

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

STATE OF OHIO,	:	APPEAL NOS. C-150517
		C-150518
Plaintiff-Appellee,	:	TRIAL NOS. B-1501870
		B-1500078
vs.	:	
		<i>JUDGMENT ENTRY.</i>
QUINTEN WHITEHEAD,	:	
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

These are appeals from convictions for felonious assault and carrying a concealed weapon. Quinten Whitehead argues that the aggregate sentence imposed by the trial court was contrary to law because it exceeded the sentence to which he and the state had agreed. He also claims that his counsel was ineffective, and that the court erred when it ordered him to pay his public defender attorney fees. We affirm.

In January 2015, Mr. Whitehead was indicted for carrying a concealed weapon and improperly handling a firearm in a motor vehicle. While out on bond on those charges, he picked up two felonious-assault charges. The state offered him a plea deal of five years, which Whitehead turned down. After he turned down the deal, the court explained the time he faced for the charges against him. Mr. Whitehead eventually accepted the deal and pled guilty to two counts of felonious assault and carrying a concealed weapon. As part of the pleas, he and the state agreed that he would receive five-year sentences for the felonious assaults, which

would be served concurrently with each other and with an 18-month sentence for carrying a concealed weapon. The court accepted the pleas and then held a sentencing hearing. At the conclusion of the hearing, the court imposed concurrent seven-year terms for the felonious assaults and ordered them to be served concurrently with an 18-month term for carrying a concealed weapon.

In his first assignment of error, Mr. Whitehead asserts that the sentences imposed by the trial court were contrary to law. We disagree. The sentences were within the applicable range for the second-degree felonious assaults and fourth-degree carrying a concealed weapon. *See* R.C. 2929.14(A). And although the court did not place on the record its consideration of the purposes and principles of sentencing as guided by R.C. 2929.11 and 2929.12, we may presume that the court considered the proper sentencing factors absent a demonstration to the contrary. *See State v. Love*, 194 Ohio App.3d 16, 2011-Ohio- 2224, 954 N.E.2d 202, ¶ 14 (1st Dist.).

Nonetheless, Mr. Whitehead maintains the sentences were contrary to law because the trial court participated in plea negotiations and because the trial court did not impose to the agreed-upon sentences. “A trial judge's participation in the plea bargaining process will be carefully scrutinized to determine if it affected the voluntariness of the defendant's plea.” *State v. Byrd*, 63 Ohio St.2d 288, 407 N.E.2d 1384 (1980), syllabus. Mr. Whitehead, however, has not challenged the voluntariness of his pleas. Rather, he argues that because the court got involved, it should have imposed the agreed-upon sentences. But as Whitehead concedes, the court had no duty to impose the agreed sentences, and the court so informed Whitehead before accepting his pleas. The first assignment of error is overruled.

Whitehead’s second assignment of error is that he was denied the effective assistance of counsel because absent counsel’s errors, he would have accepted the first plea offer from the state that included a “guaranteed” five-year sentence. Mr. Whitehead has not demonstrated that his counsel’s performance fell below an objective standard of reasonableness or that the result of the proceedings would have

been different. As a result of defense counsel's negotiations, Mr. Whitehead got exactly what he now says he wanted—a plea deal with an agreed sentence of five years. There is no reason to think that had Whitehead accepted the plea earlier, the court would have adhered to the five-year sentence. The second assignment of error is overruled.

Whitehead's final assignment of error is that the court abused its discretion when it ordered him to pay his public defender's fees. He argues that the record does not support imposition of the fees because the trial court never determined whether he "[had], or reasonably may be expected to have, the means to meet some part of the cost of the services[.]" *See* R.C. 2941.51(D).

When announcing Whitehead's sentence, the court ordered that he pay court costs, attorney fees and a \$1,000 fine. Defense counsel asked the court to reconsider the fine, explaining that his client was indigent. In response, the court inquired into Whitehead's ability to pay. Mr. Whitehead told the court he could pay the \$1,000 fine. At no point did counsel make a specific objection to the attorney fees. Absent an objection, we conclude that the court did not commit plain error when it ordered Whitehead to pay the fees. *See* Crim.R. 52(B). The third assignment of error is overruled.

Therefore, we affirm the trial court's judgments.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., HENDON and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on July 6, 2016
per order of the court _____.

Presiding Judge