[Cite as *Toledo v. Lanier*, 2009-Ohio-5191.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo

Appellee

v.

Rickie D. Lanier

Appellant

Court of Appeals Nos. L-08-1092
L-08-1093
L-08-1094

Trial Court Nos. CRB-08-02458-0101
CRB-08-02191-0101
CRB-08-03067-0101

DECISION AND JUDGMENT

Decided: September 30, 2009

* * * * *

David Toska, City of Toledo Chief Prosecutor, and
Michael Niedzielski, Assistant Prosecuting Attorney, for appellee.

Douglas A. Wilkins, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Toledo Municipal Court which found appellant guilty of three counts of violating civil protection orders in violation of Toledo Municipal Code Chapter 537. Appellant was sentenced to six-month terms of

incarceration on each of the three convictions, with two of the terms to be served concurrently to one another and consecutively to the third term, for a total term of incarceration of one year.

{¶ 2} The corresponding sentencing entry by the clerk inaccurately indicated that appellant was sentenced to an 18-month total term of incarceration. For the reasons set forth below, we affirm the judgment of conviction of the trial court and remand for issuance of a corrected sentencing entry imposing a total term of incarceration upon appellant of one year.

{¶ 3} Appellant, Rickie D. Lanier, sets forth the following three assignments of error:

{¶ 4} "I. LANIER'S TRIAL COUNSEL WAS INEFFECTIVE BY ALLOWING ALL THREE CHARGES TO BE ASSIGNED TO AND TRIED BEFORE JUDGE CHRISTIANSEN; BY WAIVING LANIER'S RIGHT TO TRIAL BY JURY; BY FAILING TO REQUEST THAT THE CASES BE SEVERED; AND BY FAILING TO CHALLENGE THE CITY'S FAILURE TO PROVE THAT LANIER WAS SERVED WITH THE CIVIL PROTECTIVE ORDERS.

{¶ 5} "II. THERE WAS INSUFFICIENT EVIDENCE TO CONVICT LANIER FOR HAVING VIOLATED THE THOMPSON AND LANE CPOs BECAUSE THERE WAS INSUFFICIENT EVIDENCE THAT LANIER WAS EVER SERVED WITH THE CPOs.

{¶ 6} "III. THE CLERK'S JOURNAL AND DOCKET ENTRIES INCORRECTLY REFLECT THE SENTENCES ORDERED BY THE TRIAL JUDGE."

{¶ 7} The following undisputed facts are relevant to the issues raised on appeal. Appellant's criminal record reveals numerous civil protection orders issued against him over a timeframe spanning approximately a decade. The record likewise contains numerous convictions against appellant for violations of those protection orders extending back to 1997.

{¶ 8} On February 2, 2008, appellant's ex-wife was awakened by a barrage of loud noises outside of her home in central Toledo. She possessed a civil protection order against appellant, her ex-husband. Upon going downstairs to investigate the noise, she observed her ex-husband standing on her front porch creating the commotion. She notified the police and appellant was arrested. On February 4, 2008, appellant sent an explicitly threatening letter to his ex-wife from jail stating, "Wait until I get out. I'm gonna kill you and you [sic] a n *** bitch."

{¶ 9} On February 7, 2008, appellant similarly sent threatening correspondence to a second woman who also possessed a civil protection order against appellant. Notably, all of the threatening correspondence underlying these cases was sent by appellant while incarcerated in the Lucas County Jail precisely because of the February 2, 2008 violation of the civil protection order with his ex-wife.

{¶ 10} On February 26, 2008, a bench trial was conducted on the three protection order violations. Appellee presented detailed and unequivocal testimony from both of the

victims. Appellant's ex-wife furnished certain, unambiguous testimony regarding her direct observation of her ex-husband on her front porch on February 2, 2008, and her identification of appellant's handwriting in the subsequent threatening correspondence based upon her many years of marriage to appellant.

{¶ 11} Notably, the transcript of proceedings also contains undisputed testimony that appellee furnished proof of service of the protection order both to appellant and his trial counsel. Trial counsel examined it and affirmed on the record his satisfaction of its legitimacy.

{¶ 12} The second victim likewise furnished clear testimony in support of appellant's violation of her protection order in sending a threatening letter to her on February 7, 2008, while incarcerated. Significantly, appellant's correspondence to the second victim itself references the protection order between the parties. As such, appellant's denials of notice of the existence of the order are particularly unpersuasive.

{¶ 13} Appellant was found guilty on all three counts. The trial court sentenced appellant to six-month terms of incarceration on each of the three counts, with two terms to be served concurrently to one another and consecutively to the third, for a total term of incarceration of one year.

{¶ 14} In his first assignment of error, appellant contends that his trial counsel was ineffective. Specifically, appellant challenges trial counsel's decision to proceed on the three cases jointly, decision to stipulate to service after examining evidence of same,

decision to proceed with a bench trial, and decision to consent to the matters being heard by the same trial judge.

