

[Cite as *State v. Hill*, 2018-Ohio-279.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105554

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ROY HILL**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-15-601511-A

**BEFORE:** McCormack, J., Kilbane, P.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** January 25, 2018

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TIM McCORMACK, J.:

{¶1} Defendant-appellant Roy Hill appeals his conviction for involuntary manslaughter, attempted murder, kidnapping, felonious assault, tampering with evidence, and having weapons while under disability following a guilty plea. For the reasons that follow, we affirm.

#### Procedural History

{¶2} On December 11, 2015, Hill was charged in a multiple-count indictment that included two counts of aggravated murder, one count of murder, two counts of attempted murder, six counts of kidnapping, three counts of felonious assault, one count of tampering with evidence, and one count of having weapons while under disability. The charges stem from an incident involving multiple victims.

{¶3} At his arraignment, Hill was declared indigent and appointed counsel. At counsel's request, on January 21, 2016, the court referred Hill to the court psychiatric clinic for a competency evaluation. On February 25, 2016, the court held a pretrial and the parties stipulated to the clinic's report on Hill's competency.

{¶4} On May 24, 2016, the court permitted the state to put a plea offer on the record. On this date, the court also re-referred Hill to the court psychiatric clinic upon defense counsel's request. Following an evaluation, the clinic opined that Hill was incompetent but restorable. On June 27, 2016, the court found Hill to be incompetent and that he could be restored to competency if provided treatment, and the court transferred Hill to Northcoast Behavioral Healthcare for treatment. Thereafter, Hill was

restored to competency. On October 27, 2016, the court, in its journal entry, noted that the defense was satisfied with the outcome of the latest competency evaluation and the defense counsel had notified the court that Hill was ready to proceed with his case. The court also noted that defense counsel and the state stipulated to the findings of the report from Northcoast Behavioral Healthcare.

{¶5} On January 10, 2017, the court permitted the state to put a plea offer on the record once again. At this time, the court discussed the plea options with Hill. And defense counsel advised the court that they had spoken with Hill about the plea offer and explained to Hill the two options offered by the state. The court indicated in its journal entry that the plea offer remained open for two days.

{¶6} On January 17, 2017, the court held a plea hearing, during which Hill pleaded guilty to amended charges of involuntary manslaughter (Count 1) and its attendant three-year firearm specification, kidnapping without the firearm specification (Count 4), kidnapping without the firearm specification (Count 9), attempted murder without the firearm specification (Count 11), felonious assault without the firearm specification (Count 14), tampering with evidence (Count 15), and having weapons while under disability (Count 16). In consideration for the plea, the state dismissed another pending matter against Hill. The court found Hill guilty of the amended charges and accepted the agreed recommended sentence of 25 years in prison.

{¶7} Hill now appeals his conviction, arguing in one assignment of error that the trial court abused its discretion in denying his request for new counsel and/or not fully

and properly considering his dissatisfaction with trial counsel, especially in light of his mental illness.

#### Appointment of New Counsel

{¶8} The Ohio Supreme Court has held that when an accused raises a specific complaint regarding his dissatisfaction with counsel during the course of trial proceedings, the trial court has an obligation to ensure that the record contains an adequate investigation of the complaint before continuing with the trial. *State v. Deal*, 17 Ohio St.2d 17, 19-20, 244 N.E.2d 742 (1969). “The right to counsel is important enough that \* \* \* a reviewing court should have sufficient information in the record to determine whether a claim of inadequate counsel is justified.” *Id.* at ¶ 20.

{¶9} Defendant’s right to counsel, however, “does not extend to counsel of the defendant’s choice.” *Patterson* at ¶ 20, quoting *Thurston v. Maxwell*, 3 Ohio St.2d 92, 93, 209 N.E.2d 204 (1965).

{¶10} The defendant bears the burden of demonstrating proper grounds for the appointment of new counsel. *State v. Patterson*, 8th Dist. Cuyahoga No. 100086, 2014-Ohio-1621, ¶ 18. “If a defendant alleges facts which, if true, would require relief, the trial court must inquire into the defendant’s complaint and make the inquiry part of the record.” *Id.*, citing *Deal* at ¶ 20. The allegations, however, must be specific, not “vague or general.” *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, 858 N.E.2d 1144, ¶ 68, citing *State v. Carter*, 128 Ohio App.3d 419, 423, 715 N.E.2d 223 (4th Dist.1998).

