

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

STATE OF OHIO,	:	APPEAL NO. C-070778
	:	TRIAL NO. B-0700692
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ADAM MYERS,	:	
	:	
Defendant-Appellant.	:	

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

Defendant-appellant Adam Myers was indicted for two counts of murder, one count of felonious assault, and one count of endangering children. Myers pleaded guilty to one count of murder. Specifically, Myers pleaded guilty to causing the death of his three-month-old son as the proximate result of committing felonious assault. All other charges and a community-control-violation charge were dismissed. Myers was sentenced to 15 years' to life imprisonment.

Myers's first assignment of error alleges that the trial court erred in accepting his guilty plea because it was not knowing, intelligent, and voluntary. Myers argues that his plea was involuntary because the trial court erroneously informed him at the plea hearing and at sentencing that if he should be released from prison he would be subject to post-release control. The sentencing entry also stated that Myers was subject

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

to post-release control. The trial court's explanation of post-release control and the sentencing entry were incorrect. Myers is subject to parole, not to post-release control. Myers argues that, due to the trial court's misinformation, he did not understand the maximum sentence he faced.

The trial court informed Myers that he faced 15 years' to life imprisonment. Life imprisonment was the maximum sentence that Myers could have received. Myers was fully aware that he potentially faced life in prison. The trial court's erroneous reference to post-release control did not affect the maximum sentence or convey to Myers that he had a right to early release. Therefore, the trial court's statements about post-release control were not prejudicial.² Further, the trial court did not err in failing to inform Myers about parole because it did not affect the maximum sentence.³

The trial court substantially complied with the requirement in Crim.R. 11(C)(2)(a) that the court inform the offender of the maximum penalty he faces.⁴ The court complied with Crim.R. 11(C) in all other respects. We hold that Myers's plea was entered knowingly, intelligently, and voluntarily. The assignment of error is overruled.

Myers's second assignment of error alleges that he was denied the effective assistance of counsel. To prevail, Myers must show deficient performance by counsel and prejudice.⁵ To establish prejudice, Myers must show "that there was a reasonable probability that, but for the errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence

² See *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462; *State v. Baker*, 1st Dist. No. C-050791, 2006-Ohio-4902.

³ See *id.*

⁴ See *id.*

⁵ See *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, 817 N.E.2d 29, citing *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052.

in the outcome.”⁶ There is a strong presumption that counsel’s representation fell within the wide range of reasonable professional assistance.⁷

Myers admits that his claims of ineffective assistance are largely based upon communications outside the record and that they should be reviewed through the postconviction remedies of R.C. 2953.21.⁸ The record does not demonstrate deficient performance or prejudice to Myers. The second assignment of error is overruled.

The third assignment of error, alleging that the indictment was deficient because count one did not include a required mens rea for felony murder, is overruled. The felony-murder count of the indictment to which Myers pleaded guilty identified the predicate offense, felonious assault, by name. Count three of the indictment separately charged felonious assault and included the statute number and the mens rea element of knowingly. The indictment was not defective because Myers had notice of all the elements of the offense of felony murder.⁹

Therefore, the judgment of the trial court is affirmed. 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.

HILDEBRANDT, P.J., DINKELACKER and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on December 17, 2008

per order of the Court _____.
Presiding Judge

⁶ See *Strickland v. Washington*, supra.

⁷ See id.

⁸ See *State v. Coleman*, 85 Ohio St.3d 129, 1999-Ohio-258, 707 N.E.2d 476.

⁹ See *State v. Buehner*, 110 Ohio St.3d 403, 2006-Ohio-4707, 853 N.E.2d 1162; *State v. Salaam*, 1st Dist. Nos. C-070385 and C-070413, 2008-Ohio-4982; *State v. Dubose*, 1st Dist. No. C-070397, 2008-Ohio-4983.