{¶ 15} To prevail on a claim of ineffective assistance of counsel, an appellant must establish that counsel's conduct was so deficient as to undermine the proper functioning of the adversarial process so that the trial court cannot be relied upon as having produced a just result. *Strickland v. Washington* (1984), 466 U.S. 668, 686.

{¶ 16} This evidentiary burden requires appellant to satisfy a two-prong test. First, appellant must show that counsel's representation fell below an objective standard of reasonableness. *Id*., at 687. Second, appellant must establish prejudice through a reasonable probability that, but for perceived errors of counsel, the outcome of the proceeding would have been different. *Id*.

{¶ 17} In conjunction with these applicable legal standards, is well settled that an appellant's burden of proof is particularly high given Ohio's presumption that a properly licensed attorney is competent. *State v. Hamblin* (1988), 37 Ohio St.3d 153, 156.

{¶ 18} Toledo Municipal Court Loc.R. 15 specifically establishes, "if a defendant has multiple charges with different case numbers, the cases will be assigned to a single judge." Despite appellant's innuendo that there was something unorthodox and improper underlying the consolidation and joinder of appellant's cases, there is no objective relevant evidence in the record in support of that implication. On the contrary, it comports with the relevant local rules.

{¶ 19} While appellant furnished an unpersuasive denial of any form of notice of the relevant civil protection orders during his testimony at trial, the record of evidence contradicts that self-serving assertion. The trial transcript clearly demonstrates that evidence of service relevant to the protection order pertaining to appellant's ex-wife was furnished both to trial counsel and appellant during the proceeding. Appellant's counsel reviewed the evidence of service and found it to be adequate.

{¶ 20} Regarding the protection order involving the second victim, appellant's own threatening correspondence to that victim references the protection order and unwittingly establishes actual notice by appellant regardless of service. Civ.R. 65(D) establishes that actual notice of an order is sufficient to make it binding.

{¶ 21} With respect to the remaining two allegations of ineffective assistance, the bench trial versus a jury trial and conducting a joint trial involving both victims, these are clearly tactical and strategic in nature. They are well within trial counsel's discretion. Appellant has failed to demonstrate any actual prejudice caused by these standard tactical decisions.

{¶ 22} Appellant has not established that counsel's representation was not in conformity with an objective standard of reasonableness. Appellant has not established by a reasonable probability that a different outcome would have occurred but for perceived errors of counsel. We find appellant's first assignment of error not well-taken.

{¶ 23} Appellant's second assignment of error maintains that there was insufficient evidence to convict appellant of violating the civil protection orders. In support,

appellant places determinative reliance upon the premise that it was not established that appellant was served with the civil protection orders.

{¶ 24} As conveyed above, the trial transcript reflected that appellee furnished evidence of service of the civil protection order pertaining to appellant's ex-wife to both appellant and trial counsel during the course of trial. Appellant's trial counsel expressly stated, "Yes. I have reviewed that, Your Honor. That does appear to be proper, Your Honor."

{¶ 25} As conveyed above, appellant's own threatening correspondence to the second victim itself reference the protection order between the parties. We find that appellant's correspondence demonstrates actual notice in conformity with Civ.R. 65(D) so as to make the underlying protection order pertaining to the second victim binding upon appellant.

{¶ 26} Of even greater significance, applicable caselaw establishes that proof of service of a civil protection order is not an element of the offense of a violation of that order. As held in *State v Rutherford*, 2d Dist. No. 08-CA-011, 2009-Ohio-2071, R.C. 2919.27(A) does not make service of a civil protection order an element of the offense of a violation of that order. On the contrary, the law only requires that it be proven that the defendant acted in disregard of a known risk that a protection order likely existed against him. The record of evidence demonstrates that such was clearly shown in this case.

{¶ 27} Evidence in support of a conviction is deemed sufficient for purposes of appellate review if it is shown that the evidence submitted at trial could convince a

rational trier of fact that the elements of the offense were shown beyond a reasonable doubt. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386.

{¶ 28} We find that the resolution of the service argument in favor of appellee, in conjunction with the clear and detailed testimony of both victims, and the identification of the threatening letters as being attributable to appellant by both victims, was sufficient to convince a rational trier fact that appellant violated the civil protection orders in place with respect to both victims. We find appellant's second assignment of error not well-taken.

{¶ 29} In the third assignment of error, it is asserted that the clerk's sentencing journal entry inaccurately reflected the one-year total sentence imposed by the trial court. Appellee concedes this point. This inaccuracy opens the improper and mistaken interpretation of appellant's sentence as being in excess of the actual sentence imposed. We find appellant's third assignment of error well-taken.

{¶ 30} On consideration whereof, the judgment of conviction of the Toledo Municipal Court is affirmed. The case is remanded to the trial court for issuance of a sentencing entry unambiguously imposing six-month terms of incarceration on each of the three counts, with two terms to be served concurrently to one another, and consecutively to the third term, for a total term of incarceration of one-year encompassing the sum total period of incarceration for all three cases. Appellant and appellee are each ordered to pay one-half of the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE