

[Cite as *State v. Hartman*, 2009-Ohio-2876.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 91611**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**KEVIN HARTMAN**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-498763, CR-501289, CR-505132,  
CR-506682, CR-508702, and CR-508703

**BEFORE:** Jones, J., Dyke, P.J., and Celebrezze, J.

**RELEASED:** June 18, 2009

**JOURNALIZED:**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

LARRY A. JONES, J.:

{¶ 1} In 2007, defendant-appellant, Kevin Hartman (“Hartman”), was charged in six different cases stemming from a drug-induced crime spree.<sup>1</sup> In May 2008, Hartman entered pleas of guilty to amended indictments in all six cases. On appeal, Hartman assigns one error for our review, in which he argues that he received ineffective assistance of trial counsel. Finding no merit to the appeal, we affirm the judgment of the trial court.

{¶ 2} In a claim of ineffective assistance of counsel, the burden is on the defendant to establish that counsel’s performance fell below an objective standard of reasonable representation and prejudiced the defense. *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph two of the syllabus; *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674. To determine whether counsel was ineffective, Hartman must show that: (1) counsel’s performance was deficient, in that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment, and (2) counsel’s deficient performance prejudiced the defense in that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. *Strickland*.

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<sup>1</sup>Cuyahoga County Common Pleas Court Case Nos. CR-498763, CR-501289, CR-505132, CR-506682, CR-508702, and CR-508703.

{¶ 3} In Ohio, a properly licensed attorney is presumed competent. *Vaughn v. Maxwell* (1965), 2 Ohio St.2d 299, 301, 209 N.E.2d 164. In evaluating whether a petitioner has been denied the effective assistance of counsel, the Ohio Supreme Court held that the test is “whether the accused, under all the circumstances, \*\*\* had a fair trial and substantial justice was done.” *State v. Hester* (1976), 45 Ohio St.2d 71, 341 N.E.2d 304, paragraph four of the syllabus.

{¶ 4} When making that evaluation, a court must determine whether there has been a substantial violation of any of defense counsel’s essential duties to his client and whether the defense was prejudiced by counsel’s ineffectiveness. *State v. Lytle* (1976), 48 Ohio St.2d 391, 358 N.E.2d 623; *State v. Calhoun*, 86 Ohio St.3d 279, 289, 1999-Ohio-102, 714 N.E.2d 905. To show that a defendant has been prejudiced, the defendant must prove that there exists a reasonable probability that, were it not for counsel’s errors, the result of the trial would have been different. *Bradley*, at paragraph three of the syllabus; *Strickland*.

{¶ 5} Hartman argues that his counsel was ineffective because counsel failed to request a psychological evaluation of his client. Hartman argues that there was “undisputed evidence” that he suffered from psychological disorders because his mother stated at sentencing that Hartman was on medication for bipolar disorder, anxiety, and depression. Hartman claims that since the record shows that he had a confirmed mental illness, the failure to request a psychological evaluation or move to transfer the case to the mental health docket constituted ineffective assistance of counsel.

{¶ 6} We find, however, that there is nothing in the record demonstrating that a psychological evaluation was needed. Although the trial court acknowledged at the plea hearing that Hartman was on medication, there is no evidence that he displayed any type of behavior that would alert trial counsel to request a psychological evaluation or transfer of the case to the mental health docket. In addition, the trial court discussed Hartman's medications with him, and Hartman assured the court that his medications did not affect his ability to think clearly or make decisions.

{¶ 7} We find nothing in the record to demonstrate ineffective assistance of counsel, nor did defense counsel's conduct in this case constitute a substantial violation of counsel's essential duties to his client. Furthermore, we find that the record demonstrates that Hartman was not prejudiced by counsel.

{¶ 8} Hartman's sole assignment of error is overruled.

{¶ 9} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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LARRY A. JONES, JUDGE

ANN DYKE, P.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR