intention to plead no contest. Counsel stated that she did not think that Collins “fully understood by pleading guilty that he was giving up his right to appeal the motion to suppress,” based on her understanding of what he wanted at that time. *Id.* at ¶ 6. The trial court denied the motion to withdraw the guilty plea. *Id.* at ¶ 7.

{¶ 42} On appeal, Collins argued that his pleas were based on his “mistaken belief” that he had preserved the right to appeal the trial court’s denial of his motion to suppress. *Id.* at ¶ 8. At the outset, the First District noted that the trial court had not been required to inform Collins prior to accepting his pleas that entering a guilty plea would waive his right to challenge the denial of his motion to suppress on appeal; it also concluded that the court’s failure to do so did not render Collins’s pleas unknowing, involuntary, or unintelligent. *Id.* at ¶ 10.

{¶ 43} Regarding ineffective assistance of counsel, the First District found in *Collins* that defense counsel’s own admission at the hearing on the motion to withdraw had established deficient performance, because counsel had failed to “properly re-advise Collins regarding the effect of a guilty plea” on his ability to appeal the denial of his motion to suppress. *Id.* at ¶ 15. The First District observed that, although defense counsel initially advised Collins that a no contest plea would preserve his appellate rights, counsel “later allowed Collins to return to court and enter guilty pleas even though his intention had been to preserve his right to appeal.” *Id.*

{¶ 44} Having concluded that defense counsel’s performance fell below an

objective standard of reasonableness, the court next considered if Collins would have pled guilty if he had been properly advised on the effects of his pleas. *Id.* at ¶ 16. Trial counsel and appellate counsel stated that Collins had intended to enter no contest pleas. The First District concluded that Collins had established that “his trial counsel rendered ineffective assistance by failing to advise him that a guilty plea would waive his right to appeal the trial court’s denial of his motion to suppress and by allowing him to plead guilty, as opposed to no contest.” *Id.* at ¶ 17.

{¶ 45} In response to the State’s argument that Collins had failed to demonstrate prejudice because he “made no showing that he would ultimately be successful in appealing the trial court’s denial of his motion to suppress,” the First District rejected the State’s reliance on *State v. Smith*, 2020-Ohio-5241, ¶ 26, 29 (1st Dist.) and concluded that *Smith* placed “too onerous a burden on a defendant to establish prejudice resulting from counsel’s deficient performance.” *Collins* at ¶ 19. *Collins* found that case law was clear that “the test for prejudice is not whether a defendant would have ultimately been successful in challenging the trial court’s ruling on a motion to suppress, but rather whether the defendant would have pled guilty if she or he had been properly advised.” *Id.* Having concluded that Collins received ineffective assistance, the First District reversed the trial court’s judgment and remanded the matter to the trial court for further proceedings. *Id.* at ¶ 21.

{¶ 46} We agree with the State that *Collins* is distinguishable from Walters’s case. Most significantly, there was no suggestion in *Collins* of any issue regarding the credibility of defense counsel; the First District accepted as true defense counsel’s representation

regarding her advice to Collins, unlike the trial court in this case. A trial court's discretion in ruling on a motion to withdraw a plea is informed by the good faith and credibility of the movant's assertions. In Walters's case, the trial court expressly doubted defense counsel's credibility.

{¶ 47} There appear to have been several bases for the trial court's skepticism. First, at the plea hearing, having previously rejected an offer of a plea to a fifth-degree felony, defense counsel sought a guarantee of community control in exchange for a plea to a fourth-degree felony. In doing so, counsel specifically noted that the presence of the witness, P.M., "created a completely new dynamic than we faced before," thereby suggesting a motivation to avoid trial. Then, at the hearing on the motion to withdraw, defense counsel, who had 35 years of practice and was repeatedly characterized by the court and the State as "experienced," asserted that, for the first time in his career, he had affirmatively and repeatedly misadvised his client in response to Walters's specific questions regarding the effect of a guilty plea on his appellate rights. While defense counsel stressed that Walters made known his intention to appeal "throughout the entire process," defense counsel further acknowledged reading the language in the plea form and going over it with Walters. The distinction between defense counsel's alleged repeated misrepresentation to Walters and an act of inadvertence such as seemingly occurred in *Collins* was significant to the trial court, as reflected in its statements. (Although there were issues related to defense counsel's credibility in this case, we reject any suggestion by the First District in *Collins* that a motion to withdraw a guilty plea should be granted solely on the representation of defense counsel.)

{¶ 48} Further, at the plea hearing, Walters himself clearly stated that he understood the terms of the plea agreement as stated on the record and that he had reviewed the plea form with defense counsel and signed it. By doing so, he admitted his guilt and his understanding of his right to appeal a maximum sentence and his “other limited appellate rights.” See *Portis*, 2014-Ohio-3641, ¶ 12 (2d Dist.) (“[T]he plea form, which Portis said he reviewed with his attorney and understood before signing, stated that he understood his ‘limited appellate rights.’ . . . The record is devoid of any evidence indicating that he somehow misunderstood what those appellate rights were.”) Having never professed his innocence, Walters is presumed to have understood that he completely admitted his guilt.

{¶ 49} Then, at the hearing on the motion to withdraw his plea, Walters appeared to have no meaningful recollection of the plea hearing, including the language of the plea form which he had reviewed with counsel, or that P.M. and another witness had appeared at trial to testify against him. Walters claimed this was due to a “PTSD moment,” but the record reflects Walters did not bring such an issue to the trial court’s attention.

{¶ 50} As discussed above, *Frazier*, 2016-Ohio-727 (2d Dist.), set forth factors to be considered in determining whether counsel was ineffective in permitting a defendant to plead guilty, as opposed to no contest: whether the State would have agreed to a no-contest plea on the same terms; whether counsel failed to advise the defendant that a no-contest plea, unlike a guilty plea, would preserve the pretrial issue for appeal; and whether, had defendant been so advised, the defendant would have rejected the plea offer. *Id.* at ¶ 82. Here, the State was unequivocal that it would not have agreed to a

no-contest plea on the same terms set forth in the plea agreement. Although defense counsel argued that he had failed to properly advise Walters that a no contest plea would preserve the speedy trial issue for appeal – and a guilty plea would not -- the trial court was not required to credit that testimony; we defer to the trial court’s determination that defense counsel’s representation did not “ring true,” given counsel’s extensive experience. Finally, even if we were to find that Walters had been misadvised (which we do not), we cannot conclude that Walters would have rejected the plea offer if he had been aware of the effect of a no-contest plea. As noted above, defense counsel acknowledged concern regarding the presence of P.M. in court on the day of trial, and Walters acknowledged the presence of another witness who was apparently ill but present to testify for the State. Walters was facing three felonies of the fourth degree and one felony of the third degree, and he benefited greatly from the negotiated plea agreement, which did not include a prison term.

{¶ 51} Based upon the foregoing, we conclude that the trial court did not abuse its discretion in denying Walters’s motion to withdraw his plea, in concluding that Walters’s plea was knowing, intelligent, and voluntary, and in finding that no ineffective assistance of counsel was demonstrated. Walters’s arguments about his speedy trial rights are not properly before us. Walters’s assignments of error are overruled.

{¶ 52} The judgment of the trial court is affirmed.

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EPLEY, P.J. and TUCKER, J., concur.