

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 14AP-631 (C.P.C. No. 13CR-717)
Damien A. Reeves,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on June 2, 2015

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*Ron O'Brien*, Prosecuting Attorney, and *Sheryl L. Prichard*,  
for appellee.

*Damien E. Reeves*, pro se.

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APPEAL from the Franklin County Court of Common Pleas

BRUNNER, J.

{¶ 1} Defendant-appellant, Damien A. Reeves, appeals a decision of the Franklin County Court of Common Pleas denying his post-sentencing motion to withdraw his guilty plea. We affirm the trial court's decision denying his motion.

**I. FACTS AND PROCEDURAL HISTORY**

{¶ 2} On February 11, 2013, a Franklin County Grand Jury indicted Reeves for three counts of burglary concerning three separate occupied buildings during an approximately one-week period in May 2012. On April 30, 2013, Reeves pled guilty to all three counts, pursuant to a plea agreement, with an agreed sentence of three years on each count, all to run consecutively to the others for a total of nine years. Reeves, his attorney, and the prosecutor all signed the plea entry. On the same day, the trial court sentenced Reeves consistent with the parties' plea agreement. The court's sentencing entry was filed on May 3, 2013.

{¶ 3} More than one year later, on May 15, 2014, Reeves filed a pro se motion to withdraw his guilty plea, alleging that his trial counsel was ineffective for failing to explore the evidence against him prior to the plea and for overlooking alleged problems with how DNA evidence was collected. The state responded. On July 23, 2014, the trial court denied Reeves' motion. Reeves now appeals.

## **II. ASSIGNMENTS OF ERROR**

{¶ 4} Reeves asserts three assignments of error for our review:

[I.] WHEN A TRIAL COURT DOES NOT ADEQUATELY DETERMINE WHETHER A DEFENDANT ENTERING A PLEA OF GUILTY IS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY ENTERED A PLEA OF GUILTY.

[II.] THE APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHEN COUNSEL FAILS TO RAISE A OBVIOUS AND MERITORIOUS PROCEDURE.

[III.] THE APPELLANT'S CASE SHOULD BE REVERSED BECAUSE THE MANIFEST WEIGHT OF THE EVIDENCE WAS NOT THERE.

(Sic passim.)

## **III. DISCUSSION**

### **A. First Assignment of Error – Whether Reeves Knowingly, Intelligently, and Voluntarily Entered a Guilty Plea**

{¶ 5} After setting forth the requirements of Crim.R. 11 and the manifest injustice standard for withdrawing a guilty plea pursuant to Crim.R. 32.1, Reeves sets forth the factual content of his first assignment of error:

[Reeves'] Trial Attorney had stated that [Reeves] had no other avenue but to plead guilty, so at the time [Reeves] put all his trust into his Trial Attorney and plead [sic] guilty and put his faith into the hands of the Court.

(Appellant's Brief, at 1-2.) Sufficient coercion by a criminal defendant's attorney to cause the defendant to enter a plea of guilty has been found to render the plea involuntary (and also to amount to ineffective assistance). *See, e.g., State v. Wilson*, 8th Dist. No. 72740 (May 14, 1998). However, the above-quoted statement by Reeves is literally the complete description of Reeves' factual recitation in support of his argument that his plea was not

knowingly, intelligently, and voluntarily made. Without more detail or supporting records, we are unable to sustain Reeves' first assignment of error, and we accordingly overrule it.

**B. Second Assignment of Error – Whether Reeves was Denied Effective Assistance of Trial Counsel**

{¶ 6} Ineffective assistance of counsel claims are assessed using the two-pronged approach set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). "First, the defendant must show that counsel's performance was deficient. \* \* \* Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* at 687; *see also State v. Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751, ¶ 223. After setting forth the law of *Strickland* and progeny, Reeves explains the basis of his argument:

[Reeves'] trial Attorney was ineffective to the point that if he would of [sic] researched the case to the best of his ability he would of [sic] seen that the D.N.A., that was taken from [Reeves] was not taken in the manner that is set down by law. [Reeves] states that his Trial Attorney should of [sic] filed a Motion to suppress the D.N.A..

(Appellant's Brief, 4-5.)

{¶ 7} There is nothing in the record to support the contention that the collection of Reeves' D.N.A. was by improper or unconstitutional procedure. Our review of the record shows that Reeves signed a waiver of his rights before giving his D.N.A. sample. Absent any other information we cannot hold that Reeves' counsel did or failed to do anything to his prejudice that would amount to ineffective assistance. Moreover, it is not deficient or ineffective assistance for counsel to fail to raise weak or meritless claims. *See, e.g., Jones v. Barnes*, 463 U.S. 745, 751-52 (1983).

{¶ 8} Reeves' second assignment of error is overruled.

**C. Third Assignment of Error – Whether Appellant's Case Should be Reversed as Against the Manifest Weight of the Evidence**

{¶ 9} Reeves argues that the chain of custody for D.N.A. collected in connection with the case was tainted. In a manifest-weight claim a court " 'review[s] the entire record, weighs the evidence and all reasonable inferences, [and] considers the credibility of witnesses,' " and the relevant "question is 'whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice

that the conviction must be reversed.' " *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶ 39, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983), citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). This case did not involve a trial, but, rather, a voluntary guilty plea. Thus, no jury or any other fact-finder weighed or considered the evidence against Reeves to convict him. Reeves' guilty plea was "a complete admission of [his] guilt." Crim.R. 11(B)(1). An analysis according to manifest weight is inapposite in Reeves' situation. *See, e.g., State v. Miller*, 9th Dist. No. CA99CA007334 (July 19, 2000) ("[Defendant's] contention that his conviction should be reversed because it is against the manifest weight of the evidence is meritless—there is no evidence to be weighed when a defendant pleads guilty.").

{¶ 10} Reeves' third assignment of error is overruled.

#### **IV. CONCLUSION**

{¶ 11} We overrule Reeves' three assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN, P.J., & KLATT, J., concur.

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