IN THE SUPREME COURT OF OHIO

State of Ohio,	:	**Case No.: 23-1039**
	:	
Plaintiff-Appellee,	:	**On Appeal From The**
-vs-	:	**Erie County Court Of Appeals,**
	:	**Sixth Appellate District**
Deonta Boyd,	:	
	:	**C.A. Case No. E-22-044; E-22-045**
Defendant-Appellant.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT OF DEONTA BOYD

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The court abused its discretion against Appellant-Boyd; the viewpoint of discrimination here is alleging that Appellant-Boyd filed his first Post -Sentence motion in 2006. The Sixth Appellate District alleges that Appellant -Boyd filed his first Post-Sentence Crim. R. 32.1 motion in 2007. However, no such motion appears on the docket in either case no.2004-CR-643; and/or 2005-CR-103. (State v. Boyd, 2020-Ohio-6866, P3). Thus, the court imputed information not in the case sub judice;..... 12.

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This Court Should Accept Review Because This Case Is Of Public Or Great General Interest And Involves A Substantial Constitutional Question

On November 18, 2022 the Sixth Appellate Judicial District consolidated Deonta Boyd (hereinafter "Boyd") 2-post-sentence Crim.R. 32.1 motions, where Boyd appealed each of the sentencing courts post-sentence orders, denying him the ability to have counsel (Sixth Appellate Judicial District Case No. E-22-044), and where Boyd appealed the sentencing court's decision detailing that Boyd's trial counsel did not have an actual conflict of interest, (Sixth Appellate Judicial District Case No. E-22-045).

Both of these consolidated cases involve violations of due process and of the right to counsel. And, due to the Supreme Court of Ohio being not only empowered to consider such question, but likewise due to it being the court's duty to do so as a court of last resort, Boyd submits that this matter must be accepted to articulate and specify that a defendant—when facing such a harsh punishment of life in prison—that the defendant's ability to have counsel and to have counsel who does not have an actual conflict of interest must be protected.

This Court must accept review to resolve these matters. This case presents 3-critical issues for the public. This case involves 2-foundational structural error issues which warrant an automatic reversal and 1-extraordinary dispute wherein the sentencing court has imputed information in to the record—which literally does not exist—to deny the defendant his requested relief, post-sentence. Thus, such topics impact a wide range of potential defendants in Ohio.

The first concern is the erroneous removal of Boyd's retained trial attorney "Denise M. Demmitt", ("Demmitt"), by the trial court—who Boyd specifically hired to represent Boyd. The second matter, transpiring concomitantly as the first concern, is that the trial court removed Demmitt from Boyd's criminal cases of 2004-CR-643, and, 2005-CR-103, without any inquiry, investigation, or colloquy as to—or why—the trial court removed Demmitt from representing Boyd, depriving Boyd of his specific choice of counsel to therein be effectively represented by counsel, as guaranteed by the Sixth Amendment of the U.S. Constitution.

Moreover, this constitutional question turns on whether Boyd's trial counsel Demmitt had an actual conflict of interest that hampered the representation of Boyd, not on whether the trial judge should have been more assiduous in taking prophylactic measures.

Third, when Boyd attempted to challenge such matter(s) post-sentence through that of a Crim. R. 32.1 pleading, the sentencing court imputed information in to the trial docket of the sentencing court—so that the sentencing court could deny Boyd on procedural grounds—even when no such information was (or is), in the record of the case sub judice.

Therefore, this court should accept jurisdiction to specify that due process and equal protections are afforded to all Ohioans, including Boyd.

Statement Of The Case And Facts

Background of the cases. Counsel Demmitt came into the representation of Deonta Boyd on or around February 27-28, 2005 advising Boyd that she'll be taken the cases as a favor to Boyd's mother Sondra Boyd-Ford. On or around March 10th, 2005), Boyd was indicted on all charges and without the prosecution filing any motions to consolidate, the two separate cases were now consolidated. Boyd's charges were #2 Counts Aggravated. Robbery [F1] 2913.01 – #2 Counts Weapon under disability [F5] 2923.13 [A] [2] – Attempted Murder [F1] 2903.02 – Felonious Assault [F2] 2903.11 [A][1]. Aggravated Murder 2903.01(A) and Aggravated Murder 2903.01(B) with a Firearm specification and the death penalty specification on both counts; Boyd also was indicted for Murder 2903.02(A), Aggravated Robbery [F-1] 2911.01(A)(1) and/or (3), #2 Counts of Having Weapons While Under Disability [F-5] 2923.13(A) (2.

On March 21-22nd,2005 Counsel Demmitt discovered what counsel called a potential conflict of interest in case No.2005-CR-103 but never alerted the trial court in Boyd's case until June 15th,2005. Furthermore, Counsel Demmitt stated in her motion to withdraw as counsel that the potential conflict was indeed an actual one. On June 15th, 2005 Counsel Demmitt filed a motion to withdraw as counsel due to

an actual conflict of interest. The trial court held a hearing on the motion that very same day but failed to inquire into the nature and extent of the actual conflict of interest between Boyd and his counsel Demmitt. The trial court did not properly rule on the matter of the motion. The trial court removed Counsel Demmitt on June 22nd, 2005 and appointed Boyd two new court appointed attorney's. Mr. Robert Dixon (Supreme Court No. 0022466) and Mr. David Doughten (Supreme Court No.0002847) on July 14th,2005.

Boyd asserts that his understanding that he was pleading guilty to 23 years to life but was deceived by Attorney's Dixon and Doughten, under duress Boyd did not understand the proceeding Boyd plead guilty to Aggravated. Murder 2903.01(B) with gun spec, Felonious Assault 2903.11[A][1]. Aggravated. Burglary. Judgement was entered on June 5, 2006. Boyd was sentenced to 41 years to life, all charges ran consecutive. Boyd did not appeal from the judgement of conviction to the court of appeals because Dixon and Doughten ignored Boyd's request to appeal.

Undisputed Facts: Boyd filed his first post-sentence motion Crim.R. 32.1 on March 12th, 2020 due to reversible error—the trial court did not strictly comply with the Crim.R.11(C)(2)(c) requirements that relate to the waiver of constitutional rights before Boyd plead guilty.

The trial court denied Boyd's post-sentence Crim.R. 32.1 motion to vacate guilty plea. see, (State v. Boyd, 2020 Ohio Misc. LEXIS 3260). On the grounds that appellant failed to demonstrate a manifest injustice. The Sixth Appellate District affirmed. However, but on different grounds. (State v. Boyd, 2020-Ohio-6866). The Sixth Appellate District claims that Boyd filed his first post-sentence Crim. R. 32.1 motion in 2007. However, no such motion appears on the docket for a 2006 or 2007. (State v. Boyd, 2020-Ohio-6866, at P3).

