

[Cite as *State v. Snyder*, 2004-Ohio-4265.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 03CA0067

vs. : T.C. CASE NO. 99CR544

SAMUEL M. SNYDER : (Criminal Appeal from  
Common Pleas Court)

Defendant-Appellant :

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O P I N I O N

Rendered on the 13<sup>th</sup> day of August, 2004.

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GRADY, J.

{¶1} Defendant, Samuel Snyder, appeals from the trial court's judgment dismissing his petition for post-conviction relief without a hearing.

{¶2} Defendant was indicted in 1999 on fifteen counts of various sex offenses involving minors. Pursuant to a

negotiated plea agreement, Defendant entered pleas of guilty to four counts of rape in exchange for a dismissal of the eleven remaining charges. The trial court sentenced Defendant to consecutive prison terms of six years on each count, for a total of twenty-four years. On direct appeal we affirmed Defendant's conviction and sentence. *State v. Snyder* (Dec. 14, 2001), Clark App. No. 00CA33, 2001-Ohio-7003.

{¶3} While his appeal was pending, on October 18, 2000, Defendant filed a petition for post-conviction relief in the trial court pursuant to R.C. 2953.21. Among his grounds for relief, Defendant asserted that he was not mentally competent to enter knowing and voluntary guilty pleas due to his mental deficiencies and suicidal tendencies, and that his judgment was impaired by prescription drugs he was then taking for his mental problems. Defendant also claimed that his trial counsel performed deficiently by failing to bring these matters to the attention of the trial court. On May 11, 2001, the trial court dismissed Defendant's post-conviction petition without a hearing, and without making any findings of fact or conclusions of law.

{¶4} Defendant timely appealed to this court from the dismissal of his post conviction petition, but we dismissed the appeal for want of a final, appealable order due to the absence of any findings of fact or conclusions of law in the trial court's May 11, 2001 dismissal entry. *State v. Snyder* (Oct. 12, 2001), Clark App. No. 01CA36. Upon Defendant's

motion for reconsideration of our October 12, 2001 decision, we ordered the trial court to issue findings of fact and conclusions of law with respect to its dismissal of Defendant's post-conviction petition.

{¶5} On March 28, 2002, the trial court once again issued a decision dismissing Defendant's post-conviction petition without a hearing. This time the trial court made findings of fact and conclusions of law to support its dismissal. The trial court concluded that Defendant's claim for relief was refuted by the record of the guilty plea proceeding, and was unsupported by any operative facts other than Defendant's own self-serving statements made in his verified petition, which are legally insufficient to rebut the record of the guilty plea proceeding. Accordingly, the trial court held that Defendant had failed to meet his burden of submitting evidentiary documents containing sufficient operative facts to demonstrate substantive grounds for relief, and dismissed Defendant's petition without a hearing.

{¶6} Defendant has again appealed to this court from the trial court's dismissal of his post conviction petition.

#### ASSIGNMENT OF ERROR

{¶7} "THE LOWER COURT COMMITTED REVERSIBLE AND PREJUDICIAL ERROR IN FAILING TO ACCORD THE PETITIONER A HEARING ON HIS PETITION TO VACATE AND/OR SET ASIDE THE SENTENCE FILED ON OCTOBER 18, 2000 ON THE PETITIONER'S CLAIMS OF MENTAL INCOMPETENCY DUE TO MENTAL DEFICIENCIES AND

PRESCRIPTION DRUG IMPAIRMENT WHICH MADE IT IMPOSSIBLE FOR PETITIONER TO KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVE HIS CONSTITUTIONAL RIGHT AND ENTER A PLEA OF GUILTY AND THE FAILURE OF DEFENSE COUNSEL TO INFORM THE COURT OF THESE DEFICIENCIES, SUICIDE ATTEMPTS, SUICIDE IDEATION AND OVERDOSING WITH SAID DRUGS MADE THE REPRESENTATION OF DEFENSE COUNSEL INEFFECTIVE."

{¶8} Defendant argues that the trial court committed reversible error in denying his petition for post-conviction relief without holding a hearing.

{¶9} R.C. 2953.21 provides for the procedures and standards by which a convicted person may seek and obtain post-conviction relief from his conviction and/or the sentence imposed thereon. The State, in its brief in reply, wholly misapprehends the applicable law, pointing instead to the standards on which a Crim.R. 32.1 motion to withdraw a plea of guilty or no contest is decided. The two proceedings are wholly different and involve different legal standards.

