

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

STATE OF OHIO,	:	APPEAL NO. C-160851
Plaintiff-Appellee,	:	TRIAL NO. B-1400727-B
vs.	:	<i>JUDGMENT ENTRY.</i>
ZARON WOODS	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Zaron Woods was indicted for aggravated murder, murder, and aggravated robbery in connection with the robbery and shooting death of Curtis Hill. Woods agreed to plead guilty to a reduced charge of voluntary manslaughter, and to aggravated robbery, each with an accompanying firearm specification. In return, the state agreed to dismiss the murder charge. Woods filed an entry with the court reflecting this plea deal and indicating his intent to plead guilty. No recommended sentence was set forth on the plea form.

The trial court conducted a plea hearing. Woods admitted to the following facts: Woods arranged to meet Hill in connection with a disputed drug transaction. When Woods arrived at the meeting, he demanded property from Hill saying, “Give me your shit.” Hill complied. After the robbery was complete, Woods shot Hill approximately 13 times, killing him. At the plea hearing Woods also stipulated that he had committed each offense with a separate animus. The state, Woods’s counsel,

and Woods all told the court that they were recommending or agreeing to a 20-year term of incarceration.

After accepting Woods's pleas, the trial court immediately proceeded to sentencing. Woods addressed the court, and indicated that he was somewhat unprepared to speak, but that he was sorry for his actions. The trial court sentenced Woods to nine years for voluntary manslaughter, and eight years for aggravated robbery, to be served consecutively. It merged the firearm specifications, and sentenced Woods to three years on the single specification, for an aggregate term of 20 years of incarceration. This appeal followed.

In his first assignment of error, Woods argues that the record does not support the sentence imposed. He first contends that the length of his sentence is excessive and is contrary to law. We are without jurisdiction to review these issues.

An appellate court lacks the authority to review a jointly-recommended sentence that is authorized by law and that is imposed by a sentencing judge. R.C. 2953.08(D)(1); *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 16. Woods contends that his sentence was not jointly recommended because the entry reflecting his guilty plea did not indicate as much. Woods asserts that counsel merely advocated—but did not recommend—imposing a specific sentence. The record indicates otherwise.

Woods's counsel stated that he wanted to "tender a plea of guilty pursuant to the agreement presented to the court," and that counsel believed "it is the intention of the parties to recommend a sentence of 20 years." Woods stated that this was his understanding of the plea. So did the state. His counsel later said, "We have fashioned a plea agreement with a recommended sentence that we believe is a fair sentence, and we would ask the court to consider imposing that sentence at this time." His second attorney then said, "Your Honor, I concur. I think it's a fair result, the 20-year sentence recommendation. * * * We would ask the Court to impose the

agreed sentence recommendation.” Accordingly, the sentence was jointly recommended. And it is not disputed that the sentence is authorized by law or that the trial court imposed it. We therefore do not have the authority to review the length of Woods’s sentence.

Woods next argues that the trial court erred because it failed to comply with the consecutive-sentencing requirements in R.C. 2929.14(C). Since this case involved a jointly-recommended sentence that included nonmandatory consecutive sentences, we lack the authority to review this issue. *See State v. Sergent*, 148 Ohio St.3d 94, 2016-Ohio-2696, 69 N.E.3d 627, ¶ 43.

Finally, Woods contends that the trial court erred in sentencing him to consecutive terms because the counts should have been merged as allied offenses of similar import. We note that R.C. 2953.08(D)(1) does not bar review of a jointly-recommended sentence that includes multiple convictions that are allied offenses of similar import. *Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, at ¶ 33. But Woods stipulated that each offenses was committed with a separate animus. As a result, he has waived appellate review of this issue. *See State v. Williams*, 1st Dist. Hamilton No. C-150320, 2016-Ohio-376, ¶ 5-11. Woods’s first assignment of error is overruled.

In his second assignment of error, Woods argues that counsel was ineffective because he stipulated that each crime was committed with a separate animus and therefore that the crimes were not allied offenses of similar import, and because counsel failed to ask for a continuance of the sentencing hearing. To succeed on his ineffective-assistance claim, Woods must establish that his trial counsel was deficient, and that, but for his counsel’s errors, the result of the proceedings would have been different. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *see also State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraphs two and three of the syllabus.

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Woods admitted that he had completed robbing Hill before shooting and killing him. These offenses, therefore, were not allied offenses of similar import. *See State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, paragraph three of the syllabus. Accordingly, counsel’s stipulation was not “deficient.”

Next, Woods asserts that trial counsel was ineffective for failing to request a continuance of the sentencing hearing when Woods indicated he was unprepared to speak on his own behalf. While Woods did state that he was “kind of unprepared,” he apologized to the family and to the state, and added that, “That was the important things I wanted to say.” Even if counsel’s performance was deficient for failing to request a continuance, Woods has not demonstrated prejudice. There is no indication that Woods would have received a lesser sentence had he spoken at length to the court, especially in light of the fact that Woods had proposed and agreed to a 20-year term. We overrule Woods’s second assignment of error.

The judgment of the trial court is affirmed.

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.

MOCK, P.J., MILLER and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on October 4, 2017

per order of the court _____.

Presiding Judge