[Cite as *State v. Shazor*, 2010-Ohio-2605.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93609

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ARIES LAMONT SHAZOR

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-508911 and CR-516577

BEFORE: Blackmon, J., Kilbane, P.J., and Stewart, J.

RELEASED: June 10, 2010

JOURNALIZED:

APPELLANT

Aries Lamont Shazor, Pro Se
Inmate No. 554-508
Grafton Correctional Institution
2500 South Avon Belden Road
Grafton, Ohio 44044

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

Thorin O. Freeman
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Aries Lamont Shazor appeals, pro se, the trial court's decision denying his petition for postconviction relief. Shazor assigns the following errors for our review:

> **"I. The lower court made factual and legal errors in determining appellant's claim of attorney conflict of interest and thereby perpetuated the violation of appellant's Sixth Amendment rights under the Federal Constitution."**
>
> **"II. The lower court erred in denying appellant's claim that, but for counsel's false averments about a three year sentence and otherwise deficient representation, appellant would not have pleaded guilty [sic] Case No. 08-CR-516577, and, instead, would insisted on going to trial."**

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court's decision. The apposite facts follow.

{¶ 3} The instant appeal arises out of two separate indictments. On March 4, 2008, the Cuyahoga County Grand Jury indicted Shazor, in Case No. CR-508911, on one count of drug trafficking with juvenile and schoolyard specifications attached. The grand jury also indicted Shazor on one count of drug possession with forfeiture specification attached and one count of possession of criminal tools. On April 22, 2008, Shazor pleaded not guilty at his arraignment, and subsequently filed a motion to suppress evidence.

{¶ 4} On October 14, 2008, a Cuyahoga County Grand Jury indicted Shazor in Case No. CR-516577 on one count of possession of a firearm while

under disability. Said indictment arose from a search warrant executed by the Cuyahoga Metropolitan Housing Authority Police Department at Shazor's residence, where a firearm was recovered.

{¶ 5} On October 16, 2008, pursuant to a plea agreement with the state, Shazor retracted his previously entered not guilty plea in Case No. CR-508911 and pleaded guilty to drug trafficking with juvenile and schoolyard specifications attached. At the same hearing, Shazor was arraigned on Case No. CR-516577 and pleaded guilty to possession of a firearm while under disability.

{¶ 6} Thereafter, the trial court sentenced Shazor to prison terms of three years in each case and ordered them served consecutively.

{¶ 7} On April 13, 2009, Shazor filed a petition for postconviction relief. On May 29, 2009, the state responded with a motion for summary judgment, which was followed with proposed findings of fact. On June 12, 2009, the trial court adopted the state's proposed findings of fact and denied Shazor's petition for postconviction relief.

Postconviction Relief

{¶ 8} We begin with the second assigned error, wherein Shazor argues the trial court erred in denying his petition for postconviction relief. We disagree.

{¶ 9} We review a trial court's decision on a petition for postconviction relief for an abuse of discretion. *State v. White*, Cuyahoga App. No. 90544, 2008-Ohio-4228, ¶19, citing *State v. Calhoun*, 86 Ohio St.3d 279, 1999-Ohio-102,714 N.E.2d 905, paragraph two of the syllabus. The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 10} A petition for postconviction relief is a collateral civil attack on a criminal judgment, not an appeal of the judgment. *State v. Easley*, 10th Dist. No. 09AP-10, 2009-Ohio-3879, citing *State v. Steffen*, 70 Ohio St.3d 399, 410, 1994-Ohio-111, 639 N.E.2d 67. It is a means to reach constitutional issues that would otherwise be impossible to reach because the evidence supporting those issues is not contained in the record. *State v. Murphy* (Dec. 26, 2000), 10th Dist. No. 00AP-233, discretionary appeal not allowed (2001), 92 Ohio St.3d 1441, 751 N.E.2d 481.

{¶ 11} R.C. 2953.21 affords a prisoner postconviction relief "only if the court can find that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Ohio Constitution or the United States Constitution." *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph four of the syllabus. A postconviction

petition does not provide a petitioner a second opportunity to litigate his or her conviction. *State v. Hessler*, 10th Dist. No. 01 AP-1011, 2002-Ohio-3321, ¶32; *Murphy*, supra.

{¶ 12} A hearing is not automatically required on every petition. *State v. Stedman*, Cuyahoga App. No. 83531, 2004-Ohio-3298, ¶24. The pivotal question is whether, upon consideration of the petition, all the files and records pertaining to the underlying proceedings, and any supporting evidence, the petitioner has set forth "sufficient operative facts to establish substantive grounds for relief." *Calhoun*, supra, paragraph two of the syllabus. If the petition, files, and records show that the petitioner is not entitled to relief, the court may dismiss the petition without an evidentiary hearing. R.C. 2953.21(C).