{¶10} R.C. 2953.21 imposes on a petitioner the initial burden to submit evidentiary documents containing sufficient operative facts to demonstrate substantive grounds for relief that merit a hearing. *State v. Jackson* (1980), 64 Ohio St.2d 107, 111; *State v. Kapper* (1983), 5 Ohio St.3d 36, 38; *State v. Pankey* (1981), 68 Ohio St.2d 58, 59. A hearing is not required absent a showing that substantive grounds for relief exist. *State v. Moreland* (Jan. 7, 2000),

Montgomery App. No. 17557. Broad conclusory allegations are insufficient, as a matter of law, to require a hearing. *Id.* A petitioner is not entitled to a hearing if his claim for relief is belied by the record and is unsupported by any operative facts other than Defendant's own self-serving affidavit or statements in his petition, which are legally insufficient to rebut the record on review. *Kapper, supra; State v. Vanderpool* (Feb. 12, 1999), Montgomery App. No. 17318.

{¶11} During the plea hearing, when the trial court asked Defendant if he was under the influence of alcohol, drugs, or prescription medications, Defendant replied "no sir." Defendant also stated that he understood the charges, the penalties, and the rights he was giving up by pleading guilty. Defendant assured the trial court that he had reviewed the plea form with his attorney, that he understood everything in that form, and that he was satisfied with his attorney's advice. Defendant also indicated that no one had threatened him to get him to plead, and other than what had been stated on the record no promises had been made to him to induce his guilty pleas.

{¶12} In his post-conviction petition Defendant claims that he was not mentally competent to enter knowing, voluntary guilty pleas due to his psychological problems, including severe depression and suicidal tendencies, and his drug impaired mind; that as a result of his suicidal tendencies Defendant was under the care of a psychiatrist

while in jail awaiting trial; that as a result of his severe depression and suicidal tendencies Defendant had been prescribed various drugs by his jail doctor, including Trazadone and Ambian; that the prosecutor and defense counsel were aware of these matters; that defense counsel never requested a competency evaluation for Defendant; that Defendant had "squirreled away" some of the drugs prescribed to him, and that his judgment was impaired by those drugs which he took on the very day he entered his guilty pleas; that Defendant has only a hazy recollection of the plea proceeding and the questions the court asked him and the answers that he gave; and that defense counsel advised Defendant to answer "yes" to all of the judge's questions at the plea hearing.

{¶13} An examination of Defendant's post-conviction petition reveals that his claim for relief is not based upon broad, conclusory assertions, as is typically the case, but alleges particular and detailed facts that portray a sequence of events which, if true, arguably support Defendant's claim for relief. Furthermore, we think it is significant that Defendant's claim is not based solely upon his own self-serving statements in his verified petition concerning his condition. *Kapper, supra*. Defendant informed the trial court in his post-conviction petition that his medical records from the Clark County jail would support and corroborate his assertions in his petition. Thus, the trial court was put on notice that evidentiary documents were in the hands of the State which might

arguably corroborate Defendant's claim for relief. Defendant also claimed that the Sheriff had denied Defendant's Public Records Act request for those medical records. Medical records are exempt from the Public Records Act. R.C. 149.43(A)(1)(a).

{¶14} Given all of these facts and circumstances, it is not sufficient justification for denying Defendant a hearing on his post-conviction claim to hold, as the trial court did, that the statement Defendant made at the plea hearing, that he was not under the influence of alcohol, drugs or prescription medicines, refutes his claim. The very nature of Defendant's claim is that the representations he made to the trial court at the plea hearing were unreliable because he did not know what he was doing due to being under the influence of drugs prescribed for him by the jail doctor for his psychological/mental problems, and was coached by his counsel on how to answer the trial court's questions at the plea hearing.

{¶15} With respect to the evidentiary documents pertaining to Defendant's claim, his medical records from the Clark County jail which he maintains would corroborate his claim for relief, we believe that it is a misapplication of the law to dismiss Defendant's petition without a hearing because Defendant failed to submit such evidentiary documents in order to demonstrate substantive grounds for relief. Defendant claims that the evidentiary documents which he must submit to meet his burden of proof and

demonstrate grounds for relief are in the sole custody and control of the State and its agent, the Clark County Sheriff, who has refused to provide those records to Defendant. Those circumstances set up a barrier making it impossible for Defendant to meet his burden of proof under *Jackson* and its progeny. Consistent with due process, Defendant must be afforded a fair and reasonable opportunity to comply with the law's requirements. Thus, an evidentiary hearing is necessary in this case. At that hearing, Defendant must be given the opportunity to subpoena the medical records which he alleges will corroborate his claim and demonstrate substantive grounds for post-conviction relief.

{¶16} On the facts of this case, we find that the trial court abused its discretion in dismissing Defendant's petition without a hearing, and its judgment will be reversed and this matter remanded back to that court for an evidentiary hearing consistent with this opinion.

{¶17} The assignment of error is well taken and is hereby sustained.

BROGAN, J. and YOUNG, J., concur.

Copies mailed to:

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Hon. Richard J. O'Neill