[Cite as *State v. Radel*, 2009-Ohio-3543.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
STATE OF OHIO	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	
-vs-	:	
	:	Case No. 2009-CA-00021
TEONNA M. RADEL	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Criminal appeal from the Stark County Court of Common Pleas, Case No. 2008-CR-1563
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	July 20, 2009

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JOHN D. FERRERO BY: RENEE M. WATSON 110 Central Plaza South, Suite 150 Canton, OH 44702-1413	FREDRICK PITINII 1000 Chase Tower 101 Central Plaza South Canton, OH 44702

Gwin, P.J.

{¶1} Defendant-appellant Teonna M. Radel appeals her convictions and sentences in the Stark County Court of Common Pleas on one count of aggravated vehicular assault in violation of R.C. 2903.08(A)(1), a felony of the third degree, two counts of assault, in violation of R.C. 2903.13(A), misdemeanors of the first degree; one count of offenses involving underage persons, in violation of R.C. 4301.69(E)(1), a misdemeanor of the first degree; one count of operating a vehicle while under the influence of alcohol, a drug of abuse or combination of them, in violation of R.C. 4511.19(A)(1)(a), a misdemeanor of the first degree; and one count of criminal damaging or endangering, a violation of R.C. 2909.06(A)(1), a misdemeanor of the second degree. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} In August 2008, appellant, was driving when she crossed the median and struck Matthew Price, who was traveling in the opposite direction on his motorcycle. Appellant was belligerent and hostile at the scene. She punched Tarrian Smith when Ms. Smith attempted to render assistance to Mr. Price. She later attempted to kick out a rear window of a police cruiser. Appellant was uncooperative with officers, threatened to beat them up, or to have her father come and beat them up. Mr. Price sustained serious injury because of appellant's actions.

{¶3} As a result of these events, the Stark County Grand Jury returned an indictment charging appellant with aggravated vehicular assault, assault, vehicular assault, offenses involving underage persons, operating a motor vehicle under the

influence of alcohol, a drug of abuse, or a combination of them, and criminal damaging or endangering.

{¶4} On December 3, 2008, the State dismissed the charge of vehicular assault. Appellant then entered a plea of guilty to the remaining charges. The court deferred sentencing and ordered a pre-sentence investigation report be prepared. On January 7, 2009, after reviewing the pre-sentence investigation report and all other relevant factors, the court sentenced appellant to an aggregate total of three years incarceration, imposed a $375.00 fine, suspended her driver's license for three years and imposed six points on her license.

{¶5} It is from these convictions and sentences appellant appeals, raising the following assignment of error:

{¶6} "I. APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS OT [sic.] THE UNITED STATES CONSTITUTION AND SECTION SIXTEEN OF THE OHIO CONSTITUTION."

I.

{¶7} In her sole assignment of error appellant maintains she received ineffective assistance of trial counsel because trial counsel failed to plea bargain and further because counsel advised her that she would receive the minimum sentence.

{¶8} A claim of ineffective assistance of counsel requires a two-prong analysis. The first inquiry is whether counsel's performance fell below an objective standard of reasonable representation involving a substantial violation of any of defense counsel's essential duties to appellant. The second prong is whether the appellant was prejudiced

by counsel's ineffectiveness. *Lockhart v. Fretwell* (1993), 506 U.S. 364, 113 S.Ct. 838; *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373.

{¶9} Challenges to guilty pleas based on allegations of ineffective assistance of counsel during the plea process are evaluated under the familiar two-pronged cause and prejudice test of *Strickland v. Washington,* supra, 466 U.S. at 687-88, 694; *Hill v. Lockhart* (1985)*,* 474 U.S. 52, 58. In order to satisfy the second prong in the context of a guilty plea, appellant must show that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill,* 474 U.S. at 59, 106 S.Ct. 366.

{¶10} In determining whether counsel's representation fell below an objective standard of reasonableness, judicial scrutiny of counsel's performance must be highly deferential. *Bradley,* 42 Ohio St.3d at 142, 538 N.E.2d 373. Because of the difficulties inherent in determining whether effective assistance of counsel was rendered in any given case, a strong presumption exists that counsel's conduct fell within the wide range of reasonable, professional assistance. Id.

{¶11} The United States Supreme Court and the Ohio Supreme Court have held a reviewing court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Bradley* at 143, 538 N.E.2d 373, quoting *Strickland* at 697.

{¶12} In this case, appellant entered pleas of guilty as part of a plea agreement. By entering a plea of guilty, the accused is not simply stating that she did the discrete acts described in the indictment; she is admitting guilt of a substantive crime. *United*

States v. Broce (1989), 488 U.S. 563, 109 S.Ct. 757. The guilty plea renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established. *Menna v. New York* (1975), 423 U.S. 61 at n. 2, 96 S.Ct. 241. Thus, when a defendant enters a plea of guilty as a part of a plea bargain she waives all appealable errors, unless such errors are shown to have precluded the defendant from entering a knowing and voluntary plea. *State v. Kelley* (1991), 57 Ohio St.3d 127, 566 N.E.2d 658; *State v. Barnett* (1991), 73 Ohio App.3d 244, 249, 596 N.E.2d 1101; see, also, *State v. Wotring,* 11th Dist. No. L-99-114, 2003-Ohio-326, at ¶ 22, appeal denied (2003), 99 Ohio St.3d 1452, 790 N.E.2d 1217.