The Sixth Appellate District found all of the arguments were barred by the doctrine of res judicata. (State v. Boyd, 2020-Ohio-6866, P5). Shortly afterwards Boyd tried to file a delayed appeal according to App.R. 5(A) but Boyd did not file a Notice of appeal within the trial court before filing the Delayed Appeal App.R. 5(A) within the Sixth Appellate District and therefore, was denied.

Now Boyd seeks to have his Guilty pleas vacated; and judgment reversed and cause remanded due to depriving Boyd of his choice of counsel, depriving Boyd of a trial, an unresolved actual conflict of interest. On March 21-22nd, 2005, a Conflict of interest disclosure and waiver form was drawn up by Demmitt, but Demmitt never alerted the trial court of the actual conflict of interest in Boyd's cases, until June 15th,2005. On June 15th,2005 the trial court conducted a partial hearing ordering Boyd to find new counsel or the court will appoint one to him. On June 22nd, 2005 the trial court removed retained counsel Demmitt (hereinafter "Demmitt"), from both cases 2004-CR- 643; 2005-CR-103. Boyd asserts that the trial court was scheduled to have a hearing on July 6th,2005. (See, docket sheet P6, No.22). However, the trial court did not have that hearing with Boyd or Demmitt present regarding the existence of an actual conflict of interest.

Proposition of Law No. 1:

In Gonzalez-Lopez, 548 U.S. at 148,126 S.Ct. 2557, 165 L.Ed.2d 409 the United States Supreme Court conclude that the erroneous denial of the right to retained counsel of choice constitutes structural error, which would mean that the court of appeals would automatically reverse the conviction.

Counsel Demmitt was initially hired for the case 2004-CR-643. But on March 21-22, 2005 in the case 2005-CR-0103, according to Demmitt's "Conflict of interest disclosure and waiver form," Demmitt acknowledged that she wanted to continue to represent Mr. Boyd. In open court, with Demmitt's other client Sylvester Ford, Demmitt was removed from S. Ford cases on March 21-22,2005.

On June 15,2005, the trial court held a hearing in the case 2005-CR-0103 on Demmitt's motion to withdraw as counsel, counsel Demmitt stated, "that she did not file a motion to withdraw in 04-CR-643 case" "It's a case not related to the facts of the case at bar" "I just didn't file a second copy"

Boyd asserts that there is a "serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it

would be fitting and appropriate for that determination to appear upon the record. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. *Johnson v. Zerbst,* 304 U.S. 458, 465, 82 L. Ed. 1461, 58 S. Ct. 1019." "Presuming waiver from a silent record is impermissible.

Boyd's fundamental right to have counsel of choice was indeed violated, the trial court erroneous deprived Boyd's of his choice of counsel which entitles him to an automatic reversal of his conviction. *Gonzalez-Lopez,* 548 U.S. at 148,126 S.Ct. 2557, 165 L.Ed.2d 409.

Although Demmitt stated on the record that she did not file a motion to withdraw as counsel in the case 2004-CR-643; it's a case not related to facts of the case at bar, which, was 2005-CR-0103; the limited discussion on the motion to withdraw as counsel that was actually filed in the case 2005-CR-0103 due to an actual conflict of interest, where no inquiry or investigation and or evidence was presented, the trial court could not have properly considered the merits of that motion to withdraw as counsel and/or the trial court could not have properly considered the merits of the motion to withdraw as counsel in the 04-CR-642 case.

On June 22nd, 2005, the trial court removed counsel Demmitt without an inquiry or an investigation in either case, especially in the 2004-CR-643 case, ignoring the July 6th, 2005 hearing, which is on the docket sheet. Prior to June 22,2005, the trial court ordered Boyd to fill out an application for the Public Defender's Office in the case 2005-CR-0103, the trial court could not have properly consider the merits of the motion to withdraw as counsel in 2004-CR-643 case because the motion to withdraw as counsel does not exist on the docket sheet nor is there a proper ruling on the reason why Demmitt was removed from that case 2004-CR-643.

The U.S. Supreme Court held in *United States v. Gonzalez-Lopez,* 548 U.S. 140 that once the denial of defendant's right to chosen counsel was established, the violation of defendant's right to counsel was complete and no showing of prejudice was required. Regardless of whether defendant received a fair trial in accordance with due process, defendant's right to counsel of his choice was the root of the

constitutional guarantee of assistance of counsel. Boyd asserts that the Sixth Amendment right which is guaranteed "the right to be represented by an otherwise qualified attorney whom that Boyd could afford to hire, or who is willing to represent Boyd even though Boyd was without funds." *Caplin & Drysdale, Chartered v. United States,* 491 U.S. 617, 624-625, 109 S.Ct. 2646, 105 L.Ed.2d 528 (1989). And when a court wrongfully denies a defendant his counsel of choice, the court has committed structural error. *United States v. Gonzalez-Lopez,* 548 U.S. 140, 150, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006); *see also State v. Chambliss,* 128 Ohio St.3d 507, 2011-Ohio-1785, 947 N.E.2d 651, ¶ 18 ("the erroneous deprivation of a defendant's choice of counsel entitles him to an automatic reversal of his conviction").

Proposition of Law No. 2:

Under State v. Gillard where a trial court breaches its affirmative duty to inquire, a criminal defendant's rights to counsel and to a fair trial is impermissibly imperiled and prejudice or "adverse effect" will be presumed.

The trial court removed Demmitt in the case 2005-CR-0103, before inquiring into Boyd's sixth Amendment right to effective and conflict-free counsel and to see if Boyd was prejudice by Demmitt's actual conflict of interest. Boyd asserts that he was denied his Sixth Amendment right to effective and conflict-free counsel. The trial court did not entertain the motion in its entirety—an abbreviated hearing was held after the motion was brought to the court's attention, the trial court spent most of the time discussing discovery issues, the indefinite time waiver to Boyd's speedy trial and how the State brought up a good idea—that the trial court should not rule on the motion to withdraw as counsel.

Boyd asserts that the violation of his Sixth Amendment right cannot be harmless because even under the presumption that the trial court knew or reasonably should know of Demmitt's possible or actual conflict of interest the trial court removed Demmitt due to the facts of Demmitt's motion that there existed an inescapable actual conflict of interest that hampered the representation of Boyd.