{¶11} This court has recognized three examples of “good cause” that warrant the appointment of new counsel: (1) a conflict of interest; (2) a complete breakdown of communication; and (3) an irreconcilable conflict that could cause an apparently unjust result. *State v. Davis*, 8th Dist. Cuyahoga No. 101208, 2014-Ohio-5144, ¶ 12. The “breakdown of communication” in the attorney-client relationship must be “of such magnitude as to jeopardize a defendant’s right to effective assistance of counsel.” *State v. Coleman*, 37 Ohio St.3d 286, 292, 525 N.E.2d 792 (1988), quoting *People v. Robles*, 2 Cal.3d 205, 215, 85 Cal.Rptr. 166, 466 P.2d 710 (1970). Defendant and trial counsel’s failure to “see eye to eye” regarding trial strategy is an insufficient basis for removal of appointed counsel. *State v. Lawson*, 8th Dist. Cuyahoga No. 97018, 2012-Ohio-1050, ¶ 24.

{¶12} We review a trial court’s decision whether to remove court-appointed counsel for an abuse of discretion. *Patterson* at ¶ 19. An abuse of discretion implies that the court’s decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶13} Here, at the hearing on May 24, 2016, the state placed its plea offer on the record, and Hill indicated that he understood his options. When the court asked Hill if he was satisfied with his attorney thus far, Hill replied that he was not satisfied. At that point, the court engaged in a discussion with Hill concerning his dissatisfaction:

Court: Why [are you not satisfied]?

Hill: Because I feel as though they are not doing half of the things that I’m asking them to do.

Court: What kinds of things are you asking them to do?

Hill: All types of stuffs, ma'am. It's like, man, everything I say, it's like, no, no, no, plead to this, plead to this, plead to this, do this, do this, do this. You know what I'm saying? That's not registering with me right now. You know what I'm saying?

Court: Okay. You have to give me an example, something you asked them to do that they're not doing.

Hill: Like I [am] telling them to subpoena people, put motions in, do little things I need to be doing, I have been asking for my motion of discovery, stuff that I have to have. They have not [given] me nothing. Only thing I got is my indictments. And they telling me like — like stuff, we looking at all this stuff that they got against me, and I'm telling them that that's not me doing this. That's not what I am saying. They telling me like plead to this; this is what's going to happen; take this time or do this. You know what I'm saying?

Court: Well, let's talk about a couple of things. First of all, a lot of the documents that they get in what we call discovery cannot be shown to you.

Hill: He told me that.

Court: Okay. And there's even an order on the docket that says that. That's a rule everywhere in the court. He's not allowed to violate that. If he's telling you that, he's telling you the truth.

Also, they cannot just subpoena people because you tell them to subpoena them. They are officers of the court. They have to follow specific rules. They have to have a basis for doing it. So although you, as a layperson, might think there's a reason for it, your lawyers have to follow what is called ethical rules as well [as] the criminal rules. So I don't know what the issue is, but I can tell you that just because you think it needs to be done doesn't mean, one, that it needs to be done, or secondly, it may be done. That's something you

can discuss further with them and maybe get more clarification on.

Attorneys are required to take plea deals to you, but they can't control what the plea deal is. He can't get a mark that the state isn't willing to give him. He can only ask. Your lawyers can only ask. They can't control it. The state has a right to not reduce any charges if they wish. That's their option. If they choose to reduce it, again, that's their option. Your attorney can communicate that to you. Attorneys always talk to clients about their options.

{¶14} The court then continued at length to explain to Hill that he is not required to accept a plea deal and he can advise his lawyer that he rejects the offer. The court stressed with Hill that he “always exercise[s] the final say.” In response, Hill stated that he “would like to get new counsel \* \* \* because we are not seeing eye to eye with this case.” The court advised Hill that his stated reason was not a sufficient reason to receive new appointed counsel but he's welcome to hire new counsel:

Well, I am not giving you new counsel based on what you've told me. This is not sufficient. This does not rise to them not doing their job. It does not rise to them doing a bad job. If you disagree with your attorney — you're not the first person in the world to disagree with their lawyer — but you have the control. If you don't want to take the plea, then you're going to tell your lawyers you don't want to take the plea.

