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

STATE OF OHIO,	:	APPEAL NOS. C-130165 C-130176 C-130177
Plaintiff-Appellee,	:	
vs.	:	TRIAL NO. B-1107036-B
ROMANDO SIMS,	:	*JUDGMENT ENTRY.*
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.

Following a jury trial, defendant-appellant Romando Sims was found guilty of trafficking in cocaine in the vicinity of a school, possession of heroin, and having a weapon while under a disability. The trial court sentenced Sims to consecutive terms of imprisonment, totaling seven years. This appeal followed.

Ineffective Assistance of Counsel

In Sims's first assignment of error, he alleges ineffective assistance of counsel. To prevail on an ineffective-assistance-of-counsel claim, Sims must demonstrate that counsel's performance fell below an objective standard of reasonableness and that, absent counsel's deficient performance, there exists a reasonable probability that the outcome of Sims's trial would have been otherwise. *See State v. Bradly*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraphs two and three of the syllabus.

Specifically, Sims claims that counsel was ineffective (1) for failing to file a motion to suppress; (2) for failing to take a more active role in voir dire; (3) for failing to object to certain testimony and to parts of the prosecutor's closing argument; (4) for making a Crim.R. 29 motion without argument; (5) for asking questions that led to prejudicial answers; and (6) for engaging in a prejudicial closing argument. None of these claims has merit.

Sims's defense at trial was that he did not live in an apartment ("apartment 3") where police had discovered drugs, a gun, and other contraband. Under this theory, Sims would not have had standing to contest the search of apartment 3. And aside from the standing issue, there is no indication in the record that there were grounds that would have supported suppression of the evidence at issue. Therefore, counsel's decision not to file a motion to suppress was a reasonable one. *See State v. Miller*, 1st Dist. Hamilton No. C-010543, 2002-Ohio-3296, ¶ 20.

As to Sims's second, third, fourth and fifth claims, upon a review of the record, we find that counsel's decisions fall within the realm of reasonable representation and can fairly be attributed to trial tactics. *See State v. Johnson*, 1st Dist. Hamilton No. C-120250, 2013-Ohio-2719, ¶ 17 (ineffective assistance of counsel cannot be based on debatable tactical decisions).

Finally, Sims's contention that his attorney's closing argument contained concessions has no merit. Defense counsel did state that Sims may have stayed in apartment 3 "a night or two" while he visited family members who lived there, and stated that "maybe" some of the cocaine in apartment 3 belonged to Sims. But counsel's statements were part of a larger argument that the state was unable to prove beyond a reasonable doubt that Sims had lived in apartment 3 or that the

drugs found in the apartment were his. Counsel conceded nothing. This argument has no merit.

Sims's first assignment of error is overruled.

Prosecutorial Misconduct

In Sims's second assignment of error, he asserts prosecutorial misconduct. To prevail on this claim, Sims must demonstrate that the prosecutor's actions were improper and prejudicial. *State v. Smith*, 14 Ohio St.3d 13, 470 N.E.2d 883 (1984).

Sims claims that the prosecutor improperly argued during closing that (1) the gun discovered in apartment 3 was there to protect "the product" in the apartment, and (2) the drugs in apartment 3 were not for personal use. Because Sims did not object to these statements, we use a plain error standard of review. *See* Crim.R. 52(B); *State v. Ushry*, 1st Dist. Hamilton No. C-050740, 2006-Ohio-6287, ¶ 47.

The state is afforded wide latitude during closing argument regarding the inferences that may be drawn from the evidence presented at trial. *State v. Lott*, 51 Ohio St.3d 160, 165, 555 N.E.2d 293 (1990). In this case, police discovered drugs and a gun in apartment 3. A reasonable inference was that the gun was present to protect the illegal activity in the apartment. As to Sims's second allegation, police testified that they found multiple baggies of cocaine, a scale, and pots and pans covered in cocaine residue in apartment 3. One officer testified that this evidence was consistent with drug-trafficking activity. Consequently, the prosecutor was justified in arguing that the drugs discovered in apartment 3 were being prepared for sale, and were not for personal use. This assignment of error is overruled.

Weight and Sufficiency of the Evidence

In Sims's third assignment of error, he argues that his convictions were against the weight and the sufficiency of the evidence. They were not. Clothing that appeared to be Sims's, a pay stub with Sims's name on it, pictures of Sims and his girlfriend, along with sonogram pictures of Sims's unborn child, were among items that police found in one of the apartment's bedrooms. In the same bedroom, police found heroin hidden in a shoe. Further, the state presented testimony that cocaine was being made into crack in the apartment's kitchen, and that the apartment contained baggies of cocaine prepared in a manner consistent with drug sales. Sims stipulated that the apartment was within the vicinity of a school. Finally, the state presented evidence that a gun was recovered from underneath a living room chair in apartment 3. And Sims stipulated that he had had a prior felony conviction. Viewing this evidence in a light most favorable to the state, we hold that there was sufficient evidence to sustain Sims's convictions for trafficking in cocaine in the vicinity of a school, possession of heroin, and having a weapon while under a disability, in violation of R.C. 2925.03(A), 2925.11(A), and 2923.13(A)(2), respectively. *See State v. Jenks,* 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

And while Sims attempted to present a version of events that would have exonerated him, there is no indication that the jury lost its way in choosing to believe the state's evidence, instead. *See State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). Sims's convictions, therefore, are not against the manifest weight of the evidence. Sims's third assignment of error is overruled.

Sentencing

In his fourth assignment of error, Sims argues that the trial court erred by failing to make the statutorily required findings before imposing sentence, by failing to inform Sims that he could be eligible for earned days of prison-time credit, and by failing to properly inform Sims of postrelease control. We sustain this assignment of error in part.

We find no error as to the length of Sims's individual prison terms or the imposition of consecutive sentences. The trial court made the requisite findings before imposing sentence, and Sims's sentences are within the ranges provided by law. *See State v. Alexander,* 1st Dist. Hamilton Nos. C-110828 and C-110829, 2012-Ohio-3349.

Sims's argument concerning earned days of prison-time credit also has no merit. The code section cited by Sims in support of this argument, former R.C. 2929.13(D)(3), was repealed before Sims was sentenced. The trial court was therefore not required to inform Sims of the possibility of earned days of prison-time credit. *See State v. Graham*, 1st Dist. Hamilton No. C-130375, 2014-Ohio-1024, ¶ 9.

The trial court did, however, fail to properly inform Sims of postrelease control. "The postrelease-control statutes require that, with respect to each offense, the sentencing court notify the offender, both at the sentencing hearing and in the judgment of conviction, of the length and mandatory or discretionary nature of postrelease control, of the consequences of violating postrelease control, and of the length of confinement that could be imposed for a postrelease-control violation." *State v. Kennedy*, 1st Dist. Hamilton No. C-120337, 2013-Ohio-4221, ¶ 119. Here, the trial court failed to inform Sims of the proper length of postrelease control, and of the length of confinement that could be imposed for a postrelease-control

violation. Consequently, the portion of Sims's sentence relating to postrelease control is void. *See State v. Williams*, 1st Dist. Hamilton No. C-081148, 2010-Ohio-1879, ¶ 20.

We sustain Sims's fourth assignment of error in part and overrule it in part. We remand this cause to the trial court to apply the procedures outlined in R.C. 2929.191 to correct the postrelease-control-related sentencing errors. In all other respects, the trial court's judgment is affirmed.

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.

HENDON, P.J., DINKELACKER and **DEWINE, JJ.**

To the clerk:

Enter upon the journal of the court on April 23, 2014

per order of the court _____.
Presiding Judge