

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-170163
	:	TRIAL NO. B-1506002
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
MATTHEW HAYDEN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Matthew Hayden appeals from the judgment of the Hamilton County Court of Common Pleas convicting him, after his pleas of guilty, to two counts of aggravated murder, in violation of R.C. 2903.01(A), and one count of attempted aggravated murder, in violation of R.C. 2923.02(A), all with firearm specifications.

At about 3 a.m. on October 21, 2015, two of Hayden’s sisters were sitting in a van in the driveway of their family home with a friend, Joshua Hacker. Hayden approached the van and began purposely firing a 9 millimeter Beretta handgun at its occupants, killing his sisters and causing Hacker serious physical harm. Hayden was arrested on the scene and indicted a few weeks later. Although he was initially found incompetent to stand trial, Hayden was found to be competent six months later after treatment. On July 5, 2016, he was again found competent.

Hayden, represented by counsel, offered guilty pleas on February 22, 2017. After a thorough plea colloquy, the trial court accepted the pleas, continued the case for sentencing, and ordered a presentence-investigation report, victim-impact statements, and a court clinic report on the advisability of treatment. About two months later, the trial court sentenced Hayden to two life sentences with the possibility of parole after 25 years on the aggravated-murder convictions, and three years for each accompanying firearm specification, to be served consecutively to each other but concurrently with a fourteen-year sentence for the attempted-aggravated-murder conviction and its accompanying firearm specification.

In his first assignment of error, Hayden argues that the trial court erred by accepting his guilty pleas because they were not made knowingly, intelligently and voluntarily. He challenges the voluntariness of his pleas based on his “severe * * * mental illness,” as documented in the “[p]sychological [e]valuations” entered into the record as sealed exhibits, and his representations to appellate counsel in a letter outside the record.

To the extent that Hayden’s claim requires proof that exists outside the trial court’s record, we cannot consider it. *See State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus. After reviewing the record, including the psychological evaluations,¹ we concur with the trial court that Hayden knowingly, intelligently, and voluntarily entered his guilty pleas, and therefore, they are valid. *See State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996), cited in *State v. Kinney*, 1st Dist. Hamilton No. C-160415, 2018-Ohio-404, at ¶ 18. Accordingly, we overrule the first assignment of error.

¹ The record the clerk certified to this court contains only two court clinic reports, one dated November 16, 2015, containing the opinion that Hayden was incompetent to stand trial, and one dated June 30, 2016, containing the opinion that Hayden, who had been restored to competency about a month earlier, remained competent to stand trial.

In his second assignment of error, Hayden argues that he was denied the effective assistance of counsel. To prevail on his claim, Hayden must show “ ‘that counsel’s performance was deficient,’ ” *State v. Xie*, 62 Ohio St.3d 521, 524, 584 N.E.2d 715 (1992), quoting *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and “ ‘that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty.’ ” *Xie* at 524, quoting *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Hayden’s assertion that counsel’s representation fell below the constitutionally required level of representation is based entirely upon evidence outside the record. Further, Hayden has failed to even allege the requisite prejudice to prevail on his claim. For these reasons, we overrule his second assignment of error.

In his third assignment of error, Hayden challenges his sentences under R.C. 2953.08(G)(2). This court may modify or vacate a felony sentence under R.C. 2953.08(G)(2) only if we clearly and convincingly find that either (1) the record does not support the mandatory sentencing findings, or (2) the sentence is otherwise contrary to law. *State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.).

First, Hayden contends that the trial court erred “by imposing a sentence that [wa]s not supported by the findings in the record.” Hayden fails to identify, however, what “findings” rendered his sentence inappropriate.

Next, Hayden argues that the trial court failed to consider as required by R.C. 2929.12(C)(4) the substantial grounds that mitigated his conduct, namely his severe and previously undiagnosed mental illness. But before imposing sentence, the court acknowledged that the crimes were the “product of [] [Hayden’s] mental illness.” The court concluded, however, based on the nature of Hayden’s “unexplainable” and “seemingly * * * unprovoked” murder of his two sisters, and the attempted murder of his

friend, that Hayden posed a threat to society and that severe sentences were necessary to protect the public. Ultimately, nothing in the record indicates that the trial court failed to consider the statutory-sentencing factors, including those set forth in R.C. 2929.12(C)(4). Because Hayden has failed to demonstrate that the trial court erred in sentencing him, *see White* at ¶ 11, we overrule the third assignment of error.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on July 11, 2018
per order of the court _____.
Presiding Judge