{¶15} Hill told the court,

This is a major case. \* \* \* I am done dealing with them. They come see me whenever they come see me, whatever, however it go. You know what I'm saying? Then when they do come see me, it's all like giggle, giggle,



giggle. And then at the end when it's getting close for me to go to trial and now it's like do this, do this, and do this.

After explaining, once again, that "it's up to you [to decide] what you're going to do," the court advised Hill to listen to his attorneys "so that you understand all of the different options," as that will be true of any attorney Hill has. The court concluded the hearing by reminding Hill that "[l]awyers aren't here to tell you what you want to hear. They are here to just tell you their advice."

{¶16} At the hearing on January 10, 2017, the court, once again, engaged in a discussion with Hill concerning the state's plea offer and Hill's dissatisfaction with his trial counsel. Hill indicated that he understood the plea offer, but he was not satisfied with counsel. This time, Hill offered that his attorneys "said we can't discuss the case right now" (meaning with the court). The court explained to Hill why he could not discuss the facts of the case with the court:

The prosecutor is your adversary. The prosecutor is here to plead on the part of the state. You don't want to discuss your case with them. You don't want to discuss it with me. At any given time, you might want to have a bench trial. Then I become your jury and judge. I don't want to hear of the facts in advance. \* \* \* I would hear them as the evidence is coming in. But we can't discuss your case ahead of time. We can't go into the details. \* \* \* I can't discuss the substance of the state's case or your defense. \* \* \* [Y]our lawyers are right.

{¶17} When the court asked Hill if he understood, Hill replied that he understood and that he needed more time to reach a decision on the plea. Thereafter, defense counsel placed on the record that counsel advised Hill of the plea offer and the possible sentences and that the state rejected a counter-offer by the defense. The court then scheduled a new hearing date.

{¶18} Ultimately, the court held a plea hearing, at which time the court engaged in a full Crim.R. 11 plea colloquy. Hill indicated that he understood the plea and the rights he was waiving and he was satisfied with his lawyers. The court found that Hill's plea was made knowingly, intelligently, and voluntarily, and it found Hill guilty.

{¶19} Under the circumstances, we do not find the trial court abused its discretion in denying Hill's request for new counsel. The court considered Hill's request and entertained Hill's dissatisfaction with his trial counsel during two separate hearings. At the hearings, the court engaged in an extensive discussion with Hill regarding his concerns and it offered considered explanations as to why Hill's reasons for wanting new counsel did not warrant counsel's removal. To the contrary, as the trial court explained, counsel's failure to turn over discovery to Hill, the alleged failure to subpoena people as instructed by Hill, and counsel's general advice to not discuss the facts of the case with the court demonstrated counsel's compliance with the rules of the court. The court also explained to Hill more than once that he was free to choose whether to follow his counsel's advice to accept the plea or to go to trial. When Hill ultimately chose to enter into a plea agreement, he no longer indicated he was dissatisfied with counsel.

{¶20} Moreover, to the extent that Hill argues the court should have done more with Hill in light of his mental illness, we disagree. The record demonstrates that the trial court fully complied with defense requests to have Hill evaluated for competency. The clinic ultimately opined that Hill had been restored to competency, defense counsel stipulated to the clinic’s findings, and counsel advised the court that Hill was prepared to proceed with his case. Additionally, following the plea hearing, defense counsel thanked the trial court for providing defense counsel “the opportunity to have [Hill] seen by the experts that have worked with him and got him to the position where he understands what’s going on in the courtroom today.”

{¶21} In light of the record before us, we find that Hill has failed to demonstrate “good cause” that warrants the appointment of new counsel. *Davis*, 8th Dist. Cuyahoga No. 101208, 2014-Ohio-5144, at ¶ 12. The denial of new counsel, therefore, did not constitute a denial of the effective assistance of counsel.

{¶22} Hill’s sole assignment of error is overruled.

{¶23} Judgment affirmed.

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. 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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TIM McCORMACK, JUDGE

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