

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 09CA009585

Appellee

v.

JOSEPH P. HUFFMAN

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 05CR067499

Appellant

DECISION AND JOURNAL ENTRY

Dated: January 31, 2011

MOORE, Judge.

{¶1} Appellant, Joseph Huffman, appeals his conviction by the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} Huffman was charged with obstructing official business, resisting arrest, driving under the influence, assault on a police officer, and felonious assault on a police officer. On February 15, 2007, he filed a pro se motion to dismiss the indictment that argued, among many other things, that the deputy sheriffs who arrested him were “usurpers in office.” The trial court denied Huffman’s motion after a hearing. On November 21, 2008, Huffman pled guilty to driving under the influence of alcohol and assault on a police officer. Less than one week later, however, he moved to withdraw his plea for the reasons set forth in his motion to dismiss. The trial court denied the motion to withdraw Huffman’s guilty plea following a hearing and, on April 13, 2009, sentenced him to community control, imposed a \$375 fine, and suspended his

driver's license. Huffman timely appealed the trial court's judgment, asserting three assignments of error.

II.

ASSIGNMENT OF ERROR I

“ATTORNEYS KENNY LIEUX AND DOUG MERRILL WERE INEFFECTIVE IN VARIOUS WAYS AND AS SUCH JOSEPH HUFFMAN WOULD NOT HAVE MADE A PLEA DEAL BUT FOR HIS LAWYER’S ERRORS, FAILURE TO TAKE ACTION ON ISSUES OF RELEVANCE, AND FAILURE TO FULLY REPRESENT HIS CASE.”

{¶3} In his first assignment of error, Huffman has argued that the performance of his attorneys was ineffective because they did not investigate the appointment of the deputy sheriffs who arrested him or object to the deputies’ jurisdiction to make an arrest in Carlisle Township.

{¶4} This Court has concluded that a guilty plea resulting from ineffective assistance of counsel is not voluntary. *State v. Liu*, 9th Dist. No. 24112, 2008-Ohio-6793, at ¶22. To demonstrate ineffective assistance of counsel, a defendant must show deficiency in the performance of counsel and that, but for counsel’s errors, there is a reasonable possibility that the outcome of the proceeding would have been different. *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, at ¶204, citing *Strickland v. Washington* (1984), 466 U.S. 668, 687-88, 694. In other words, Huffman must demonstrate a reasonable probability that he would not have pled guilty absent counsel’s errors. See *State v. Xie* (1992), 62 Ohio St.3d 521, 524. As in any appeal, however, this Court’s review is limited to the record on appeal, and it is the appellant’s responsibility to ensure that the record is provided. *Francis v. Francis*, 9th Dist. No. 09CA009722, 2010-Ohio-5659, at ¶3, citing App.R. 9.

{¶5} Huffman did not provide a transcript of either the hearing on his motion to dismiss or the hearing on his motion to withdraw his guilty plea, nor did he provide any other

evidence from the trial court record that might substantiate his argument that counsel's performance was deficient. Although Huffman makes many factual assertions in his brief in support of his arguments, "a direct appeal is not the appropriate context to present evidence outside the record." *State v. Mitchell*, 9th Dist. No. 24730, 2009-Ohio-6950, at ¶20.

{¶6} The unsupported factual allegations in Huffman's brief are not sufficient to demonstrate that his attorneys were ineffective. His first assignment of error is overruled.

ASSIGNMENT OF ERROR II

"THE LORAIN COUNTY SHERIFF[']S DEPARTMENT HAD NO JURISDICTION TO PATROL THE ROADS IN CARL[IS]LE TOWNSHIP WITH NO CONTRACT IN PLACE LEAVING THE COMMON PLEAS COURT WITH NO JURISDICTION OVER THE SUBJECT MA[T]TER, AND NEVER HAVING A HEARING ON THE JURISDICTION."

ASSIGNMENT OF ERROR III

"THE SHERIFF[']S DEPUTIES NEVER PRODUCED QUALIFICATIONS NECESSARY AS REQUIRED UNDER THE STATUTES, BEING USERPERS [SIC] IN OFFICE."

{¶7} Huffman's second and third assignments of error argue that the trial court lacked subject matter jurisdiction because the deputy sheriffs who arrested him did not have territorial jurisdiction within Carlisle Township and were not qualified to hold their employment. Although issues related to the trial court's jurisdiction are not waived upon entry of a guilty plea, once again, this Court's review is constrained because the record does not contain any evidence related to these assignments of error, and Huffman did not provide transcripts of either hearing during which these issues may have been addressed. See, generally, App.R. 9(B). In the absence of those parts of the record necessary to demonstrate error, this Court must presume regularity in the proceedings below. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. Huffman's second and third assignments of error are overruled.

{¶8} Huffman has also argued that his conviction is against the manifest weight of the evidence, but has not separately assigned this argument as error. See Loc.R. 7(B)(7). Nonetheless, this Court notes that when Huffman pled guilty to the offenses in question, he waived his ability to challenge manifest weight on appeal. See *State v. Chavers*, 9th Dist. No. 07CA0065, 2008-Ohio-3199.

III.

{¶9} Huffman's assignments of error are overruled, and the judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

JOSEPH P. HUFFMAN, pro se, Appellant.

DENNIS P. WILL, Prosecuting Attorney, and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellee.