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

STATE OF OHIO,	:	APPEAL NO. C-060543 TRIAL NO. B-0601932
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
SCOTT WHEAT,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Scott Wheat appeals his conviction for aggravated burglary. We conclude that his assignments of error do not have merit, and we therefore affirm the judgment of the trial court.

On March 2, 2006, Wheat displayed a gun while demanding painkillers from a pharmacist. Wheat was indicted for aggravated robbery and robbery. His trial attorney filed a motion for a court-clinic evaluation to determine whether Wheat was not guilty by reason of insanity ("NGRI evaluation"). Upon the request of his defense counsel, Wheat was brought before the trial court so that it could explain a plea agreement that was being offered by the state.

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

The court told Wheat, "I suggested to your counsel that I would be willing to sign off on a total package of this, plus a community control violation, of four years. With that proposal here today and today only, do you understand that?" Wheat replied, "Yes, sir." The court continued, "Now, you have a right to request a clinic evaluation to determine whether you will be unsuccessful or successful on NGRI. My understanding is that—it appears to be, the state has suggested in the presence of your attorney, one, that a confession and two, a videotape showing you involved in the alleged conduct at Walgreen's. So what do you want to do today?" Wheat replied that he wanted to proceed with his NGRI evaluation.

Three days later, Wheat withdrew his request for an NGRI evaluation. Nearly a week after that, Wheat appeared again before the court. He told the court that he wanted to accept the plea agreement. The court engaged him in the Crim.R. 11(C) colloquy and accepted his plea of guilty to aggravated robbery. The trial court imposed a four-year sentence.

In his first assignment of error, Wheat now asserts that his plea was rendered involuntary by the trial court's involvement in the plea negotiations. The Ohio Supreme Court "strongly discourages" a judge's participation in the plea negotiation process.[2] "Such participation * * * due to the judge's position in the criminal justice system presents a great potential for coerced guilty pleas and can easily compromise the impartial position a trial judge should assume."[3] Here, while the trial court came very close to crossing the line to become an advocate of the plea agreement being offered, we conclude that its actions did not render Wheat's plea involuntary. The court did not indicate that it would impose a longer sentence if Wheat proceeded to

[2] *State v. Byrd* (1980), 63 Ohio St.2d 288, 293, 407 N.E.2d 1384.
[3] Id.

trial. And despite the court's warning that the offer was "here today and today only," it is clear from the record that Wheat was given the opportunity to reconsider his decision and to accept the plea agreement at a later date. During the Crim.R. 11(C) colloquy, the court ensured that no promises or threats had been made to get Wheat to plead guilty. We conclude that Wheat's plea was knowingly, intelligently, and voluntarily made. The first assignment of error is overruled.

Wheat's second assignment of error is that his sentence violated his due-process and equal-protection rights and that it amounted to cruel and unusual punishment. Wheat argues that because the trial court was biased against him, his sentence was unconstitutional. Having reviewed the record, we conclude that there was no indication of bias against Wheat on part of the trial court. And if the court was biased, Wheat's remedy was to file an affidavit of disqualification with the Ohio Supreme Court.[4] The second assignment of error is without merit.

In the final assignment of error, Wheat asserts that he was denied the effective assistance of counsel. To prevail on this assignment of error, Wheat must demonstrate that his counsel's performance was deficient and that, absent his counsel's errors, the result of the trial would have been different.[5] Our review of counsel's performance must be "highly deferential."[6]

Wheat claims that his counsel was ineffective because he did not file a motion to suppress statements that Wheat had made to police officers on the night of the robbery. But the record does not reveal that a motion to suppress would have been successful, so we are unable to conclude that counsel's performance was deficient.

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[4] R.C. 2701.03. See *State v. Earls*, 1st Dist. No. C-040531, 2006-Ohio-4029.
[5] See *State v. Bradley* (1989), 42 Ohio St.3d 136, 142, 538 N.E.2d 373; *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052.
[6] *Strickland*, supra, at 689.

Wheat also claims that his counsel was ineffective because he failed to object to the trial court's involvement in the plea negotiation process and to request that the court recuse itself. We have already determined that the trial court's involvement in the plea negotiations did not render Wheat's plea involuntary and that there was no indication of bias on the part of the trial court. Given these determinations, we are unable to conclude that the result of the proceedings would have been different had Wheat's trial counsel taken the actions that Wheat now cites. The third assignment of error is overruled.

We, therefore, affirm the judgment of the trial court.

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.

PAINTER, P.J., HILDEBRANDT and **SUNDERMANN, JJ.**

To the Clerk:

Enter upon the Journal of the Court on July 3, 2007
per order of the Court _____.
Presiding Judge