Boyd asserts that prejudice is presumed, the violation of Boyd's Sixth Amendment rights cannot be harmless. Boyd asserts that because prejudice is presumed, that he was and is entitled to a new trail. If

a conflict of interest is found, the trial court must then conduct a new trial free from conflicts of interest. See, *State v. Johnson,* 185 Ohio App. 3d 654, *659.

The trial court, the prosecutor(s) and Sixth District do not dispute that an inescapable actual conflict of interest existed in the case 2005-CR-0103.

As the Supreme Court has recognized, "a court must presume that counsel's divided loyalties adversely affected his performance on behalf of his client. When the effects of a constitutional violation are not only unknown but unknowable, the Constitution demands that doubts be resolved in favor of a criminal defendant." See, *Bonin v. California,* 494 U.S. 1039, 1045, 110 S. Ct. 1506, 1509, 108 L. Ed. 2d 641 (1990) (Marshall, J., dissenting from the denial of certiorari).

According to Supreme Court of Ohio in *State v. Gillard,* 64 Ohio St. 3d 304; Where a trial court knows or reasonably should know of an attorney's possible conflict of interest in the representation of a person charged with a crime, the trial court has an affirmative duty to inquire whether a conflict of interest actually exists. The duty to inquire arises not only from the general principles of fundamental fairness, but from the principle that where there is a right to counsel, there is a correlative right to representation free from conflicts of interest. Where a trial court breaches its affirmative duty to inquire, a criminal defendant's rights to counsel and to a fair trial are impermissibly imperiled and prejudice or "adverse effect" will be presumed. *See, Holloway v. Arkansas (1978), 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426; Cuyler v. Sullivan (1980), 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333; and Wood v. Georgia (1981), 450 U.S. 261, 101 S.Ct. 1097, 67 L.Ed.2d 220.*

The trial court should have investigated the facts in order to have protected Boyd's constitutional rights and the details of counsel Demmitt's interests to determine whether Demmitt in fact suffered from an actual conflict and to see if no genuine conflict at all existed before removing Demmitt from Boyd's cases because Demmitt was already removed from Sylvester Ford cases on March 22nd, 2005.

Boyd asserts that according to the Supreme Court of Ohio in Gillard, appointing new counsel **did not correct the problem**. Boyd asserts that in order for the trial court to safeguard his right to the effective assistance of counsel, the trial court had an affirmative obligation to explore the actual conflict of interest, especially when such conflict is brought to the attention of the trial judge in a timely manner.

In *State v. Gillard*, 64 Ohio St. 3d 304; the Supreme Court of Ohio was reluctant to accept the limited inquiry conducted by the trial court into whether the possible conflict affected William Gillard. The Supreme Court were concerned with appellant's constitutional rights. And, the Supreme Court was not satisfied that appointing independent counsel to represent William Gillard corrected the problem.

Boyd asserts that the trial court was constitutionally required to conduct an inquiry into the actual conflict of interest to determine whether that conflict had a prejudicial effect on Boyd's case or cases; whether Boyd had received, and would receive, the right to conflict-free counsel guaranteed him by the Sixth Amendment to the United States Constitution. *See, State v. Gillard,* supra.

Boyd assert that he was denied his Sixth Amendment right to effective and conflict-free counsel, therefore, his Sixth Amendment right to effective and conflict-free counsel was indeed violated. The duty of the trial court to inquire arises not only from the general principles of fundamental fairness, but from the principle that where there is a right to counsel, there is a correlative right to representation free from conflicts of interest. *See, State v. Dillon,* 74 Ohio St. 3d 166.

Proposition of Law No. 3:

Under Johnson v. Zerbst a waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. A waiver from a silent record is impermissible.

Despite counsel Demmitt attempt to redirect the court's attention to the actual conflict-of-interest issue, the trial court said nothing about whether trial counsel Demmitt had an actual conflict of interest that hampered the representation of Boyd. The actual conflict-of-interest claim, aside from acknowledging that there were indeed "issues" stating that the court "has reviewed the document" and that "Demmitt's

motion to withdraw as counsel was very well drafted." The Ohio Supreme Court has held that, where a trial court knows or reasonably should know of an attorney's possible conflict of interest in the representation of a person charged with a crime, the trial court has an affirmative duty to inquire whether a conflict of interest actually exists.

Once the court has ascertained that a potential conflict exists, the trial court must alert the defendant to the possible consequences of the conflict and obtain a voluntary, knowing, and intelligent waiver of such a conflict. The trial court has substantial latitude in determining the existence and waiver of an actual or potential conflict of interest. Therefore, the standard of review for determining whether the court erred in its pretrial disqualification of defense counsel is whether it abused its broad discretion.

Boyd asserts that in counsel Demmitt's motion to withdraw as counsel, Demmitt claimed to have presented Boyd a Waiver of Conflict in late March 21-22, 2005 to sign, however, this waiver is without Boyd's signature. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. *Johnson v. Zerbst,* 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). Boyd asserts that he never waived the conflict of interest because Boyd never seen the waiver of conflict form because Boyd knew nothing of the conflict of interest. A waiver from a silent record is impermissible.

Proposition of Law No. 4:

Under State v. Gillard and the constitutional right free from conflicts of interest the duty of the trial court to inquire arises not only from the general principles of fundamental fairness, but from the principle that where there is a right to counsel, there is a correlative right to representation free from conflicts of interest.

Boyd asserts that the trial court's duty to conduct an inquiry into even a possible conflict of interest to determine whether a Boyd did or would receive the right to conflict free counsel guaranteed him by the Sixth Amendment to the United States Constitution. *State v. Johnson,* 185 Ohio App.3d 654, 2010 Ohio 315 ¶¶ 3-4, 925 N.E.2d 199 (3d.Dist), citing to Gillard. In Johnson, a review of several seminal United States Supreme Court cases clearly demonstrated that where a trial court knows or reasonably

should know of an attorney's possible conflict of interest in the representation of a person charged with a crime, the trial court has an affirmative duty to inquire whether a conflict of interest actually exists. *Johnson*, at ¶ 3, *quoting Gillard*, 64 Ohio St.3d at 309-312. When "a trial court breaches its affirmative duty to inquire, a criminal defendant's rights to counsel and to a fair trial are impermissibly imperiled and prejudice or 'adverse effect' will be presumed." Id. Boyd asserts that he was deprived of his guaranteed right to conflict-free representation before he entered his guilty plea. The constitutional question here is "whether trial counsel Demmitt had an actual conflict of interest that hampered the representation of Boyd." *State v. Davis*, 338 Conn. 458, at FN11 citing *Mickens v. Taylor*, 535 U.S. 162, at *179

