

Delaney, P.J.

{¶1} Defendant-Appellant Brandon Stephens appeals the October 6, 2016 sentencing entry of the Licking County Court of Common Pleas.

FACTS AND PROCEDURAL HISTORY

{¶2} On February 24, 2016, law enforcement personnel with the Whitehall Police Department were conducting surveillance on a residence located in Franklin County believed to be involved in a drug trafficking operation. During the course of the surveillance, officers observed Defendant-Appellant Brandon Stephens arrive at the surveilled residence, enter the residence, and leave the residence a short time later.

{¶3} Officers followed Stephens's vehicle after he drove away from the residence and Whitehall Police Department officers initiated a traffic stop. Stephens was stopped in Franklin County. The officers searched Stephens's vehicle and found \$22,500.00 in U.S. currency in the vehicle.

{¶4} Stephens was transported to the Whitehall Police Department where he was interviewed by law enforcement personnel. Stephens was asked for consent to search his residence located in Licking County, but he declined. A search warrant was obtained to search Stephens's residence.

{¶5} On February 25, 2016, the Licking County Sheriff's Department carried out the search of Stephens's residence. The search resulted in the seizure of \$61,000.00 in U.S. currency, an operable handgun, and over 17 grams of cocaine. Following the search, Stephens admitted to ownership of all the items seized from his residence.

{¶6} On March 24, 2016, Stephens was indicted on one count of possession of cocaine, a first-degree felony in violation of R.C. 2925.11(A)(C)(4)(e), and one count of

having weapons while under disability, a third-degree felony in violation of R.C. 2923.13(A)(3)(B). The indictment also included a specification seeking forfeiture of Stephens's motor vehicle and a specification seeking forfeiture of \$83,500.00 in U.S. currency pursuant to R.C. 2941.1417(A) and 2981.02(A)(2). The specification as to the forfeiture of the \$83,500.00 states:

* * * said defendant, used property, to-wit: \$83,500.00 in U.S. currency or intended to use said property in any manner to commit, or to facilitate the commission of a felony offense(s) or act(s) as contained in Count One of this Indictment, said currency profits from drug sales, and/or was used to protect drug trafficking operation, and/or said property constitutes, or is derived directly or indirectly from any proceeds obtained directly or indirectly from the commission of said offense(s) or act(s), said property shall be forfeited to the arresting agency.

{¶7} On October 6, 2016, Stephens entered a plea of guilty to an amended charge of possession of cocaine, a third-degree felony in violation of R.C. 2925.11(A)(C)(4)(c); having weapons while under disability, a third-degree felony in violation of R.C. 2923.13(A)(3)(B); and the specification seeking forfeiture of \$83,500.00 in U.S. currency. The State dismissed the remaining specification seeking forfeiture of Stephens's vehicle.

{¶8} By judgment entry filed on October 6, 2016, the trial court sentenced Stephens to a prison term of 30 months on count one and 30 months on count two. The prison terms were ordered to be served consecutively, for an aggregate term of 60 months. The trial court advised Stephens that upon his release from prison, he would be

subject to a discretionary period of three years of post-release control. The trial court further ordered that the \$83,500.00 recovered during the investigation would be forfeited. The trial court ordered \$12,525.00 to the Licking County Prosecutor's Law Enforcement Trust Fund, \$53,231.25 to the Whitehall Police Department, and \$17,743.75 to the Central Ohio Drug Enforcement Task Force.

{¶9} It is from this decision Stephens now appeals.

ASSIGNMENTS OF ERROR

{¶10} Stephens raises two Assignments of Error:

{¶11} "I. FAILURE BY TRIAL COUNSEL TO RAISE VENUE ISSUES RESULTED IN INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF APPELLANT'S CONSTITUTIONALLY PROTECTED RIGHTS.

{¶12} "II. THE TRIAL COURT FAILED TO PROPERLY IMPOSE POST RELEASE CONTROL IN ACCORDANCE WITH LAW."

ANALYSIS

I. Ineffective Assistance of Counsel

{¶13} Stephens argues in his first Assignment of Error that his trial counsel was ineffective for his failure to raise the issue of venue as to the forfeiture of \$22,500.00 in U.S. currency confiscated from Stephens's vehicle. We disagree.

{¶14} To succeed on a claim of ineffectiveness, a defendant must satisfy a two-prong test. Initially, a defendant must show that trial counsel acted incompetently. See *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). In assessing such claims, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the

presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’ ” *Id.* at 689, citing *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158 (1955). “There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” *Strickland*, 466 U.S. at 689. The question is whether counsel acted “outside the wide range of professionally competent assistance.” *Id.* at 690.

