

**THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	<b>OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2008-L-121</b>
TOM J. DAVIES,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Painesville Municipal Court, Case No. 08 TRC 02155.

Judgment: Affirmed.

*Ron M. Graham*, 6988 Spinach Drive, Mentor, OH 44060 (For Plaintiff-Appellee).

*Brian L. Summers*, 7327 Center Street, Mentor, OH 44060 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Tom J. Davies, appeals the Judgment Entry of the Painesville Municipal Court, in which the trial court found Davies guilty of Operating a Motor Vehicle Without a Valid License, in violation of R.C. 4510.12. For the following reasons, we affirm the decision of the trial court.

{¶2} On April 11, 2008, Davies was issued a traffic citation by the Lake County Sherriff's Department, charging him with Driving While Under the Influence, Driving While Under Suspension, and Operating a Motor Vehicle Without a Valid License.

{¶3} At his initial appearance in the Painesville Municipal Court, Davies pled not guilty to the charges. At the bench trial held July 1, 2008, the matter was resolved through a plea bargain. The court dismissed the counts of Driving While Under the Influence and Driving While Under Suspension and Davies pled guilty to Operating a Motor Vehicle Without a Valid License. He was sentenced to two days in jail, with credit for time served. Further, he was ordered to pay a fine and costs in the amount of \$450, which was suspended due to his indigent status.

{¶4} Davies subsequently appealed and raises the following assignment of error:

{¶5} “Defendant-appellant was denied the effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution.”

{¶6} In his sole assignment of error, Davies claims he was denied the effective assistance of trial counsel because his counsel “arranged to have him enter a guilty plea, without first filing and fully litigating a motion to suppress which could have resulted in the dismissal of all traffic charges.” He further argues that his counsel’s performance fell below an objective standard of reasonableness which prejudiced him. However, Davies pled guilty; therefore, he has waived this issue for the purposes of appeal.

{¶7} “Once a guilty plea is offered and accepted in a trial court and judgment is rendered on the basis of that guilty plea, the ability to challenge the judgment on appeal is severely limited. A party who has entered a plea of guilty may only appeal: (1) a lack of subject matter jurisdiction of the court which accepted the plea; or (2) the lack of

voluntary plea, i.e., the plea was not made knowingly, voluntarily or intelligibly as required by Crim.R. 11.” *State v. Morrison*, 11th Dist. No. 2008-T-0030, 2009-Ohio-291, at ¶7, quoting *State v. Bronaka*, 11th Dist. No. 2007-L-095, 2008-Ohio-1334, at ¶15 (citations omitted).

{¶8} “As a general proposition, the Supreme Court of Ohio has stated that ‘a guilty plea represents a break in the chain of events which has preceded it in the criminal process.’” *Id.*, quoting *State v. Spates*, 64 Ohio St.3d 269, 272, 1992-Ohio-130 (citation omitted). “Consequently, if a criminal defendant admits his guilt in open court, he waives the right to challenge the propriety of any action taken by the court or counsel prior to that point in the proceeding unless it affected the knowing and voluntary character of the plea. This also includes a waiver of any action which may have resulted in a ‘deprivation’ of a constitutional right that did not affect the knowing and voluntary character of the plea.” *Id.* (citation omitted).

{¶9} “The mere fact that, if not for the alleged ineffective assistance of counsel, the defendant would not have entered a guilty plea is *not* sufficient to establish the requisite connection between guilty plea and the ineffective assistance. \*\*\* Rather, ineffective assistance of trial counsel is found to have affected the validity of a guilty plea when it precluded a defendant from entering his plea knowingly and voluntarily.” *State v. Bean*, 11th Dist. No. 2008-G-2839, 2009-Ohio-682, at ¶11, citing *State v. Madeline*, 2002-Ohio-1332, 2002 Ohio App. LEXIS 1348, at \*10 (citations omitted); *State v. Smith*, 11th Dist. No. 2007-T-0076, 2008-Ohio-1501, at ¶27 (citation omitted).

{¶10} Davies does not claim that the knowing and voluntary nature of his guilty plea was affected by his counsel's failure to make a Motion to Suppress. Therefore, he has waived the right to challenge the effectiveness of his trial counsel.

{¶11} Davies' assignment of error is without merit.

{¶12} For the foregoing reasons, the Judgment Entry of the Painesville Municipal Court, sentencing Davies to two days in jail, with credit for time served and a fine and costs in the amount of \$450, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.