Although the trial court was constitutionally required to conduct an inquiry into the actual conflict of interest to determine the nature of Demmitt's conflict, whether Boyd had received, and would receive, the right to conflict-free counsel guaranteed him by the Sixth Amendment to the United States Constitution. In support of this argument, Boyd relies on *Holloway v. Arkansas* (1978), 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426; *Cuyler v. Sullivan (1980)*, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333; and *Wood v. Georgia* (1981), 450 U.S. 261, 101 S.Ct. 1097, 67 L.Ed.2d 220; *State v. Gillard*, 64 Ohio St. 3d 304, 309, 595 N.E.2d 878, 881, 1992 Ohio LEXIS 1711, *10, 1992-Ohio-48 (Ohio August 12, 1992)

Additionally, the United States Constitution is violated by an actual conflict of interest, not a possible one. *Cuyler v. Sullivan* (1980), 446 U.S. 335, 348-350, 100 S. Ct. 1708, 1718-1719, 64 L. Ed. 2d 333, 346-347; *State v. Manross* (1988), 40 Ohio St. 3d 180, 182, 532 N.E.2d 735, 738. When a possible conflict of interest exists, a defendant is entitled only to an inquiry by the trial court. The trial court's failure to conduct the inquiry, however, does not transform a possible conflict into an actual one. A retrial for failing to inquire into a possible conflict of interest is premature. Rather, reversal is mandated only if an actual conflict is found. *See Brien v. United States* (C.A.1, 1982), 695 F.2d 10, 15, fn. 10; *United States v. Winkle* (C.A.10, 1983), 722 F.2d 605, 611-612; *Bonin v. Vasquez* (D.C.Cal. 1992), 807 F. Supp. 589, 606, fn. 16.

Proposition of Law No. 5:

In this case where the trial court was informed by counsel or the defendant of actual conflict of interest but failed to inquire into that conflict: in such cases, prejudice is presumed and reversal is automatic.

Counsel Demmitt was ordered to remain on Boyd's case, even after Demmitt told the trial court that she was off the case. (See, Tr. P7; lines1-3) also see, (Tr. P10; lines10-13). Such would constitute automatic reversal, as it is a foundational error which occurred and prejudiced Boyd as a result. *See Holloway v. Arkansas,* 435 U.S. at 489-92. Because according to *Holloway v. Arkansas,* 435 U.S. 475, 484-91, 55 L. Ed. 2d 426, 98 S. Ct. 1173 (1978); *Riggs v. United States,* 209 F.3d 828, 831 n.1 (6th Cir. 2000) since the trial court **did not inquire** into the purported actual conflict of interest in the 2005-CR-0103, the automatic reversal is implicated. *Cf. Holloway,* 435 U.S. at 488; *Riggs v. United States,* 209 F.3d 828, 831 n.1 (6th Cir. 2000).

Boyd submits to the Supreme Court of Ohio that the record demonstrates that the trial court (Judge Tygh Tone) was informed by counsel (Demmitt) of an actual conflict of interest but the trial court failed to inquire into that actual conflict of interest. In this case, where there was limited discussion on the motion where no evidence was presented, the court could not have properly considered the merits of the motion as evidenced from the record.

Additionally, as the trial court was unable to determine from the limited hearing whether Boyd's right to assistance of counsel under U.S. Const. amend. VI was violated; the trial court breached this affirmative duty, Boyd's right to counsel and a fair trial were impermissibly imperiled; prejudice or "adverse effect" should be presumed. The fact of the matter; the trial court believed that there was an actual conflict of interest but the trial court did not give a full and fair consideration to see if Boyd was represented by "highly competent" counsel. Boyd's right to assistance of counsel under U.S. Const. amend. VI was violated. Boyd asserts that the trial court's failure to inquire into the risk of conflict unconstitutionally endangered Boyd's Sixth Amendment right to counsel.

The trial court knew of a conflict of interest, so it had an affirmative duty to inquire whether a conflict of interest actually existed and but the trial judge failed to make the . . . mandated inquiry, the constitutional question here is whether counsel Demmitt had an actual conflict of interest that hampered the representation of Boyd's entire case. As the record validates, such transpired herein.

As such, the question this court must now determine is: was Boyd therein denied his most fundamental constitutional rights under the Fifth and Sixth Amendments to the United States Constitution. Where the court acted arbitrarily and unreasonably in declining to hold a hearing on the merits of the motion, which presented an issue of a criminal defendant's fundamental right to have counsel free from conflicts. See *State v. Gillard,* 64 Ohio St.3d at 311, 595 N.E.2d 878. The court, therefore, abused its discretion in denying Boyd's motion to withdraw his plea. See, *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 5 Ohio B. 481, 450 N.E.2d 1140 (1983). For this reason also, this court must reverse the conviction accordingly.

Proposition of Law No. 6:

The court abused its discretion against Appellant-Boyd; the viewpoint of discrimination here is alleging that Appellant-Boyd filed his first Post-Sentence motion in 2006. The Sixth Appellate District alleges that Appellant-Boyd filed his first Post-Sentence Crim. R. 32.1 motion in 2007. However, no such motion appears on the docket in either case no.2004-CR-643; and/or 2005-CR-103. (State v. Boyd, 2020-Ohio-6866, P3). Thus, the court imputed information not in the case sub judice;

The Sixth Appellant District committed jurisdictional error by claiming in Boyd's **2020-Ohio-6866** appeal that Boyd filed his 1-post-sentence motion to withdraw his guilty plea in 2007. The trial court claimed that Boyd filed his first post-sentence Crim.R. 32.1 motion in 2006. However, Boyd asserts that he actually filed his very first post-sentence Crim.R. 32.1 motion on January 17th,2020, which was denied by the trial court. *State v. Boyd,* 2020-Ohio-6866, P3, 2020 Ohio App. LEXIS 4695, *2, 2020 WL 7655433 (Ohio Ct. App., Erie County December 23, 2020).

