

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

STATE OF OHIO,	:	APPEAL NO. C-160207
Plaintiff-Appellee,	:	TRIAL NO. B-1504617
vs.	:	<i>JUDGMENT ENTRY.</i>
LYESA ADJEI,	:	
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.

Defendant-appellant Lyesa Adjei entered a guilty plea to theft from an elderly person, a felony of the third degree. The trial court sentenced her to 18 months in prison. Adjei now appeals.

In her first assignment of error, Adjei argues that the trial court erred by accepting her guilty plea because it was not made knowingly, intelligently, and voluntarily. She contends that she thought she was pleading to a fourth-degree felony that carried a presumption of probation.

Before accepting a guilty plea, the trial court must address the defendant personally and, as relevant to this appeal, make sure that the defendant understands the consequences of the plea and the maximum penalty involved. *See* Crim.R. 11(C)(2)(a). Because this does not involve a constitutional right, the court need only

substantially comply with this requirement. *See State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 14. Substantial compliance exists where, under the totality of the circumstances, the defendant subjectively understood the implications of the plea. *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

The record demonstrates that Adjei understood the consequences of her guilty plea, including the maximum penalty of 36 months. The maximum penalty was set forth on the plea form that Adjei had signed. And, during the plea colloquy, Adjei affirmatively acknowledged that she was pleading to a felony of the third degree for which she could be sentenced to serve up to 36 months in prison. When asked whether she understood the nature of the charge and the possible penalties, she responded that she did. Because the record shows that Adjei understood the implications of her guilty plea, we find that the plea was entered knowingly, voluntarily, and intelligently. We overrule the first assignment of error.

In her second assignment of error, Adjei argues that she was deprived of the effective assistance of counsel because defense counsel failed to inform her of the consequences of her plea and failed to file a motion to withdraw her guilty plea. To establish ineffective assistance of counsel, the defendant must demonstrate that she was prejudiced by counsel's deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To show prejudice, Adjei must prove that, but for counsel's errors, she would not have pled guilty and would have insisted on going to trial. *See Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); *State v. Xie*, 62 Ohio St.3d 521, 584 N.E.2d 715 (1992).

We are unable to determine on appeal whether ineffective assistance of counsel occurred where the allegations of ineffectiveness are, as Adjei admits here, based on facts outside the record. *See State v. Cooperrider*, 4 Ohio St.3d 226, 228, 448 N.E.2d

452 (1983); *State v. Coleman*, 85 Ohio St.3d 129, 134, 707 N.E.2d 476 (1999). Therefore, we overrule the second assignment of error.

In her third assignment of error, Adjei argues that the trial court erred by imposing a sentence that is not supported by the findings in the record. Specifically, she contends that the court failed to adequately consider whether substantial grounds existed to mitigate her conduct.

This court may only modify or vacate a defendant's sentence if we find by clear and convincing evidence that the sentence is contrary to law or that the record does not support the sentence. *State v. Marcum*, Slip Opinion No. 2016-Ohio-1002, ¶ 23. In this case, the record demonstrates that the trial court considered Adjei's stated grounds for mitigation, as well as her prior criminal history. Absent an affirmative showing to the contrary, we presume the court properly considered the relevant factors set forth in R.C. 2929.11 and 2929.12. Because Adjei has not made any such demonstration, we cannot clearly and convincingly find that her sentence was contrary to law. We overrule the third assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute 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 MOCK, JJ.

To the clerk:

Enter upon the journal of the court on September 9, 2016
per order of the court _____.
Presiding Judge