[Cite as *State v. Dudas*, 2008-Ohio-7043.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**PER CURIAM OPINION**
Plaintiff-Appellee,	:	
	:	**CASE NOS. 2008-L-081 and 2008-L-082**
- vs -	:	
RONALD DUDAS,	:	
Defendant-Appellant.		

Criminal Appeal from the Court of Common Pleas, Case Nos. 06 CR 000560 and 06 CR 000700.

Judgment: Affirmed.

William D. Mason, Cuyahoga County Prosecutor and *Daniel Kasaris*, Assistant Prosecutor, The Justice Center, 9th Floor, 1200 Ontario Street, Cleveland, OH 44113 (For Plaintiff-Appellee).

Ronald Dudas, pro se, PID #520-261, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030 (Defendant-Appellant).

PER CURIAM

{¶1} Appellant, Ronald Dudas, appeals the judgment entry of the Lake County Court of Common Pleas denying his motion to withdraw his guilty plea. At issue is whether the withdrawal of appellant's guilty plea was necessary to correct a manifest injustice. For the reasons that follow, we affirm.

{¶2} On April 18, 2006, appellant was charged by the Cuyahoga County Grand Jury with 14 counts of intimidation, in violation of R.C. 2921.03; 15 counts of retaliation, in violation of R.C. 2921.05; two counts of conspiracy to commit aggravated murder, in violation of R.C. 2903.01 and 2923.01; attempted aggravated murder, in violation of R.C. 2903.01 and 2923.02; and attempted felonious assault on a police officer, in violation of R.C. 2903.11 and 2923.02 ("the murder conspiracy case").

{¶3} In addition, on September 26, 2006, appellant was indicted by the Cuyahoga County Grand Jury in a 135-count indictment for engaging in a pattern of corrupt activity, in violation of R.C. 2923.32; conspiracy to engage in a pattern of corrupt activity, in violation of R.C. 2923.01 and 2923.32; 30 counts of tampering with records, in violation of R.C. 2913.42; 10 counts of securing writings by deception, in violation of R.C. 2913.43; six counts of telecommunications fraud, in violation of R.C. 2913.05; 46 counts of forgery, in violation of R.C. 2913.31; 21 counts of theft by deception when the value of the property stolen was between $5,000 and $100,000, in violation of R.C. 2913.02; 14 counts of theft by deception when the value of the property stolen was $100,000 or more, in violation of R.C. 2913.02; theft beyond the scope of consent when the value of the property stolen was $100,000 or more, in violation of R.C. 2913.02; and six counts of money laundering, in violation of R.C. 1315.55 ("the corrupt activity case").

{¶4} In the murder conspiracy case, following appellant's sentence in 2005 by Cuyahoga County Common Pleas Judge David T. Matia to 17 months in prison on a felony theft conviction and a parole violation, appellant hired a hitman to murder Judge Matia and to break North Olmsted Detective Simon Cesareo's legs in retaliation for their roles in investigating and sentencing him.

{¶5} In the corrupt activity case, appellant formed and carried on an enterprise for the ostensible purpose of providing loans to individuals in desperate financial straits, but with the true purpose of stealing their funds and real estate. Many of appellant's victims were near foreclosure, and he took advantage of their plight by stealing the last of their assets. Appellant created spurious loan documents to obtain loans from lenders on behalf of his victims. He then stole the proceeds from these loans. He stole in excess of one million dollars from multiple victims, driving many of them into financial ruin and/or bankruptcy. The indictment listed 35 victims. He stole more than $100,000 apiece from 14 separate victims.

{¶6} Upon appellant's motion, the Ohio Supreme Court transferred the cases to the Honorable Eugene Lucci of the Lake County Common Pleas Court. After two days of trial in the murder conspiracy case, appellant entered a guilty plea in both cases on October 19, 2006. In the murder conspiracy case, appellant pled guilty to four counts of intimidation and one count of retaliation. In the corrupt activity case, appellant pled guilty to one count of engaging in a pattern of corrupt activity, one count of tampering with records, one count of forgery, one count of felony theft, one count of uttering, one count of securing writings by deception, and one count of telecommunications fraud.

{¶7} Following a sentencing hearing on December 1, 2006, in the murder conspiracy case, the court sentenced appellant on each of four counts of intimidation to five years, each term to run concurrently to the others. The court also sentenced him to five years on the retaliation count, to be served consecutively with the intimidation counts, for a total of ten years.