However, according to the certified docket sheets for the cases 2004-CR-643 and 2005-CR-103, there is no such post-sentence Crim.R. 32.1 motion appearing on either of the dockets, (see attached

exhibits "A" and "B", incorporated herein). And, according to the Supreme Court of Ohio, a document is "filed" when it is deposited properly for filing with the clerk of courts. The clerk's duty to certify the act of filing arises only after a document has been filed. This is implicit in the statutes and rules regarding filing. *R.C. 1901.31*, *2303.08*, *2303.10*, and *2303.31*, and *Sup.R. 26.05* and *44*. *See: City of Zanesville v. Rouse*, 126 Ohio St. 3d 1, at the syllabus, and P6. Boyd asserts that if the 2007 post-sentence Crim.R. 32.1 motion was filed—then the certification by a clerk on a document would verify that it was indeed filed. *City of Zanesville v. Rouse*, 126 Ohio St. 3d 1 supra., id at P9. This is axiomatic. Had the 2007 post-sentence Crim.R. 32.1 motion been endorsed with "the fact and date of filing" by the clerk, this would be the evidence of the filing. *King v. Penn* (1885), 43 Ohio St. 57, 1 N.E. 84, at 61. But this wasn't done. It could not have been done. Because, there was no 2007 post-sentence Crim.R. 32.1 motion filed.

Boyd did not file any documents with the clerk of court, pursuant to the clerk of court's docket sheets and there is no indication or evidence that Boyd ever filed a post-sentence Crim.R. 32.1 motion with clerk of courts. Therefore, any such imputation by the court—of Boyd filing a Crim.R. 32.1 motion **before** March 12, 2020—is an abuse of discretion and error attributed to the trial court.

On May 20, 2021, Boyd filed a motion for Clarification, asking the Erie County Clerk of Courts to clarify a post-sentence Crim.R. 32.1 ever being filed by Boyd in the year of 2006/2007? The Erie County Clerk of Courts responded by saying no such motion exists.

And, any such, the alleged post-sentence Crim.R. 32.1 motion, **before** March 12, 2020, was never produced by the prosecutor as evidence or exhibits. See Civ. R. 5(E) for documents to be "filed" under the Rules of Civil Procedure, the filing "shall be made by filing them with the clerk of court, except that the judge may permit the documents to be filed with the judge, in which event the judge shall note the filing date on the documents and transmit them to the clerk"); *Apps v. Apps*, 10th Dist. No. 02AP-1072, 2003-Ohio-7154, ¶ 19. As the Ohio Supreme Court stressed, that a document is considered filed when it is filed

with the clerk of courts. See: *State v. Finfrock*, 1998 Ohio App. LEXIS 4889; WL 726478, *10, n. 1. See also: *State v. Hansbro*, 2002-Ohio-2922

Furthermore, the trial court should have required that any Crim.R. 32.1 motion, allegedly filed **before** March 12, 2020, been in fact filed with the court, before rendering any orders on a motion which was not properly before it, as Crim. R. 49 requires that **all** papers served on an opposing party must be filed with the court. See, *City of Cleveland v. Pavarini,* 2005 Ohio 3552, 2005 Ohio App. LEXIS 3297 (2005). But, the sentencing court did not complete such. Thus, the sentencing court abused its discretion and committed reversible error by rendering a decision which was unreasonable, arbitrary or unconscionable and not supported by the record. See, *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219, 5 Ohio B. 481, 450 N.E.2d 1140 (1983).

The record is devoid of any evidence that the clerk of courts ever receiving a post-sentence Crim.R. 32.1 motion on or around August or September of 2006/2007 because Boyd never sent the letter to the clerk of courts. The prosecutor was aware of the letter because the prosecutor was the only office Boyd sent the letter to. Now, the question is what did the trial court make his ruling from? How did the trial Judge receive Boyd's letter and mistaken it as a post-sentence Crim.R. 32.1? Boyd asserts that the trial judge should not have been aware of the letter at all nor the clerk of courts because that letter was sent to the prosecutor's office only.

CONCLUSION

It appeared that the statements contained in affidavits supporting the motion filed by Boyd were unchallenged by any counter-affidavits or by any evidence. This case involves a substantial constitutional question, pursuant to Article IV, Section 2(B)(2)(a)(ii) of the Ohio Constitution, and involves a felony pursuant to Article IV, Section 2(B)(2)(b) of the Ohio Constitution, which involves a question of public or great general interest pursuant to Article IV, Section 2(B)(2)(e) of the Ohio Constitution.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **Memorandum in Support Of Jurisdiction of Appellant Deonta Boyd** was sent by USPS mail to Kevin Baxter, Erie County prosecutor office, 247 Columbus Ave., Suite 319, Sandusky, Ohio 44870, this 20th day of July, 2023.

Deonta Boyd.

Deonta Boyd #A504737
R.I.C.I
P.O. Box 8107
Mansfield, Ohio 44901
Defendant- Pro Se

MANDATE

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

STATE OF OHIO

APPELLEE

V.

DEONTA BOYD

APPELLANT

COURT OF APPEALS NO. {22}E-22-044
{22}E-22-045

TRIAL COURT NO. 2004-CR-0643
2005-CR-0103

DECISION AND JUDGMENT

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Kristin R. Palmer, Assistant Prosecuting Attorney, for appellee.

Deonta Boyd, pro se.

* * * * *

DUHART, J.

{¶ 1} In this consolidated appeal, appellant, Deonta Boyd, appeals, pro se, from the September 15, 2022 judgments of the Erie County Court of Common Pleas denying his motions to vacate his guilty plea in case Nos. 2004-CR-0643 and 2005-CR-0103. For the reasons that follow, the trial court's judgment is affirmed.

J48/204
7-28-23

J869/1453
7-28-23

Statement of the Case and Relevant Facts

{¶ 2} On February 9, 2005, Boyd was indicted in case No. 2004-CR-0643 for aggravated burglary. On March 10, 2005, he was indicted in case No. 2005-CR-0103 for: (1) aggravated murder; (2) murder; (3) aggravated robbery; (4) having weapons while under a disability; and (5) attempted murder.

{¶ 3} On June 15, 2005, Boyd's trial counsel, Denise M. Demmitt, filed a motion to withdraw as counsel based upon a conflict of interest. Demmit's motion explained that she had been hired to represent Boyd prior to the murder charges being filed against him in case No. 2005-CR-0103. After Demmitt agreed to take on the murder charges as well, she learned that another one of her clients, Sylvester Ford, who was Boyd's stepfather, was on the witness list for the state. At this point, Demmitt sought and was granted a withdrawal from representation on behalf of Ford. According to Demmitt, at the time of her withdrawal from Ford's case, the state, through Assistant Prosecutor Alkire, specified on the record that Demmitt had no prior knowledge of any dealings that Ford had with the state regarding Boyd. Demmitt further alleged that "[a]ll of Mr. Ford's communications and deals with the State relative to his testimony against Mr. Boyd occurred without Attorney Demmitt's knowledge or participation."

