

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

STATE OF OHIO,	:	APPEAL NO. C-100798
	:	TRIAL NO. B-1003939
Plaintiff-Appellee,	:	
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
JAMES ANTONIO CAPELL,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-appellant James Capell appeals from the 13-year aggregate prison term imposed by the trial court for domestic violence, a third-degree felony, and felonious assault. We overrule Capell's five assignments of error and affirm the judgment of the trial court.

In Capell's first assignment of error, he contends that the trial court erred in overruling his motion to appoint new counsel. Because Capell failed to demonstrate that good cause existed for new counsel, such as an irreconcilable conflict between Capell and his counsel, or a complete breakdown of communication, the trial court did not err in denying Capell's motion. *State v. Sheppard*, 1st Dist Nos. C-060042 and C-060066, 2007-Ohio-24, ¶15. Consequently, we overrule Capell's first assignment of error.

In his second assignment of error, Capell argues that he was denied the effective assistance of counsel. In light of the evidence against Capell, he has failed to show that counsel's alleged deficient performance caused him prejudice. *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052. We overrule Capell's second assignment of error.

In Capell's third assignment of error, he argues that the trial court erred by failing to properly instruct the jury with regard to Capell's prior convictions. Capell acknowledges that he failed to object to this error below, and we determine that any error by the trial court did not amount to plain error. *State v. Coley*, 93 Ohio St.3d 253, 265, 2001-Ohio-1340, 754 N.E.2d 1129. We overrule Capell's third assignment of error.

We overrule Capell's fourth assignment of error alleging that the evidence was insufficient to sustain his convictions, or, alternatively, that his convictions were against the manifest weight of the evidence, on the authority of *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, and *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

In his fifth assignment of error, Capell argues that the trial court erred in imposing his sentence by failing to consider the principles and purposes of sentencing. We reject this argument pursuant to *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. Capell further argues that the trial court erred by failing to merge his domestic-violence and felonious-assault offenses as allied offenses of similar import under R.C. 2941.25. Because the offenses were committed separately and with a separate animus, Capell was properly convicted of each offense. *State v. Lanier*, 192 Ohio App.3d 762, 2011-Ohio-898, 950 N.E.2d 600, ¶123. We overrule Capell's fifth assignment of error.

**OHIO FIRST DISTRICT COURT OF APPEALS**

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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.

**SUNDERMANN, P.J., CUNNINGHAM and FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on October 26, 2011  
per order of the Court \_\_\_\_\_.  
Presiding Judge