[Cite as *State v. Leonard*, 2010-Ohio-3601.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93496

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KING LEONARD

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-512591

BEFORE: Rocco, J., Gallagher, A.J., and Sweeney, J.

RELEASED AND JOURNALIZED: August 5, 2010

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KENNETH A. ROCCO, J.:

{¶ 1} Defendant-appellant King Leonard, who has been classified as a sexual offender pursuant to R.C. 2950.09, appeals from his conviction after a trial to the bench on a charge of violating R.C. 2950.05(E)(1), failure to provide notice of change of address.

{¶ 2} Leonard presents three assignments of error. He claims his trial counsel rendered ineffective assistance, and further asserts his conviction is not supported by either sufficient evidence or the manifest weight of the evidence.

{¶ 3} Upon a review of the record, this court disagrees. His conviction, accordingly, is affirmed.

{¶ 4} According to the evidence presented by the state, in February 1986, Leonard was convicted of attempted rape. The trial court sentenced him to a prison term of five to fifteen years, but suspended sentence and placed him on three years of conditional probation. However, Leonard violated probation; thus, in April 1988 the trial court ordered his sentence into execution.

{¶ 5} On January 14, 2003, Leonard secured his release from prison. He was notified of his status under Revised Code Chapter 2950, Ohio's version of "Megan's Law," that he was classified as a "sexually oriented offender."[1]

{¶ 6} Leonard was required pursuant to that classification to register, and also to verify his address with the sheriff's department of his county of residence annually for a period of ten years. Former R.C. 2950.04(A)(1), 2950.07(B)(3) and 2950.06(B)(2). Furthermore, with regard to a change of address, the applicable sections of R.C. 2950.05 in January 2003 stated in pertinent part as follows:

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[1]See the discussion set forth in *State v. Bodyke*, Slip Op. No. 2010-Ohio-2424.

{¶ 7} "(A) If an offender or delinquent child is required to register pursuant to section 2950.04 of the Revised Code, the offender or delinquent child, at least twenty days prior to changing the offender's or delinquent child's residence address during the period during which the offender or delinquent child is required to register, shall provide written notice of the residence address change to the sheriff with whom the offender or delinquent child most recently registered under section 2950.04 of the Revised Code or under division (B) of this section.

{¶ 8} "* * *

{¶ 9} "(E)(1) No person who is required to notify a sheriff of a change of address pursuant to division (A) of this section shall fail to notify the appropriate sheriff in accordance with that division."

{¶ 10} Thus, if Leonard intended to change his address, he was required to notify the sheriff's department in his county of residence twenty days *prior* to the change. According to the evidence in the record, Leonard fully complied with his registration, verification, and notification duties between the time of his release from prison and January 14, 2008. He consistently listed his address as "16510 Lotus Avenue, Cleveland, Ohio."

{¶ 11} In 2007, the Ohio enacted its version of the "Adam Walsh Act."[2] This law supplanted much of the former law applicable to sexual offenders.

[2]2007 Am.Sub.H.B. No. 10.

Among other changes, the county sheriff's department was required to "actually go out to the property and verify that the offender lives or does not live there"[3] before generating a community notification regarding a registered sexual offender.

{¶ 12} In January 2008, the Cuyahoga County Sheriff's Department notified Leonard that, under the new version of the law, he had new responsibilities with respect to his address verification. The letter was returned by the postal service marked "Attempted-Not Known, Unable to Forward." Nevertheless, Leonard began to report under the new requirements.

{¶ 13} On March 28, 2008, he "complete[d] a periodic address verification," indicating that his address remained "16510 Lotus in Cleveland." A few days later, however, sheriff's deputy Rodney Blanton went to that address, and he was unable to verify that Leonard lived there. Blanton noted that he spoke with Leonard's "grandmother," and that it was a "bad address."

{¶ 14} At that point, Blanton sent Leonard's case file to Cuyahoga County Sheriff's Detective Kathleen Orlando for investigation. Leonard next was scheduled to return to the sheriff's office on June 18, 2008. He failed to appear.

{¶ 15} On June 27, 2008, the Cuyahoga County Grand Jury indicted Leonard on three counts, charging him with failure to verify his address, failure to

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[3]In this context, quotes indicate testimony given at Leonard's trial.

notify the sheriff of a change of address, and tampering with records. On July 14, 2008, Leonard entered pleas of not guilty to the charges. The trial court assigned counsel to represent him, and he was released on bond.

{¶ 16} On October 3, 2008, Det. Orlando went to the Lotus Avenue address and spoke with a neighbor. On October 6, 2008 she sent a "warning letter" to Leonard at that address; the letter noted Leonard had failed to verify his address as required on June 16, 2008, and instructed Leonard to report to the sheriff's office no later than October 13, 2008.

{¶ 17} Leonard complied. During his visit to the sheriff's office that time, he provided notice of a change of address to East 189th Street. As Leonard completed the form, a deputy alerted Orlando that Leonard was present. Orlando went over with his file to the registration area, identified herself, and initiated a conversation.

{¶ 18} She asked what "the nature of his business he was conducting in the office." He responded he was "changing his address." Orlando told him that the sheriff's office had received an anonymous tip back in March that he had been living at East 189th Street, had been aware of it "for months and months" because of "mail getting returned and other things," and, then, "asked what took him so long and why didn't he come in and change his address." Leonard told Orlando that he had been on East 189th "just for a few months," and that he had

not completed a "prior notice" about it because "he didn't think he would be able to register that address."

{¶ 19} Leonard's case eventually proceeded to a bench trial. The trial court heard testimony from Orlando and Blanton, and received some of the relevant documents into evidence.