{¶15} Even if a defendant shows that counsel was incompetent, the defendant must then satisfy the second prong of the *Strickland* test. Under this “actual prejudice” prong, the defendant must show that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694.

{¶16} Stephens argues his trial counsel was ineffective because he failed to raise the issue of venue as to the forfeiture of \$22,500.00 in U.S. currency. \$22,500.00 was found in Stephens’s vehicle when he was stopped by law enforcement in Franklin County. Stephens contends the State failed to establish the \$22,500.00 found in his vehicle in Franklin County was related to the offenses he committed in Licking County.

{¶17} R.C. 2901.12 governs venue. It states that a “criminal case * * * shall be held in a court having jurisdiction of the subject matter, and in the territory of which the offense or any element of the offense was committed.” R.C. 2901.12(A). Venue can exist in any jurisdiction where any element of the crime was committed. *State v. Plants*, 5th Dist. Tuscarawas No. 2009 AP 10 0054, 2010–Ohio–2930, ¶ 39, citing *State v. Chakirelis*, 11th Dist. Lake No. 95–L–041, 1996 WL 200605 (March 29, 1996). The standard of proof is beyond a reasonable doubt, although venue need not be proved in express terms so

long as it is established by all the facts and circumstances in the case. *State v. Dickerson*, 77 Ohio St. 34, 82 N.E. 969 (1907), paragraph one of the syllabus. “In contrast with subject matter jurisdiction, which may be challenged at any time, venue is not jurisdictional.” *State v. Buoni*, 10th Dist. Franklin Nos. 11AP-111, 11AP-148, 11AP-149, 2011-Ohio-6665, ¶ 11 citing *State v. Andrews*, 148 Ohio App.3d 92, 2002–Ohio–787, ¶ 20 (10th Dist.) (stating venue “is neither a jurisdictional nor a material element of a criminal offense”).

{¶18} Stephens did not challenge venue before the Licking County Court of Common Pleas, thus waiving venue, but Stephens also admitted to venue when he pleaded guilty to possession of cocaine, having a weapon under disability, and the specification of forfeiture of \$83,500.00. A guilty plea admits to committing the crime charged, as described in the indictment. *United States v. Broce*, 488 U.S. 563, 569, 109 S.Ct. 757, 763 (1989). It has been held that a defendant’s “guilty plea precludes [him] from challenging the factual issue of venue.” *State v. Buoni*, 2011-Ohio-6665, ¶ 12 quoting *State v. McCartney*, 55 Ohio App.3d 170, 563 N.E.2d 350 (9th Dist.1988).

{¶19} Stephens did not move the trial court to vacate his guilty plea. On appeal, Stephens does not suggest his guilty plea was entered into other than knowingly, intelligently, and voluntarily. He contends instead his trial counsel was incompetent for failing to raise venue as to the forfeiture specification. Stephens has not demonstrated in his appeal that his trial counsel acted outside the wide range of professionally competent assistance when he did not challenge venue as to \$22,500.00 seized from Stephens. Further, we agree with the State’s argument that Stephens cannot show he was prejudiced by the failure to challenge venue on the forfeiture specification. Based on

Stephens's admissions, the money seized from Stephens would be subject to forfeiture whether Stephens was tried in Licking County or Franklin County.

{¶20} Stephens's first Assignment of Error is overruled.

II. Post-Release Control

{¶21} Stephens argues in his second Assignment of Error that the trial court failed to properly impose post-release control. We disagree.

{¶22} Stephens was originally indicted on one count of possession of cocaine, a first-degree felony in violation of R.C. 2925.11(A)(C)(4)(e), and one count of having weapons while under disability, a third-degree felony in violation of R.C. 2923.13(A)(3)(B). The State amended the indictment to reduce the possession of cocaine charge to a third-degree felony in violation of R.C. 2925.11(A)(C)(4)(c). Accordingly, on October 6, 2016, Stephens entered a plea of guilty to R.C. 2925.11(A)(C)(4)(c) and R.C. 2923.13(A)(3)(B), both third-degree felonies. The trial court imposed a discretionary period of three years post-release control pursuant to R.C. 2967.28.

{¶23} Stephens contends the trial court should have imposed a five-year term of post-release control. If the trial court had convicted Stephens of a first-degree felony, Stephens would be correct that the trial court erred in not imposing a five-year term of post-release control. See R.C. 2967.28(B)(1). Stephens was not convicted of a first-degree felony; the indictment was amended and the trial court convicted Stephens of a third-degree felony. Pursuant to R.C. 2967.28(C), the trial court properly imposed a discretionary three-year term of post-release control.

{¶24} Stephens's second Assignment of Error is overruled.

CONCLUSION

{¶25} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Delaney, P.J.,

Hoffman, J. and

Baldwin, J., concur.