The Supreme Court of Ohio

CASE ANNOUNCEMENTS

September 4, 2025

[Cite as *09/04/2025 Case Announcements #2*, 2025-Ohio-3140.]

APPEALS NOT ACCEPTED FOR REVIEW

2025-0819. State v. Farakhan.
Summit App. No. 31296, 2025-Ohio-1130.
Brunner, J., dissents, with an opinion.

BRUNNER, J., dissenting.

{¶ 1} I respectfully dissent from this court's decision declining jurisdiction over this case.

{¶ 2} Defendant-appellant, Nia Farakhan, entered an *Alford* plea, *see North Carolina v. Alford*, 400 U.S. 25 (1970), to one count of felonious assault and two counts of endangering children. She filed a petition for postconviction relief, raising claims of ineffective assistance by her trial counsel. The trial court denied the petition without holding a hearing. Summit C.P. No. CR-2018-01-0265, 8-9 (Nov. 19, 2024). Although Farakhan supported her petition with an affidavit in which she described her conversations with her trial counsel, the trial court concluded that her affidavit lacked credibility, in part because Farakhan had expressed satisfaction with counsel at her plea hearing. *Id.* at 4. The Ninth District Court of Appeals affirmed that decision. 2025-Ohio-1130, ¶ 1 (9th Dist.). Like the trial court, the court of appeals relied on Farakhan's expression of satisfaction with counsel at her plea hearing. *Id.* at ¶ 28. It also faulted her for failing to support her claims with an affidavit from her trial counsel. *Id.*

{¶ 3} Farakhan now seeks our review of three propositions of law, which focus on whether her postconviction petition may be denied without a hearing based on statements she

made during her plea colloquy and based on the failure to support her petition with an affidavit from trial counsel.

{¶ 4} In my view, these propositions warrant review. Farakhan presents a strong argument that the trial and appellate courts relied on improper considerations when denying her petition. If a defendant's allegations about conversations with trial counsel have merit, trial counsel may be unwilling to provide an affidavit, as doing so may expose counsel to professional discipline. An evidentiary hearing may be the only way for a defendant to obtain a sworn statement from trial counsel about their conversations. A defendant's failure to also submit an affidavit from counsel backing up the defendant's allegations should not automatically undermine the credibility of the defendant's affidavit.

{¶ 5} Farakhan also expressly claims that she learned of the basis for her ineffective-assistance claim only *after* she was convicted. Therefore, the fact that she may have expressed satisfaction with counsel's performance during the plea colloquy cannot be said to undermine the credibility of Farakhan's affidavit. And given the frequency with which postconviction petitions raise claims of ineffective assistance of counsel, we should ensure that the law on these issues is abundantly clear.

{¶ 6} Farakhan's petition also reveals another reason why this case deserves close scrutiny: her convictions were based on a diagnosis of shaken-baby syndrome ("SBS"). "In its purest form, the SBS Hypothesis posits that intentional child abuse in infants and young children, can be reliably diagnosed from a finding of three symptoms: (1) encephalopathy (brain injury—usually brain swelling); (2) subdural hematoma (bleeding on the surface of the brain); and (3) retinal hemorrhage (bleeding behind the eyes)." Plummer & Syed, *"Shifted Science" Revisited: Percolation Delays and the Persistence of Wrongful Convictions Based on Outdated Science*, 64 Clev.St.L.Rev. 483, 511 (2016). In the present case, the charges against Farakhan arose in early 2018 after a six-month-old child in her care became unresponsive and was found to have subdural hematomas and retinal hemorrhages. The court of appeals noted when it rejected her attempt to reopen her appeal that if Farakhan had elected to proceed to trial, "[d]octors would have testified that those types of injuries could *only* happen from a shaking and slamming incident." (Emphasis added.) No. 30791, 3 (9th Dist. Nov. 26, 2024).

{¶ 7} Mounting an effective defense against an SBS-based prosecution requires a thorough understanding of the science surrounding SBS. Just last year, we recognized that there

have been significant developments in the scientific community's understanding of SBS over the last few decades. "Although a debate in the scientific community over SBS—now referred to as Abusive Head Trauma—continues, some consensus has emerged: the triad of symptoms" previously thought to be caused *only* by violent shaking "can be caused in ways other than shaking, including accidents." *State v. Grad*, 2024-Ohio-5710, ¶ 59 (lead opinion), citing Plummer & Syed at 514-515.

{¶ 8} "As a result of these changes in the scientific community's understanding of the triad, numerous courts have vacated convictions based on SBS." *Id.*, citing *Commonwealth v. Epps*, 474 Mass. 743, 768-769 (2016); *State v. Edmunds*, 308 Wis.2d 374, ¶ 23; *see also State v. Butts*, 2023-Ohio-2670, ¶ 44-54, 102 (10th Dist.) (affirming judgment granting new trial for defendant who had been convicted based on SBS evidence and discussing the scientific community's understanding that the triad of symptoms can have causes *other than* violent shaking and that the triad does not always appear in the immediate aftermath of the event that caused those symptoms).

{¶ 9} Farakhan's petition makes clear that trial counsel's alleged ineffective assistance deprived Farakhan's ability to present a meaningful challenge to the State's SBS theory, both during trial-court proceedings and in her direct appeal. The trial court did not mention this issue in its order denying the petition, and the appellate court rejected Farakhan's arguments by describing trial counsel's decisions as a matter of reasonable trial strategy.

{¶ 10} In my view, Farakhan's arguments deserve more serious consideration than what the trial and appellate courts appear to have given them. The petition cannot reasonably be viewed as presenting only a question whether Farakhan's affidavit was credible. If anything, Farakhan's petition was focused squarely on evidence she claims trial counsel should have presented as part of her defense against the State's SBS theory. Whether trial counsel's decisions fell within the range of reasonable trial strategy is also not easy to determine given the developments in the scientific community's understanding of SBS, as noted above. Our review of this case is therefore warranted to ensure that the legal community's understanding of SBS-based prosecutions does not lag behind the scientific community's understanding of SBS—potentially allowing an innocent person to be convicted.

{¶ 11} I would therefore accept jurisdiction in this case. Because the majority does not, I respectfully dissent.