{¶ 4} After thoroughly reviewing the matter, it became apparent to Demmitt that Ford "was in fact a material witness in the prosecution" of Boyd in that he had tipped off police regarding the gun, which was later retrieved from the basement of the home that Ford and his stepfather occupied. Demmitt, therefore, sought to withdraw as Boyd's

counsel because there was "an inescapable conflict of interest" inasmuch as the warrantless search and seizure of the alleged murder weapon was a matter that "must be litigated."

{¶ 5} On June 22, 2005, the trial court granted Demmitt's motion as to both cases. Attorneys Robert Dixon and David Doughten were appointed to take over Boyd's representation.

{¶ 6} In June 2006, Boyd pleaded guilty to reduced charges of aggravated murder with a firearm specification, felonious assault, and aggravated burglary. The trial court sentenced Boyd to consecutive terms of: (1) imprisonment for life with eligibility for parole after 20 years for the murder offense; (2) three years imprisonment for the firearm specification; (3) eight years imprisonment for the felonious assault offense; and (4) ten years imprisonment for the aggravated burglary offense. Boyd did not appeal the judgment of conviction and sentence. Instead, sometime between June and July 2006, appellant filed his first motion to withdraw guilty plea, which was denied by the trial court on August 7, 2006.[1] Boyd did not appeal this decision.

---

[1] The docket sheet for case No. 2005-CR-0103 shows that on August 7, 2006, the trial court entered an order denying a motion to withdraw guilty plea that had been filed by Boyd but was not recorded on the docket. The docket sheet also shows that a response to Boyd's motion to withdraw guilty plea was filed by the state on July 19, 2006. Logically, then, Boyd's motion to withdraw guilty plea must have been filed sometime between June 5, 2006, when Boyd entered his guilty plea, and July 19, 2006, when the state filed its response to Boyd's motion.

{¶ 7} On January 17, 2020, more than thirteen years after pleading guilty, Boyd filed a second Crim.R. 32.1 motion to vacate his guilty plea, arguing that his plea was not knowingly, intelligently, or voluntarily made because he did not understand the maximum penalties involved and because he had not been notified of his constitutional right to compulsory process. The trial court denied the motion on March 27, 2020, on the ground that Boyd had not demonstrated that a manifest injustice had occurred. This time, Boyd appealed the decision to this court.

{¶ 8} On December 23, 2020, this court affirmed the judgment of the trial court denying Boyd's motion to vacate his plea. In reaching this conclusion, this court held that all of Boyd's arguments relating to the validity of his plea were barred by the doctrine of res judicata, and that the trial court had not abused its discretion by denying his motion to vacate without a hearing. Specifically, this court concluded:

> [A]ppellant's arguments could have been raised on appeal. The issues could have been or were raised in his first motion to withdraw his guilty plea and could have been asserted on appeal from the judgment denying his first motion to withdraw his guilty plea. Therefore, any arguments appellant could have raised regarding the entry of his guilty plea are now barred under the doctrine of res judicata and his second motion to withdraw his guilty plea should have been dismissed on that ground.

State v. Boyd, 6th Dist. Erie No. E-20-006, 2020-Ohio-6866, ¶ 7. Boyd appealed the decision to the Ohio Supreme Court, but on March 30, 2021, the Supreme Court declined jurisdiction. *State v. Boyd*, 162 Ohio St.3d 1412, 2021-Ohio-961, 165 N.E.3d 328.

{¶ 9} In July and August 2022, Boyd again filed motions to withdraw guilty his guilty pleas in case Nos. 2004-CR-0643 and 2005-CR-0103. On September 15, 2022, the trial court denied both of these motions, concluding that the claims were barred by the doctrine of res judicata and that Boyd had failed to demonstrate that a manifest injustice had occurred. It is from these decisions that Boyd currently appeals.

Assignments of Error

{¶ 10} Boyd asserts the following assignments of error on appeal:

I. The court abused its discretion against Appellant-Boyd; the viewpoint of discrimination [sic] here is alleging that Appellant-Boyd filed his first Post-Sentence motion in 2006. The Sixth Appellate District alleges that Appellant-Boyd filed his first Post-Sentence Crim.R. 32.1 motion in 2007. However, no such motion appears on the docket in either case no. 2004-CR-643; and/or 2005-CR-103. (State v. Boyd, 2020-Ohio-6866, P3). Thus, the court imputed information not in the case sub judice;

II. The trial court violated Boyd's right to effective assistance of counsel as provided by the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution by not inquiring into the existence of a serious actual conflict of interest and denying him Due

process and Equal protection, in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

III. Demmitt committed Fraud within the Courts through deception, that deprived and prejudiced "Defendant" of effective assistance of counsel that is in violation of Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. Therefore, violating Ohio Prof. Cond. Rule 8.3 and Prof. Cond. R. 1.7(c).

IV. The Defendant allege that Demmitt provided ineffective assistance of counsel due to a serious actual conflict of interest that caused an adverse effect that violated Boyd's Sixth, Fifth, and Fourteenth Amendments to the United States constitution, and Ohio Constitution Sections 10 and 16 of Article I. Ohio Prof. Cond. Rule 8.3 and Prof. Cond. R. 1.7(c).

V. Mr. Boyd argues that the trial court abused its discretion in denying his motion to vacate guilty plea pursuant to Crim.R. 32.1 without a hearing, and finding that Mr. Boyd had not established a manifest injustice.

VI. The Defendant's Demmitt provided ineffective assistance of counsel when counsel failed to file any motions to suppress all of the tainted evidence, therefore violating the defendant's Fourth, Fifth and Fourteenth Amendment of Due Process., U.S. Constitution; Article 1, Section 10 and 14, of the Ohio Constitution.

VII. The Appellant's counsel Dixon and Doughten provided ineffective assistance of counsel when counsel failed to file any motions to suppress the tainted evidence that police obtained during a search of his home, in violation of the Fourth, Fifth and Fourteenth Amendment of Due Process., U.S. Constitution; Article I, Section 10 and 14, of the Ohio Constitution.

VIII, The Defendants guilty plea was not made knowingly, voluntarily, and intelligently due to an unresolved "serious actual conflict of interest" with Attorneys' Dixon and Doughten representing, in violation of the Ohio Constitution Section 10 and 16 of Article 1, and of the United States Constitution of the Fifth, Sixth and Fourteenth Amendment. Ohio Prof. Cond. Rule 8.3

IX. The trial court abused its discretion in denying the defendant a hearing due to manifest injustice. The trial Judge removed Demmitt in case No. 2004-CR-643 there was no cause to withdraw counsel as it was not a conflict in this case, nor was there any filing of counsel's motion to withdraw as counsel in Case No. 2004-CR-643.23.

