

[Cite as *State v. Wheeler*, 2016-Ohio-5503.]

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
HIGHLAND COUNTY

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : Case No. 15CA21  
 :  
 vs. :  
 :  
 TODD WHEELER, : DECISION AND JUDGMENT ENTRY  
 :  
 Defendant-Appellant. :

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APPEARANCES:

Todd Wheeler, Hamilton, Ohio, appellant pro se<sup>1</sup>

Fred J. Beery, Hillsboro City Law Director, Hillsboro, Ohio for appellee

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CRIMINAL APPEAL FROM MUNICIPAL COURT

DATE JOURNALIZED: 8-8-16

ABELE, J.

{¶ 1} This is an appeal from a Hillsboro Municipal Court judgment of conviction and sentence. Todd Wheeler, defendant below and appellant herein, pled guilty to a charge of domestic violence in violation of R.C. 2919.25.

{¶ 2} Appellant assigns the following error for review:

“THE COUNSEL FOR THE DEFENSE DID NOT REPRESENT HIS CLIENT TO HIS FULL ABILITY AND TO THE LEGAL STANDARD REQUIRED.”

{¶ 3} A September 8, 2015 criminal complaint charged appellant with domestic

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<sup>1</sup> During the trial court proceedings, legal counsel represented appellant.

violence. Appellant agreed to plead guilty in exchange for the dismissal of three violations of a previously issued protective order. On November 6, 2015, the trial court accepted appellant's plea, found him guilty and sentenced him to serve one hundred eighty (180) days in jail, with one hundred fifty-six (156) days suspended, provided that he have no contact with the victim. The court also gave appellant credit for twenty-four (24) days in jail that he had already served. In other words, appellant would not be required to spend any additional time in jail. This appeal followed.

{¶ 4} Appellant asserts on appeal that his trial counsel rendered constitutionally ineffective assistance. Criminal defendants have a right to counsel, which includes the right to the effective assistance from counsel. See *McMann v. Richardson*, 397 U.S. 759, 770, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970); also see *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, at ¶93. To establish constitutionally ineffective assistance of trial counsel, a criminal defendant must show that (1) his counsel's performance was deficient, and (2) such deficient performance prejudiced his defense and deprived him of a fair trial. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984); *State v. Issa*, 93 Ohio St.3d 49, 67, 752 N.E.2d 904 (2001); *State v. Goff*, 82 Ohio St.3d 123, 139, 694 N.E.2d 916 (1998). "In order to show deficient performance, the defendant must prove that counsel's performance fell below an objective level of reasonable representation. To show prejudice, the defendant must show a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." (Emphasis added.) *State v. Conway*, 109 Ohio St.3d 412, 2006 Ohio-2815, 848 N.E.2d 810, ¶95.

{¶ 5} In the case sub judice, appellant pled guilty to the charge. Generally, a guilty plea

waives most appealable errors, except, for example, that a plea was not knowing, intelligent and voluntary. *State v. Robinson*, 4<sup>th</sup> Dist. Lawrence No. 13CA18, 2015-Ohio-2635, at ¶45; *State v. Neu*, 4th Dist. Adams No. 12CA942, 2013–Ohio–616, at ¶13. In *Robinson*, supra, we explained the rationale for this principle:

“[T]he defendant must show that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. 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 necessary connection between ineffective assistance and the plea. Ineffective assistance will only be found to have affected the validity of plea when it precluded defendant from entering the plea knowingly and voluntarily. The relevant inquiry is not whether defendant ultimately would have prevailed at trial, but whether defendant would have pled guilty if properly advised by counsel.” (Internal quotations omitted.) (Emphasis added.)

{¶ 6} Here, appellant does not claim that his plea was unknowing. For that matter, he also does not cite any authority to support his assignment of error as App.R. 16(A)(7) requires. To the best of our ability to understand them, appellant alleges that he received ineffective assistance of counsel because: (1) counsel did not make time to meet with him; (2) counsel sought continuances of this case for other cases that caused appellant to languish in jail; (3) counsel “had no regard for [him] in any way;” and (4) counsel coerced him into accepting the plea arrangement.

{¶ 7} First, we point out that appellant cites no evidence whatsoever to support his argument.

{¶ 8} Second, as our Eleventh District colleagues have observed, a guilty plea represents a break in the chain of events in the criminal process and a defendant who admits guilt waives the right to challenge actions taken prior to that point in the proceedings:

“[T]he 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 the guilty plea and the ineffective assistance. State v. Sopjack (Dec. 15, 1995), Geauga App. No. 93–G–1826, 1995 Ohio App. LEXIS 5572, at 11, citing State v. Haynes (Mar. 3, 1995), Trumbull App. No. 93–T–4911, unreported, 1995 Ohio App. LEXIS 780, at 4–5. 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. Id. This court further explained that a guilty plea represents a break in the chain of events that preceded it in the criminal process; thus, a defendant, who admits his guilt, waives the right to challenge the propriety of any action taken by a trial court or trial counsel prior to that point in the proceedings unless it affected the knowing and voluntary character of the plea. Haynes, supra, at 3–4, citing States v. Spates (1992), 64 Ohio St.3d 269, 272, 595 N.E.2d 351. This “waiver” is applicable to a claim of ineffective assistance of trial counsel unless the allegation caused the plea to be less than knowing and voluntary. Id. at 4, 595 N.E.2d 351; see, also, Barnett, supra, 73 Ohio App.3d at 249, 596 N.E.2d 1101; State v. Washington (Apr. 4, 1997), Portage App. No. 95–P–0025, unreported, 1997 Ohio App. LEXIS 1340, at 10–11.” (Emphasis added.)

{¶ 9} Undoubtably, a defendant may suffer from a degree of “buyer’s remorse” after a guilty plea to a criminal offense. That is the reason why appellate courts need some evidence to demonstrate that a defendant received ineffective assistance of counsel. Again, we find none here. We further note that our review of the case reveals that appellant substantially benefitted from defense representation with the dismissal of several additional charges. Once again, appellant does not appear to contend that his plea was unknowing and involuntary. To the best of our ability to parse the statements in his brief, we do not believe that is his position. His brief does, however, indicate that he is displeased with trial counsel’s effort in representing him. Nevertheless, these arguments do not establish that he received ineffective assistance of counsel.

{¶ 10} We also point out that our review of the November 16, 2015 change of hearing transcript does not appear to indicate that appellant’s plea was unknowing and involuntary. Appellant did not make the trial court aware of any of his alleged problems or issues with

counsel and appellant did not ask the trial court to appoint new counsel to represent him when he would have had ample opportunity to do so. Therefore, we find no merit to appellant's assignment of error and it is hereby overruled.

{¶ 11} Accordingly, based upon the foregoing reasons we hereby affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed. Appellee to recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hillsboro Municipal Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY: \_\_\_\_\_  
Peter B. Abele, Judge

**NOTICE TO COUNSEL**

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.