

[Cite as *State v. Norman*, 2004-Ohio-2409.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83561

STATE OF OHIO	:	ACCELERATED DOCKET
	:	
Plaintiff-appellee	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
JUJUAN NORMAN	:	
	:	
Defendant-appellant	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	MAY 13, 2004
CHARACTER OF PROCEEDING	:	Civil appeal from
	:	Cuyahoga County Court of Common
	:	Pleas
	:	Case No. CR-411588
JUDGMENT	:	AFFIRMED.
DATE OF JOURNALIZATION	:	
APPEARANCES:		
For plaintiff-appellee:		WILLIAM D. MASON

Cuyahoga County Prosecutor
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KENNETH A. ROCCO, J.

{¶1} This case came to be heard on the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. The purpose of an accelerated docket is to permit the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶2} Appellant Jajuan Norman, proceeding pro se, appeals from the trial court's denial of his petition for postconviction relief based upon a claim of ineffective assistance of trial counsel. Appellant argues in his assignment of error that the affidavit attached to his petition demonstrates counsel failed to present a defense witness whose testimony would have "exonerated" appellant.

{¶3} Appellant and his two co-defendants all were convicted after a jury trial for the murder of a twelve-year old boy who was struck by a bullet during an

exchange of gunfire outside his home. This court reviewed appellant's case and affirmed his convictions in *State v. Norman*, Cuyahoga App. No. 80702, 2002-Ohio-6043. As set forth in that opinion, "each defendant admitted to firing weapons in the direction of the" victim's home; the defendants were shooting at the occupants of a white car which was moving past their location.

{¶4} Appellant attached to his petition for postconviction relief the affidavit of Darrell Martin. The record reflects Martin had been intended to be a witness at appellant's trial, but had not been called by any party. In his affidavit, Martin stated he had "seen the shooting incident" in which appellant had been involved, that only the occupants of the white car had fired weapons, and that he saw the three defendants "running in the opposite direction of the [victim's] house seconds before the occupants in the white [car] started shooting."

{¶5} In denying appellant's petition, the trial court noted that the defense theory had been one of self-defense; therefore, such "testimony would have directly conflicted with the statements given by [appellant] and his co-defendants," and would also "have been inconsistent with the defense theory that was presented to the jury." Appellant thus had not sustained his burden to prove counsel had provided ineffective assistance, since the decision to call witnesses at trial "falls within the purview of trial tactics," and it was reasonable to omit a witness whose

testimony was inconsistent with the defense theory of the case.

{¶6} The trial court acted within its prerogative in determining appellant had not presented “sufficient operative facts to establish substantive grounds for relief.”

State v. Calhoun, 86 Ohio St.3d 279, 1999-Ohio-102, paragraph two of the syllabus. See also, *State v. Gammalo*, Cuyahoga App. No. 82853, 2004-Ohio-482.

Accordingly, appellant’s assignment of error is overruled.

{¶7} The judgment is affirmed.

Judgment affirmed.

TIMOTHY E. McMONAGLE, P.J., and SEAN C. GALLAGHER, J., concur.

It is ordered that appellee recover of appellant 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 common pleas court to carry this judgment into execution.

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

KENNETH A. ROCCO
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).