

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

STATE OF OHIO,	:	APPEAL NO. C-130470
	:	TRIAL NO. B-1208254
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ELIAS TSIBOURIS,	:	
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. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In two assignments of error, defendant-appellant Elias Tsibouris claims that the trial court erred when it accepted his guilty plea to one count of gross sexual imposition. We affirm.

In his first assignment of error, Tsibouris alleges that the trial court abused its discretion when it accepted his guilty plea. Tsibouris argues that the plea was defective because he, in a statement made as part of the presentence investigation, claimed that he was only pleading guilty in order to avoid prison, and that otherwise he “would have continued with the not guilty plea and continued to fight my case.” But when asked if he had anything to say at sentencing, he said “[n]o, thank you. I will go ahead and take the probation and the outpatient treatment.” Counsel related to the court that he had discussed the statement with Tsibouris, and had offered to file a motion to withdraw the plea on his behalf. But Tsibouris told his counsel that he did not want to withdraw his plea, and that he wanted to proceed with sentencing.

It is well settled that the trial court enjoys wide discretion in deciding whether to accept or reject a negotiated plea agreement. *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). The term “abuse of discretion”

connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Body Power, Inc. v. Mansour*, 1st Dist. Hamilton No. C-130479, 2014-Ohio-1264, ¶ 28, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 291, 450 N.E.2d 1140 (1983). On this record, we cannot conclude that the trial court abused its discretion. We overrule Tsibouris's first assignment of error.

In his second assignment of error, Tsibouris claims that counsel was ineffective for allowing him to plead guilty. To sustain a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient, and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In this case, counsel negotiated a plea agreement with the state that included an agreement that Tsibouris would not serve a prison term, and secured the dismissal of one of two charges. In addition, counsel discussed Tsibouris's statement with him, and offered to file a motion to withdraw the plea on his behalf. Tsibouris instructed him not to do so. On appeal, counsel indicates that Tsibouris's plea was motivated by a misunderstanding of the appellate process. While his statement in the presentence report seems to indicate that he may have had an overly optimistic understanding of his chances of successfully appealing his conviction, there is nothing in the record to indicate that his counsel did not correct this possible misunderstanding before the sentencing hearing. Faced with a client who had told him he wished to proceed with sentencing so that he could have the result he bargained for, we cannot say that counsel was ineffective for seeking that result. We overrule Tsibouris's second assignment of error, and affirm the judgment of the trial court.

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A certified copy of this judgment entry is the mandate, which 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 June 13, 2014

per order of the court _____.

Presiding Judge