{¶13} In *State v. Jackson*, Delaware App. Nos. 04CA-A-11-078, 04CA-A-11-079, 2005-Ohio-5173, this Court observed, “A manifest injustice can, under certain circumstances, arise from erroneous advice of counsel regarding the sentence to be imposed. *State v. Blatnik* (1984), 17 Ohio App.3d 201, 203, 478 N.E.2d 1016). However, there is overwhelming case law that states that a manifest injustice does not, ipso facto, result. Id. See also *State v. Sabatino* (1995), 102 Ohio App.3d 483, 657 N.E.2d 527. A defendant's mistaken belief or impression regarding the consequences of his plea is not sufficient to establish that such plea was not knowingly and voluntarily made. *Sabatino,* supra. Likewise, erroneous speculation, as opposed to an erroneous representation, on the part of counsel does not constitute ineffective assistance of counsel nor warrant the withdrawal of a guilty plea. *Blatnik,* 17 Ohio App.3d at 203, 478 N.E.2d 1016; *State v. Longo* (1982), 4 Ohio App.3d 136, 139, 446 N.E.2d 11465.” *Jackson* at ¶ 23.

{¶14} At the plea hearing, the trial court informed appellant of the range of sentences she faced and indicated to appellant that the trial court could make final disposition as the court felt was appropriate based on the evidence and the law. The sentencing court also reviewed the issue of maximum sentences, mandatory prison terms and the possibility of consecutive sentencing. Thus, regardless of what appellant may have been told by her attorney, appellant was aware of the potential sentences she faced.

{¶15} "It is well-established in Ohio law that where an ineffective assistance of counsel claim cannot be supported solely on the trial court record, it should not be brought on direct appeal. *See* [*State v. Cooperrider* (1983), 4 Ohio St.3d 226], 48 N.E.2d at 454; *State v. Leeper,* [Delaware App. No. 2004CAA07054, 2005-Ohio-1957]; *State v. Fryer,* 90 Ohio App. 3d 37, 627 N.E. 2d 1065, 1072 (1993) (quoting *Cooperrider*)." *Williams v. Anderson* (6th Cir. 2006), 460 F.3d 789, 800.

{¶16} In *Cooperrider*, supra, the Court discussed the proper procedure where, on direct appeal, a defendant raises issues outside the record. Specifically, the Court held:

{¶17} "It may be in the present case appellant can allege sufficient facts to state a claim of ineffective assistance of counsel. However, it is impossible to determine whether the attorney was ineffective in his representation of appellant where the allegations of ineffectiveness are based on facts not appearing in the record. For such cases, the General Assembly has provided a procedure whereby appellant can present evidence of his counsel's ineffectiveness. This procedure is through the post-conviction remedies of R.C. 2953.21. This court has previously stated that when the trial court

record does not contain sufficient evidence regarding the issue of competency of counsel, an evidentiary hearing is required to determine the allegation. * * * " *Cooperrider,* supra, at 228, 448 N.E.2d 452. (Citation omitted). See also, *State v. Barnett*(1991), 73 Ohio App.3d 244, 249, 596 N.E.2d 1101, 1104; *State v. Day*, Cuyahoga App. No. 89777, 2008-Ohio-4122 at ¶ 42.

{¶18} In the case at bar, the discussions between appellant and her trial counsel took place off the record. There is no evidence in the record from which this court can find that trial counsel failed to engage in plea negotiations, or that appellant was misinformed concerning the sentence she was facing.[1] Because a determination of appellant's claim of ineffective assistance of counsel involves facts outside the record, appellant's argument concerning trial counsel's failure to plea bargain and alleged erroneous advice that she would receive the minimum sentence must fail based on the authority of *Cooperrider, supra.* See, also *Leeper*, supra at ¶ 57.

{¶19} Accordingly, appellant's sole assignment of error is overruled.

[1]Appellant failed to raise the issue of withdrawal of her guilty pleas in the trial court. See, *State v. Conethan*, Coshocton App. No. 02 CA 20, 2003-Ohio-7019 at ¶ 18.

{¶20} For the foregoing reasons, the judgment of the Court of Common Pleas for Stark County, Ohio is affirmed.

By Gwin, P.J.,

Hoffman, J., and

Wise, J., concur

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

_____
HON. JOHN W. WISE

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[Cite as *State v. Radel*, 2009-Ohio-3543.]

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
TEONNA M. RADEL	:	
Defendant-Appellant	:	CASE NO. 2009-CA-00021

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas for Stark County, Ohio is affirmed. Costs to appellant.

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HON. W. SCOTT GWIN

_____
HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE