

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 15AP-735 (C.P.C. No. 10CR09-5615)
Somnath Ganguly,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on December 24, 2015

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*Ron O'Brien*, Prosecuting Attorney, and *Michael P. Walton*,  
for appellee.

*Somnath Ganguly*, pro se.

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APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, Somnath Ganguly, appeals from a judgment of the Franklin County Court of Common Pleas denying his petition for postconviction relief. For the following reasons, we affirm that judgment.

**I. Factual and Procedural Background**

{¶ 2} In 2010, a Franklin County Grand Jury indicted appellant for multiple counts of theft and forgery as well as one count of tampering with evidence. He initially entered a not guilty plea to the charges, but subsequently withdrew that plea and pled guilty to two counts of forgery and one count of tampering with records. The trial court accepted the guilty plea, found him guilty, and sentenced him accordingly. This court affirmed appellant's convictions and sentence. *State v. Ganguly*, 10th Dist. No. 14AP-383, 2015-Ohio-845. Appellant's convictions arose from his work as a property manager

for RIBA Properties. While there, among other criminal conduct, he stole money from RIBA Properties by writing checks to third-parties and then forging the third-parties' name on the back of the check to endorse the check over to his own company. *Id.* at ¶ 3.

{¶ 3} While his direct appeal was pending before this court, appellant filed a petition to vacate and set aside sentence in which he claimed that he received ineffective assistance of trial counsel. Specifically, appellant argued that his trial counsel failed to interview Josh Williams, the alleged victim of one of his forgery convictions (hereinafter referred to as "Count Five").<sup>1</sup> In his petition, appellant attached an affidavit from Williams in which he (Williams) swore that appellant did not defraud him and that he had been paid in full by RIBA Properties for his work. Appellant argued that the allegations in Williams' affidavit would defeat the state's claim that he defrauded Williams and that, had he known of such allegations, he would not have pled guilty to Count Five.

{¶ 4} The trial court, construing the motion as a petition for postconviction relief pursuant to R.C. 2953.21, concluded that appellant failed to substantiate his claim of ineffective assistance of counsel. The trial court noted that the victim of Count Five was RIBA Properties, not Williams, because appellant forged Williams' name on a check written from the account of RIBA Properties and deposited that check into an account that appellant controlled. The fact that Williams was ultimately paid for his work by RIBA Properties is not relevant to the forgery alleged in Count Five. Accordingly, the trial court found appellant's allegations that his trial counsel was ineffective for not interviewing Williams to be irrelevant.

## **II. The Appeal**

{¶ 5} Appellant appeals and assigns the following error:

The trial court erred in denying the relief for the motion for the Post Conviction Petition for the claim of Ineffective Assistance of Counsel under the Sixth and Fourteenth Amendments of the U.S. Constitution.

### **A. Standard of Review**

A trial court's decision granting or denying a postconviction petition filed pursuant to R.C. 2953.21 should be upheld absent an abuse of discretion. *State v. Gondor*, 112 Ohio St.3d

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<sup>1</sup> Count Five, in pertinent part, provided that appellant: "with purpose to defraud or knowing that he was facilitating a fraud, did utter, or possess to utter, a writing, to wit: on check number 1199 the checking account of RIBA Properties made payable to Josh Williams \* \* \* which he knew to have been forged."

377, 2006-Ohio-6679, ¶ 58. Although an abuse of discretion is typically defined as an unreasonable, arbitrary, or unconscionable decision, no court has the authority, within its discretion, to commit an error of law. *State v. Moncrief*, 10th Dist. No. 13AP-391, 2013-Ohio-4571, ¶ 7.

### **B. Ineffective Assistance of Counsel**

{¶ 6} Appellant claimed that he received ineffective assistance of counsel. To establish that claim, appellant must show that counsel's performance was deficient and that counsel's deficient performance prejudiced him. *State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, ¶ 133, citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The failure to make either showing defeats a claim of ineffective assistance of counsel. *State v. Bradley*, 42 Ohio St.3d 136, 143 (1989), quoting *Strickland* at 697. ("[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.").

{¶ 7} In order to show counsel's performance was deficient, appellant must prove that counsel's performance fell below an objective standard of reasonable representation. *Jackson* at ¶ 133. The appellant must overcome the strong presumption that defense counsel's conduct falls within a wide range of reasonable professional assistance. *Strickland* at 689. To show prejudice, the appellant must establish that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, ¶ 204.

{¶ 8} The trial court concluded that appellant failed to demonstrate both deficient conduct and any resulting prejudice. We agree.

{¶ 9} First, the record does not support appellant's allegation that his trial counsel did not interview Williams. Although he makes that allegation multiple times in his brief, appellant did not present evidence to demonstrate trial counsel did not interview Williams. Significantly, someone crossed out the portion of Williams' affidavit that stated he had not been contacted by an attorney representing appellant before the filing of this petition. This would tend to negate appellant's claim that Williams had not been contacted by an attorney. Second, any alleged deficient conduct in this regard could not

have prejudiced appellant because Williams was not the victim of Count Five. Although appellant forged Williams' signature on the check, the check was written from a RIBA Properties account and therefore, appellant defrauded RIBA Properties, not Williams. Thus, his claim that he did not defraud Williams is irrelevant to this case and Williams' testimony in that regard would not have assisted appellant.

{¶ 10} Because appellant failed to demonstrate a claim of ineffective assistance of counsel, the trial court did not abuse its discretion by denying appellant's petition. Accordingly, we overrule appellant's assignment of error.

### **III. Conclusion**

{¶ 11} Having overruled appellant's assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

DORRIAN and BRUNNER, JJ., concur.

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