X. The trial court abused its discretion Attorney's Dixon and Doughten provided ineffective assistance of counsel when attorney's denied Boyd a Jury trial which violated the Sixth Amendment and Fourteenth Amendment rights of Due Process and Equal protection. Crim. Rule. 23(A) Trial by jury or by the court?

XI. Boyd argues that the trial court abused its discretion in denying his Motion to vacate guilty his guilty plea pursuant to Crim.R. 32.1 without a hearing, and finding that Boyd had not established a manifest injustice. The trial court mistakenly denied defendant the right to trial, and instead insisted on counsel's determination on Appellant frustration, and lack of understanding of the plea leaving Appellant with no right to jury trial.

Analysis

First assignment of error

{¶ 11} Boyd asserts in his first assignment of error that *this* court improperly found in its December 23, 2020 decision denying Boyd's second motion to vacate guilty plea that Boyd had filed his first such motion in 2007. Boyd contends that, in fact, he filed his first Crim.R. 32.1 motion in 2020, and that the 2020 motion should have been granted.

{¶ 12} We initially note that the issue concerning the alleged mistaken date is not properly before this court, as it was part of Boyd's previous appeal in Case No. E-20-006. Boyd never filed application to reconsider this court's earlier decision, pursuant to App.R. 26(A)(1). Nor did he raise this issue in his latest Crim.R. 32.1 motions, the denial of which are the proper subject of this appeal. Boyd cannot now raise a new argument for the first time on appeal to this court. *See State ex rel. Gutierrez v. Trumball Cty Bd. of Elections*, 65 Ohio St.3d 175, 177, 602 N.E.2d 622 (1992).

{¶ 13} Furthermore, Boyd's dispute over the timing of his filing of his first Crim.R. 32.1 motion is of no consequence with respect to this court's December 23, 2020 decision. Whether the motion was filed in 2006 or in 2007, this court's analysis of the merits of the case would remain the same.

{¶ 14} In fact, the determination of whether Boyd's first Crim.R. 32.1 motion was filed in 2006, 2007 -- or even in 2020 -- ultimately makes no difference to this court's holding in the earlier decision, because in affirming the trial court's March 12, 2020 decision denying Boyd's motion to vacate his guilty plea, this court held that all of Boyd's arguments were barred by the doctrine of res judicata as they "could have been raised on appeal." *State v. Boyd*, 6th Dist. Lucas No. E-20-006, 2020-Ohio-6866, ¶ 7. In other words, this court concluded that Boyd's failure to raise the arguments relating to the validity of his plea on direct appeal of his conviction was sufficient to bar his claims under the doctrine of res judicata. *See State v. El-Amin*, 6th Dist. Lucas No. L-21-1175, 2022-Ohio-2905, ¶ 14 (res judicata held to bar argument that could have been raised on direct appeal); *State v. Madrigal*, 6th Dist. Lucas Nos. L-10-1142, L-10-1143, 2011-Ohio-798, ¶ 16 ("It is well established by pertinent Ohio caselaw that claims submitted in support of a Crim.R. 32.1 motion to withdraw plea that could have been raised on direct appeal, but were not raised on direct appeal, are barred by res judicata."). Thus, irrespective of the timing of Boyd's first motion to withdraw his guilty pleas, this court correctly determined that the claims in his 2020 Crim.R. 32.1 motion were barred by res judicata. Accordingly, Boyd's first assignment is found not well-taken.

Second through Eleventh assignments of error

{¶ 15} Boyd's remaining assignments of error challenge the trial court's denial of his most recent Crim.R. 32.1 motions to withdraw his guilty plea, filed in July and August 2022. As the issues raised in the remaining assignments of error are all resolved using a single analysis, this court will address these assignments of error together.

{¶ 16} "In reviewing a trial court's decision of whether to grant or deny a Crim.R. 32.1 motion to withdraw a guilty plea, an appellate court is limited to determining whether the trial court's decision constituted an abuse of discretion." *State v. Thompson*, 6th Dist. Lucas No. L-05-1213, 2006-Ohio-1224, ¶ 25, citing *State v. Zinn*, 4th Dist. Jackson No. 04CA1, 2005-Ohio-525, ¶ 14. "An abuse of discretion involves more than a mere error of judgment; it suggests an attitude on the part of the court that is unreasonable, unconscionable, or arbitrary." *Thomson* at ¶ 25, citing *State v. Clark*, 71 Ohio St.3d 466, 470, 644 N.E.2d 331 (1994). When applying the abuse of discretion standard, the reviewing court may not simply substitute its judgment for that of the trial court. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E. 1140 (1983).

{¶ 17} Motions to withdraw pleas of guilty and no contest to criminal offenses are governed by Crim.R. 32.1, which provides:

> A motion to withdraw a plea of guilty or no contest may be made only before a sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.

In the present case, Boyd's latest motions to withdraw his guilty pleas were filed more than 16 years after he pled guilty and was sentenced. Therefore, the trial court was authorized to set aside the convictions and allow appellant to withdraw his guilty pleas only to correct a "manifest injustice." *See* Crim.R. 32.1; *State v. Caraballo*, 17 Ohio St.3d 66, 67, 477 N.E.2d 627 (1985).

{¶ 18} A defendant seeking to withdraw a guilty plea after the imposition of a sentence has the burden of establishing the existence of a manifest injustice. *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph one of the syllabus. A "manifest injustice" is defined as a "clear or openly unjust act." *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 207-208, 699 N.E.2d 83 (1998). "Under this standard, a post-sentence motion to withdraw should be allowed only under extraordinary circumstances." *Thomson* at ¶ 48. "The logic behind this precept is to discourage a defendant from pleading guilty to test the weight of potential reprisal, and later withdraw the plea if the sentence was unexpectedly severe." *Caraballo* at ¶ 67.

{¶ 19} An undue delay between the occurrence of the alleged cause for the withdrawal of the guilty plea and the filing of the Crim.R. 32.1 motion is a factor militating against the granting of the motion. *State v. Straley*, 159 Ohio St.3d 82, 2019-Ohio-5206, 147 N.E.3d 623, ¶ 15; *see also Smith* at paragraph three of the syllabus." "And generally, res judicata bars a defendant from raising claims in a Crim.R. 32.1 postsentencing motion to withdraw a guilty plea that he raised or could have raised on

direct appeal." *Straley* at ¶ 15, citing *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 59.