{¶ 13} Shazor asserted four arguments in his petition for postconviction relief. He contended that he was entitled to a new trial because (1) his attorney told him that the motion to suppress was denied, (2) promised a three-year prison sentence, (3) provided false information regarding whether the plea agreement could be reduced to writing, and (4) promised to file a motion for judicial release after two years. We analyze each claim separately.

{¶ 14} In reference to Shazor's claim that his attorney told him that his motion to suppress was denied, we reference the following exchange, which took place at the plea hearing:

> **"The Court: Counsel, do you think your client is making a knowing, intelligent, and voluntary plea here today?**
>
> **Ms. Ranke: I do, your Honor. For the record, we have had full and open discovery. We had the chance to go over not only the search warrant, the affidavit, and all the facts of the new case I've had the opportunity to go over with my client. We did file a motion to suppress back in May on 508911. For purposes of the record, we withdraw that motion as a condition of this plea.**
>
> *** * ***
>
> **The Court: All right. Is that true, Mr. Shazor?**
>
> **The Defendant: Yes, your Honor.**
>
> **The Court: Did you understand everything that was said?**
>
> **The Defendant: Yes."** Tr. 8-9.

{¶ 15} We find that the record belies Shazor's assertions that his attorney told him that the motion to suppress was denied. We also find no support in the record for Shazor's claim that his attorney promised him a three-year prison sentence. The record indicates that after the state had outlined the plea agreement, the trial court specifically asked whether there was an agreement on sentencing. The following exchange took place:

"The Court: * * * What about the sentence now?

Mr. Canonico: No agreement on sentencing, your Honor.

The Court: No agreement on sentencing?

Ms. Ranke: We do not have an agreement on sentencing, Judge.

The Court: I just want to find out. Okay." Tr. 7-8.

{¶ 16} As it relates to Shazor's claim that his attorney told him that the agreement could not be reduced to writing, he now claims that he did not contradict her in open court because his attorney promised that he would get a three-year sentence. We are not persuaded.

{¶ 17} Our review on appeal is limited to those materials in the record, which were before the trial court. See, *State v. Feagin* (Mar. 19, 2001), 5th Dist. No. 00CA43. As previously stated, the record reveals that the trial court specifically asked whether there was any agreement on sentencing. Both the state and Shazor's defense counsel indicated that there was none.

{¶ 18} Further, the record indicates Shazor proceeded to plead guilty after telling the trial court that he was not under the influence of drugs, alcohol, or any medications, and that he did not have any physical or mental problem that would prevent him from understanding the proceedings. Shazor also indicated that he understood the nature of the charges. In addition, Shazor indicated that he understood the possible penalties and understood the rights he waived by pleading guilty. This record

demonstrates that Shazor's guilty pleas were entered knowingly, intelligently, and voluntarily.

{¶ 19} Finally, Shazor's claim that his attorney promised to file a motion for judicial release after he had served two years of his sentence is without merit. The record indicates that Shazor has not yet served two years in prison, having only been sentenced in October 2008. As such, this issue is premature.

{¶ 20} We conclude, Shazor's present assertions, after receiving a consecutive sentence, is merely due to a change of heart. As such, we will not disturb the trial court's denial of Shazor's petition for postconviction relief because it is supported by competent and credible evidence. Accordingly, we overrule the second assigned error.

Attorney Conflict

{¶ 21} In the first assigned error, Shazor claims the trial court erred in denying his petition for postconviction relief because his attorney had a conflict of interest as a result of her initial representation of his codefendants. We disagree.

{¶ 22} In his petition for postconviction relief, Shazor attached affidavits from his codefendants, Daniel and Melissa Halloran. In their affidavits, the Hallorans both averred that Shazor's attorney, who initially represented all

three defendants, indicated they could receive favorable treatment from the state by testifying against Shazor.

{¶ 23} The record before us indicates that Shazor's attorney ceased representing the Hallorans very early in the proceedings; consequently, there was no conflict. The record also indicates that Shazor fails to assert that he pleaded guilty because he believed the Hallorans would testify against him. Most importantly, Shazor indicated that he did not learn of the alleged information until after he was sentenced. Shazor's affidavit states in pertinent part as follows:

> **"I did not know prior to being sentenced, that Attorney Ranke had advised my codefendants, Melissa Halloran and Daniel Halloran, to cooperate with the prosecution against me." Shazor's Affidavit.**

{¶ 24} Since Shazor did not learn this information prior to pleading guilty, it could not have been a factor in his decision to plead guilty. As such, Shazor was not prejudiced by his attorney's alleged disloyalty. We conclude on the record before us that the trial court properly denied Shazor's petition for postconviction relief. Accordingly, we overrule the first assigned error.

Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. 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.

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR