

[Cite as *State v. Wagerman*, 2015-Ohio-2063.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

ROBERT E. WAGERMAN

Defendant-Appellant

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Appellate Case No. 2014-CA-36

Trial Court Case No. 2013-CR-539

(Criminal Appeal from
Common Pleas Court)

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OPINION

Rendered on the 29th day of May, 2015.

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WELBAUM, J.

{¶ 1} Defendant-appellant, Robert E. Wagerman, appeals from his conviction in the Greene County Court of Common Pleas for one count of theft from an elderly person and four counts of forgery. Wagerman contends he received ineffective assistance of counsel based on his trial counsel having a conflict of interest. For the reasons outlined below, the judgment of the trial court will be affirmed.

{¶ 2} On October 4, 2013, Wagerman was indicted on one count of theft from an elderly person in violation of R.C. 2913.02(A)(1), a felony of the fourth degree; four counts of forgery in violation of R.C. 2913.31(A)(3), felonies of the fifth degree; and three counts of receiving stolen property in violation of R.C. 2913.51(A), also felonies of the fifth degree. On October 11, 2013, Wagerman pled not guilty to all the counts contained in the indictment. Following his plea, the State dismissed one of the receiving stolen property charges. The matter was then scheduled for a jury trial on April 7, 2014.

{¶ 3} While awaiting trial, Wagerman was released on bond on February 10, 2014. Approximately one month later, on March 7, 2014, Wagerman's trial counsel filed a motion to withdraw due to the deterioration of his attorney-client relationship with Wagerman. Specifically, counsel indicated that Wagerman would not communicate with him, abide by his advice, or cooperate with his trial strategy. Counsel also stated that Wagerman had indicated that he no longer wished to utilize his legal services.

{¶ 4} On March 27, 2014, the trial court held a hearing on counsel's motion to withdraw. Counsel was present at the hearing, but Wagerman failed to appear. As a result, Wagerman's bond was revoked and a capias was issued for his arrest. Due to Wagerman's absence, the trial date was continued and a second hearing on the motion to

withdraw was scheduled for June 19, 2014. Prior to this hearing, Wagerman sent two hand-written letters to the trial court stating his reasons for wanting new representation. In his letters, Wagerman alleged that his trial counsel intimidated him, had conflicting views about trial strategy, was dishonest, broke appointments, and did not provide him with court dates and documents.

{¶ 5} Thereafter, at the June 19th hearing, the trial court confirmed that it had received Wagerman's letters, construing them as motions for new counsel. Wagerman, however, orally withdrew the motions during the hearing stating on the record that he wanted the same counsel to continue to represent him. The parties also informed the trial court that they had reached a plea agreement, whereby Wagerman would plead guilty to one count of theft from an elderly person and four counts of forgery in exchange for the State dismissing the remaining receiving stolen property charges. The trial court then proceeded with a change of plea hearing and accepted Wagerman's guilty pleas.

{¶ 6} On August 7, 2014, the parties reconvened for purposes of sentencing. At the sentencing hearing, the trial court sentenced Wagerman to 18 months in prison for the theft charge and 12 months in prison for each of the four forgery charges. The 18-month prison term for the theft charge was ordered to be served consecutively with one of the 12-month prison terms for forgery, whereas the three remaining 12-month prison terms for forgery were ordered to be served concurrently with the other sentences, thus providing an aggregate prison term of 30 months.

{¶ 7} Wagerman now appeals from his conviction, raising the following assignment of error for our review:

MR. WAGERMAN RECEIVED INEFFECTIVE ASSISTANCE OF

COUNSEL.

{¶ 8} Under his sole assignment of error, Wagerman raises an ineffective assistance of counsel claim based on an alleged conflict of interest with his trial counsel. Wagerman, however, does not specifically explain the nature of the conflict. Instead, Wagerman merely implies that a conflict of interest arose due to “friction” in the attorney-client relationship and disagreements about trial strategy. Wagerman also argues that the trial court erred in failing to address the conflict situation when it knew or reasonably should have known that a conflict existed. We disagree with Wagerman’s argument that he received ineffective assistance of counsel and that the trial court should have realized a conflict existed.

{¶ 9} A claim of ineffective assistance of trial counsel requires both a showing that trial counsel’s representation fell below an objective standard of reasonableness, and that the defendant was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A reviewing court “must indulge in a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Id.* at 689. The prejudice prong requires a finding that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different, with a reasonable probability being “a probability sufficient to undermine confidence in the outcome.” *Id.* at 694; *see also State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989).

{¶ 10} With regard to conflicts of interest in the context of ineffective assistance claims, we stated in *State v. Brewer*, 2d Dist. Greene No. 95-CA-96, 1996 WL 339940 (June 14, 1996) that:

One of the components of the Sixth Amendment right to effective assistance of counsel is the right to representation free from conflicts of interest. [*Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942); *State v. Dillon*, 74 Ohio St.3d 166, 657 N.E.2d 273 (1995)]. The term “conflict of interest” bespeaks a situation where regard for one duty tends to lead to disregard of another duty, such as with the representation of multiple clients with competing interests. A lawyer represents conflicting interests when, on behalf of one client, it is the lawyer’s duty to contend for that which a duty to another client requires him to oppose. [*State v. Manross*, 40 Ohio St.3d 180, 532 N.E.2d 735 (1988)]. If, during the course of the representation, the clients’ interests do so diverge, an actual conflict of interest exists. * * * If, on the other hand, the interests of the clients simply may diverge at some point so as to place the attorney under inconsistent or conflicting duties, then a possibility of a conflict of interest exists. * * *.

Brewer at *3.

{¶ 11} “[W]here a trial court knows or reasonably should know of an attorney’s possible conflict of interest in the representation of a person charged with a crime, the trial court has an affirmative duty to inquire whether a conflict of interest actually exists.” *State v. Gillard*, 64 Ohio St.3d 304, 311, 595 N.E.2d 878 (1992), citing *Wood v. Georgia*, 450 U.S. 261, 272-274, 101 S.Ct. 1097, 67 L.Ed.2d 220 (1981). (Other citations omitted.)

{¶ 12} In this case, Wagerman did not allege in his appellate brief or in any of his motions for new counsel that his trial counsel’s representation was adversely affected by divided loyalties to other clients with interests opposing his. Rather, Wagerman merely

alleged that his trial counsel had conflicting views about trial strategy, broke appointments, was dishonest, intimidated him, and did not provide him with court dates and documents. These allegations, however, have nothing to do with conflicting duties to others, and there is nothing in the record indicating that the trial court knew or should have known about any alleged conflict of interest. In so holding, we note that Wagerman clearly indicated on the record at the June 19, 2014 hearing that he wished to withdraw his motions for new counsel and explicitly stated that he was satisfied with the legal representation rendered by his trial counsel. Therefore, the trial court had no reason to inquire further into the matter let alone inquire about a conflict of interest.

{¶ 13} Because the record provides no basis for an ineffective assistance claim based on a conflict of interest, and because Wagerman has failed to state how counsel's performance was otherwise deficient so as to prejudice him, his ineffective assistance claim must fail.

{¶ 14} Appellant's sole assignment of error is overruled and the judgment of the trial court is affirmed.

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DONOVAN, J. and HALL, J., concur.

Copies mailed to:

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