{¶ 20} Leonard then presented the testimony of his grandmother. Although she indicated that, in her view, Leonard still resided with her, she acknowledged that when he got married, he went to live with his wife. Leonard's grandmother could not recall the date of the wedding. However, she claimed to have a distinct memory of speaking with the deputy as she was "raking leaves" off her front porch, and she recalled the deputy simply asking if Leonard were home at that time; she stated she told the deputy, "No."

{¶ 21} The trial court found Leonard not guilty of failure to verify and tampering with records, but found him guilty of failure to notify the sheriff's office of his change of address. The court sentenced Leonard to a year of community control sanctions for his conviction.

{¶ 22} Leonard presents three assignments of error.

{¶ 23} "**I. Trial counsel was ineffective for failing to file a motion to suppress any and all statements attributed to the appellant.**

{¶ 24} **"II. The trial court's verdict is not supported by sufficient evidence.**

{¶ 25} "III. The trial court's verdict is against the manifest weight of the evidence."

{¶ 26} Leonard first argues that he received ineffective assistance of trial counsel, since the record reflects counsel neither filed a motion to suppress Leonard's statements to Orlando nor objected to Orlando's testimony at trial. Leonard contends that the circumstances not only warranted a motion to suppress his statements, but that such a motion would have been successful. This court does not agree.

{¶ 27} Leonard acknowledges that a claim of ineffective assistance of counsel requires him to demonstrate both that his attorney's performance fell below an acceptable standard of reasonable representation and that he was prejudiced by that substandard performance. *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph two of the syllabus. In evaluating counsel's performance, this court will not second-guess his decisions in what are matters of trial strategy. *State v. Stone*, Cuyahoga App. Nos. 91679 and 91680, 2009-Ohio-2262, ¶12. A motion to suppress evidence is not required in all cases. Id., ¶13. Moreover, counsel cannot be faulted for failure to perform futile acts. Id., ¶15.

{¶ 28} In this case, counsel clearly made a tactical decision to forgo filing a motion to suppress Leonard's statements, since the motion would have been unsuccessful. Leonard came to the sheriff's office in October 2008 of his own

volition in order to comply with his registration duties. At that time, he finally decided to formally notify the sheriff of his change of address. Once he did so, he was free to leave. He was not in custody. *State v. Williams*, 99 Ohio St.3d 493, 505, 2003-Ohio-4396, 794 N.E.2d 27.

{¶ 29} Orlando simply approached Leonard and asked him to speak with her. Leonard could have refused her request, especially since he already had been indicted in this case. Nevertheless, he volunteered information in response to her questions. Under these circumstances, Leonard waived his rights against self-incrimination and to counsel when he engaged in conversation with the detective. Id.

{¶ 30} The record reflects, moreover, that Leonard's trial counsel came well-prepared for the proceeding, vigorously cross-examined the state's witnesses, and ably showed his client in a sympathetic light, causing the trial court to acquit Leonard of two of the three charges against him. Thus, Leonard cannot demonstrate his claim of ineffective assistance, and his first assignment of error fails. *State v. Stone*.

{¶ 31} Leonard next argues that his conviction for failure to notify the sheriff of his change of address is supported by neither sufficient evidence nor the weight of the evidence.

{¶ 32} An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at

trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386,1997-Ohio-52, 678 N.E.2d 541. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the state, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. Id.

{¶ 33} The test to be applied when reviewing a claim that a conviction is against the manifest weight of the evidence also was set forth in *Thompkins*, at 387. The test is "much broader" than the test for sufficiency; i.e., this court reviews the entire record to determine whether in resolving any conflicts in the evidence, the factfinder "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." Id. In conducting its review, this court must remain mindful that the weight of the evidence and the credibility of the witnesses are matters primarily for the factfinder to assess. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

{¶ 34} The record reflects that when Blanton went to the Lotus Avenue address in March, 2008, he spoke with Leonard's grandmother. As a result of that conversation, Blanton noted that Leonard no longer lived there.

{¶ 35} Orlando, too, testified several letters the sheriff's office sent addressed to Leonard at the Lotus Avenue address were returned by the postal

service. She stated that she went to that address in early October to ascertain whether Leonard could be located there.

{¶ 36} She further testified that when she finally confronted Leonard with her awareness that he had been living elsewhere for "months and months," and asked him why it took him until mid-October 2008 to notify the office of the change, Leonard told her he did not think he would be able to "register" the new address. Since R.C. 2950.05 requires Leonard to give the sheriff's office twenty days notice *before* he changes his address, a reasonable factfinder could conclude the state presented sufficient evidence to prove Leonard's guilt of the offense. *State v. Blanton*, Franklin App. No. 08AP-844; *State v. Starkey*, Auglaize App. No. 2-05-40, 2006-Ohio-6341; *State v. Beasley* (Sept. 27, 2001), Cuyahoga App. No. 77761.

{¶ 37} Leonard's guilt also found support in the manifest weight of the evidence. His eighty-year-old grandmother had difficulty remembering when Leonard got married, but recalled with unusual clarity talking about Leonard with a male sheriff's deputy in March 2008 as she was "raking leaves." In finding Leonard guilty, the trial court indicated that it relied upon Leonard's own admissions more than upon his grandmother's testimony. This was within the trial court's prerogative. *State v. Starkey*, ¶34.

{¶ 38} Since Leonard's conviction, therefore, is supported both by sufficient evidence and by the manifest weight of the evidence, his second and third assignments of error also are overruled.

{¶ 39} His conviction is affirmed.

It is ordered that appellee recover from 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. 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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KENNETH A. ROCCO, JUDGE

SEAN C. GALLAGHER, A.J., and
JAMES J. SWEENEY, J., CONCUR