{¶ 20} "Under the doctrine of res judicata, a final judgment bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding, except an appeal from that judgment, any defense or claimed lack of due process that the defendant raised or could have raised at trial or on appeal." *State v. Brown*, 167 Ohio App.3d 239, 2006-Ohio-3266, 854 N.E.2d 583, ¶ 7 (10th Dist.), citing *State v. Szefcyk*, 77 Ohio St.3d 93, 671 N.E.2d 233 (1996), syllabus; *see also State v. Adams*, 6th Dist. No. L-13-1169, 2014-Ohio-4110, citing *Brown* at ¶ 7. This doctrine, "which operates to prevent repeated attacks on a final judgment, applies to any proceeding initiated after a final judgment of conviction and direct appeal * * * and to all issues that were or might have been previously litigated." *Thomson* at ¶ 26, citing *State v. Gaston*, 8th Dist. Cuyahoga No. 82628, 2003-Ohio-5825 and *State v. Brown*, 8th Dist. Cuyahoga No. 84322, 2004-Ohio-6421, ¶ 7. Thus, "[a] Crim.R. 32.1 motion filed after the time for appeal has passed is subject to res judicata and, if applicable, may be denied on those grounds." *Thomson* at ¶ 26, citing *Brown* at ¶ 7 and *Zinn* at ¶ 20. Furthermore, "[r]es judicata serves as a bar for successive motions to withdraw guilty pleas under Crim.R. 32.1, when the grounds to withdraw the plea were raised or could have been raised in the initial motion to withdraw." *State v. Phillips*, 6th Dist. Lucas No. L-18-1145, 2019-Ohio-3707, ¶ 11 (citations omitted.).

{¶ 21} In this case, a judgment of conviction was entered against Boyd in June 2006. All of the arguments raised in Boyd's Assignments of Error Nos. Two through Eleven -- each of which involve alleged misconduct and/or error on the part of retained and appointed counsel, the state, and the trial court -- all could have been raised on direct appeal from that conviction had Boyd timely sought such an appeal. Furthermore, despite Boyd's protests to the contrary, the record demonstrates that he has filed not one, but two previous motions to withdraw guilty plea. To the extent his claims are based on off-the-record evidence, those claims could have been, and should have been, included in his first and/or second such motions. *See Adams* at ¶ 9, quoting *State v. Walters*, 4th Dist. Scioto No. 12CA3482, 2013-Ohio-695, ¶ 13 ("'[R]es judicata bars [an appellant] from raising claims of ineffective assistance that occurred both 'on-the-record' (direct appeal) and 'off-the-record' (postconviction relief) in [a] Crim.R. 32.1 motion.'") Accordingly, appellant is precluded by the doctrine of res judicata from litigating these issues now, in precisely the sort of repeated attacks on a final judgment that the doctrine of res judicata is intended to prevent. *See Thompson* at ¶ 26.

{¶ 22} Appellant contends that res judicata should not apply, because he "was unaware in June 2005 that the removal of retained counsel of choice prior to trial in a criminal case was a final, appealable order." "[C]ourts have recognized 'that in some cases "circumstances render the application of res judicata unjust."'" *State v. Jones*, 4th Dist. Gallia No. 19CA9, 2020-Ohio-7037, ¶ 33, citing *State v. Houston*. However, as the Supreme Court of Ohio has noted, "[l]ack of effort or imagination, and ignorance of the

law * * * do not automatically establish good cause for failure to seek timely relief." *State v. Reddick*, 72 Ohio St.3d 88, 91, 647 N.E.2d 784 (1995). In the present case, appellant fails to show good cause as to why he did not take advantage of any earlier opportunities to challenge the removal of his original counsel, whether in a direct appeal or in an earlier motion to withdraw guilty plea. Because Boyd could have raised the issue many years previously, we find that his challenge to the removal of his retained counsel is properly barred by res judicata.

{¶ 23} Even assuming arguendo that appellant's claims were not barred by res judicata, they are substantively meritless, as appellant has failed to demonstrate manifest injustice to justify the extraordinary remedy of allowing him to withdraw his guilty pleas after sentencing. Appellant pled guilty in June 2006 and filed motions to withdraw his guilty plea in 2006 and 2020, both of which were denied. Now, more than 16 years after pleading guilty and being sentenced, appellant asks the court to review a number of (apparently new) claims, including claims of fraud on the part of his retained counsel; a claim that the trial court erred in failing to inquire into whether appellant's retained counsel had an actual conflict of interest prior to making the decision to appoint new counsel; claims of ineffective assistance of counsel - by both retained and appointed counsel; a claim of prosecutorial misconduct; (paradoxically) a claim challenging the removal of retained counsel; and a claim - previously made and rejected - that his plea was not knowingly, intelligently, and voluntarily made. The undue delay in the amount of time that has passed since appellant's guilty plea was made weighs heavily against the

granting of relief under Crim.R. 32.1 in this case. In addition, Boyd fails to demonstrate the type of manifest injustice required to permit him to withdraw his guilty pleas more than sixteen years after sentencing. Accordingly, the trial court did not abuse its discretion by denying appellant's Crim.R. 32.1 motions for failing to demonstrate manifest injustice.

{¶ 24} To the extent that appellant suggests that the trial court abused its discretion by ruling on his motion without first granting him a hearing, we find that this claim is also without merit. "No hearing is required on postsentence motions under Crim.R. 32.1 unless the facts as alleged by the appellant, taken as true, would require the trial court to permit withdrawal of the plea." *State v. Beachum*, 6th Dist. Sandusky Nos. S-10-041, S-10-042, 2012-Ohio-285, ¶ 22, citing *State v. Blatnik*, 17 Ohio App.3d 201, 204, 478 N.E.2d 1016 (6th Dist.1984) and *State v. Burkhart*, 2d Dist. Champaign No. 07-CA-26, 2008-Ohio-4387, ¶ 12. "Moreover, an evidentiary hearing is not required if the arguments presented by the petitioner are barred by the doctrine of res judicata." *Thompson* at ¶ 58.

{¶ 25} For all of the foregoing reasons, appellant's second through eleventh assignments of error are found not well-taken.

Conclusion

{¶ 26} The judgment of the Erie County Court of Common Pleas is affirmed. Appellant is to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.
State of Ohio v. Deonta Boyd
C.A. No. E-22-044, E-22-045

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Gene A. Zmuda, J.

JUDGE

Myron C. Duhart, P.J.

JUDGE

Charles E. Sulek, J.
CONCUR

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.

I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL FILED IN THIS OFFICE.
LUVADA S. WILSON, CLERK OF COURTS
Erie County, Ohio
By