

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 2009-CA-5
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2008-CR-293
v.	:	
	:	
JEFFREY ULERY	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 5th day of February, 2010.

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Attorney for Defendant-Appellant

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FAIN, J.

{¶ 1} Defendant-appellant Jeffrey Ulery appeals from his conviction and sentence for Conspiracy to Commit Aggravated Murder.

{¶ 2} Ulery was originally indicted upon two counts of Conspiracy to Commit Aggravated Murder and one count of Attempted Aggravated Murder. After trial had

commenced, he pled guilty to one count of Conspiracy to Commit Aggravated Murder, and the State dismissed the remaining charges. Ulery was sentenced to a prison term of four years.

{¶ 3} Assigned appellate counsel has examined the record and filed a brief under the authority of *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, wherein counsel represents that he has found no arguably meritorious issues to present on appeal. Ulery was notified that his counsel had filed an *Anders* brief, and was afforded the opportunity to file his own, pro se brief. He has not done so.

{¶ 4} Ulery's appellate counsel has suggested two potential issues for review, although concluding that they lack merit:

{¶ 5} "APPELLANT DID NOT FULLY UNDERSTAND HIS CONSTITUTIONAL RIGHTS PRIOR TO PLEADING GUILTY.

{¶ 6} "APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL FROM HIS TRIAL ATTORNEY."

{¶ 7} Due process requires the entry of a plea of guilty to be knowing, intelligent, and voluntary. *State v. Engle*, 74 Ohio St.3d 525, 1996-Ohio-179. In order to guarantee that this requirement has been met, the trial court must engage in an oral dialogue with the defendant in compliance with Crim.R. 11(C)(2)(a-c). *State v. Strickland*, 2007-Ohio-1750.

{¶ 8} Crim.R. 11(C) sets forth the requisite notice to be given to a defendant at a plea hearing on a felony. The trial court must determine that the defendant's plea was made with an "understanding of the nature of the charges and the

maximum penalty involved.” Crim.R. 11(C)(2)(a). In order for a plea to be given knowingly and voluntarily, the trial court must follow the mandates of Crim.R. 11; advise the defendant of his constitutional right to trial by jury, the right of confrontation, and the privilege against self-incrimination; and ascertain that the defendant understands those rights and the consequences of a guilty plea.

{¶ 9} In reviewing the colloquy between the trial court and Ulery, we find that the court substantially complied with the requirements set forth in Crim.R. 11(C), and that Ulery's guilty plea was made in a knowing and voluntary fashion. An examination of the record of the plea hearing in the instant case establishes that the trial court fully complied with the requirements of Crim.R. 11(C)(2) before accepting the guilty plea. Thus, there is no arguable merit to the claim that Ulery did not knowingly, intelligently, and voluntarily enter his plea. There is nothing in the record to support a claim of that kind.

{¶ 10} In order to reverse a conviction based on 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; *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.

{¶ 11} In this case, trial counsel filed numerous pre-trial motions and requests for jury instructions. The record demonstrates that counsel was proceeding with a trial strategy utilizing the defense of entrapment. To that end, trial counsel had engaged the services of a psychologist to testify that Ulery was susceptible to suggestion. Furthermore, pursuant to the plea agreement reached by counsel, Ulery was sentenced to just four years in prison, as compared to a possible ten-year sentence. This record, manifestly does not support a claim that defense counsel's performance was deficient.

{¶ 12} In accordance with *Anders v. California*, supra, we have conducted our own, independent review of the record. From that review, we are satisfied that Ulery was properly convicted and sentenced and that he has received appropriate appellate representation. Accordingly, the judgment of the trial court is Affirmed.

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GRADY and FROELICH, JJ., concur.

Copies mailed to:

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Hon. Thomas C. Nurre