{¶8} In the corrupt activity case, the court sentenced appellant to ten years for engaging in a pattern of corrupt activity, five years for tampering with records, 18 months for forgery, one year for theft, 18 months for uttering, five years for securing writings by deception, and 18 months for telecommunications fraud. The prison terms imposed for forgery, theft, uttering, and telecommunications fraud were to be served concurrently to each other and concurrently to the terms imposed for engaging in a pattern of corrupt activity, tampering with records, and securing records by deception. The terms for engaging in a pattern of corrupt activity, tampering with records, and securing records by deception were to be served consecutively to each other, for a total of 20 years in prison, and consecutively to the prison term in the murder conspiracy case, for a total of 30 years in prison.

{¶9} Appellant appealed his conviction in *State v. Dudas,* 11th Dist. Nos. 2006-L-267 and 2006-L-268, 2007-Ohio-6739, discretionary appeal not allowed, 118 Ohio St.3d 1409, 2008-Ohio-2340 ("*Dudas I*"), in which we affirmed appellant's conviction.

{¶10} Meanwhile, on December 27, 2006, appellant filed a motion in the trial court for an order requiring the state to return a laptop computer and files, which he alleged had been seized by police without a warrant and used against him by the state. The trial court denied appellant's motion to return on April 10, 2007. Appellant appealed the trial court's order denying this motion in *State v. Dudas*, 11th Dist. No. 2007-L-074, 2007-Ohio-6731 ("*Dudas II*"), in which we affirmed the trial court's order.

{¶11} Subsequently, on June 19, 2007, appellant filed a motion to compel the trial court to require Dennis and Cheryl Golic, two of appellant's victims in the corrupt activity case, to return appellant's property, which, he claimed, they had stolen from him

in June, 2005. On September 26, 2007, the trial court denied appellant's motion. Appellant appealed the trial court's denial of this motion in *State v. Dudas*, 11th Dist. No. 2007-L-169, 2008-Ohio-3261 ("*Dudas III*"), in which we affirmed the trial court's order.

{¶12} While *Dudas I* and *Dudas II* were pending in this court, on June 29, 2007, appellant filed a petition for post conviction relief claiming that he had been set up and that the state had used evidence against him that had been obtained in an illegal search. The trial court dismissed that petition on August 22, 2007. We affirmed that ruling in *State v. Dudas*, 11th Dist. Nos. 2007-L-140 and 2007-L-141, 2008-Ohio-3262 ("*Dudas IV*"), holding both claims were barred by res judicata.

{¶13} Then, on September 13, 2007, appellant filed a Civ.R. 60(B) motion for relief from judgment in the trial court, in which he argued that the state issued a search warrant for one of his businesses and then unlawfully searched and seized property from another one of his businesses and used it against him. On October 3, 2007, the trial court denied that motion. Appellant appealed the trial court's denial of this motion in *State v. Dudas*, 11th Dist. Nos. 2007-L-170 and 2007-L-171, 2008-Ohio-3260 ("*Dudas V*"), in which this court affirmed the trial court's judgment.

{¶14} As noted supra, the matter was set for sentencing on December 1, 2006 at 9:00 a.m. Earlier that morning, although represented by counsel, appellant filed a pro se motion to withdraw his guilty plea. When the trial court brought this motion to defense counsel's attention, counsel stated, "we're gonna withdraw that motion. I'm gonna withdraw it on behalf of the Defendant. So we don't have to have a hearing on it and be

heard. We'll withdraw the motion to withdraw the plea." When asked by the court if he agreed with these remarks, appellant said he did.

{¶15} After appellant's sentence, on December 5, 2006, he filed another motion to withdraw his guilty plea. On January 3, 2007, the trial court denied appellant's motion to withdraw. However, while that motion was pending, appellant filed his notice of appeal in *Dudas I* on December 15, 2006, in which he challenged, inter alia, the trial court's denial of his motion to withdraw his guilty plea. In that case we held that because appellant had filed his notice of appeal while his motion to withdraw his guilty plea was pending, appellant divested the trial court of jurisdiction to rule on the motion.

{¶16} Thereafter, on April 15, 2008, appellant filed another motion to withdraw his guilty plea, which the trial court denied finding that: (1) appellant's assertions were made in bad faith, were not credible, and were contradicted by the record; (2) appellant was advised of all his rights at the change of plea hearing by the court and his counsel; (3) appellant had stated at the guilty plea hearing that he understood the rights he was waiving and that his decision to enter his guilty plea was voluntary; and (4) appellant had failed to establish manifest injustice.

{¶17} Appellant appeals the trial court's judgment denying his motion to withdraw his guilty plea asserting five assignments of error. Because these assigned errors are interrelated, we shall consider them together. Appellant states for his assigned errors:

{¶18} "[1.] DID THE TRIAL COURT ERROR [SIC] BY DENYING THE APPELLANTS [SIC] MOTION TO WITHDRAW THE GUILTY PLEA. [SIC]

{¶19} "[2.] DID THE TRIAL COURT ERROR [SIC] BY DENYING MOTION TO WITHDRAW GUILTY PLEA UPON PROOF OF STATES [SIC] BREECH [SIC] OF PLEA AGREEMENT AND THE INEFFECTIVE TRIAL COUNSEL. [SIC]

{¶20} "[3.] WHEN VIEWING THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE CASE DID COUNSEL FAIL TO PROPERLY ADVISE PETITIONER OF ALL WAIVERS INVOLVED IN A GUILTY PLEA. [SIC]

{¶21} "[4.] THE STATE OPENLY ADMITTED IN ITS MOTION, 'RESPONSE TO REQUEST FOR ORAL ARGUMENTS,' THAT IT TOOK FILES WITHOUT A SEARCH WARRANT AND IT INSTRUCTED THE GOLICS TO HAND OVER A COMPUTER HARD DRIVE AND FILES.

{¶22} "[5.] THE STATE VIOLATED THE DUE PROCESS CLAUSES, THE FOURTH, FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS. THEREFORE, THE GUILTY PLEA WAS NOT KNOWINGLY [SIC], INTELLIGENT OR VOLUNTARY."

{¶23} Crim.R. 32.1 provides that "[a] motion to withdraw a plea of guilty *** may be made only before sentence is imposed ***; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit a defendant to withdraw his plea." A defendant who seeks to withdraw a guilty plea after sentence has the burden of establishing a manifest injustice. *State v. Smith* (1977), 49 Ohio St.2d 261, at paragraph one of the syllabus. Under such standard, a post-sentence withdrawal motion is allowable only in extraordinary cases to correct a manifest injustice. Id. at 264; *State v. Glenn*, 11th Dist. No. 2003-L-022, 2004-Ohio-2917, at ¶26; *State v. Mack*, 11th Dist. No. 2005-P-0033, 2006-Ohio-1694, at ¶15. The logic behind this high standard 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." *State v. Caraballo* (1985), 17 Ohio St.3d 66, 67, citing *State v. Peterseim* (1980), 68 Ohio App.2d 211, 213.

{¶24} "Manifest injustice is determined by examining the totality of the circumstances surrounding the guilty plea. Paramount in this determination is the trial court's compliance with Crim.R. 11(C), evidence of which must show in the record that the accused understood his rights accordingly." *State v. Padgett* (Jul. 1, 1993), 8th Dist. No. 64846, 1993 Ohio App. LEXIS 3374, *2. A defendant seeking to withdraw a guilty plea following the imposition of sentence bears the burden of establishing manifest injustice with specific facts either contained in the record or supplied through affidavits submitted with the motion. *State v. Jordan*, 10th Dist. No. 04AP-42, 2004-Ohio-6836, at ¶5.

{¶25} The decision whether to grant or deny a post-sentence motion to withdraw a guilty plea is within the sound discretion of the trial court. *Smith*, supra, at paragraph two of the syllabus; *State v. Pearson*, 11th Dist. Nos. 2002-G-2413 and 2002-G-2414, 2003-Ohio-6962, at ¶7. The good faith, credibility, and weight of the movant's assertions in support of the motion are to be resolved by the trial court. *Smith*, supra; *Jordan*, supra, at ¶5. Accordingly, appellate review of the trial court's denial of a post-sentence motion to withdraw a guilty plea is limited to a consideration of whether the lower court abused its discretion. *Pearson*, supra; *Glenn*, supra, at ¶27. An abuse of discretion connotes more than an error of law or judgment; rather, it implies the trial court's attitude was unreasonable, arbitrary, or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶26} "The basic premise behind the guilty plea colloquy engaged in between the court and accused is that the accused is entitled to all relevant information that would have a bearing on the decision to plead guilty." *State v. Cvijetinovic*, 8th Dist. No. 81534, 2003-Ohio-563, at ¶6. In short, the guilty plea hearing transcript affords the reviewing court an opportunity to evaluate whether the defendant's guilty plea was knowing and voluntary, and whether a manifest injustice occurred. Id.; see, also, supra; *Pearson*, supra.

{¶27} A properly licensed attorney is presumed to have rendered effective assistance to a defendant. *State v. Smith* (1985), 17 Ohio St.3d 98, 100. In the context of a guilty plea, the standard of review for ineffective assistance of counsel is whether: (1) counsel's performance was deficient; and (2) the defendant was prejudiced by the deficient performance in that there is a reasonable probability that, but for counsel's error, the defendant would not have pled guilty. *State v. Madeline,* 11th Dist. No. 2000-T-0156, 2002-Ohio-1332, 2002 Ohio App. LEXIS 1348, *9, citing *Hill v. Lockhart* (1985), 474 U.S. 52. The burden of proving ineffective assistance of counsel falls upon the defendant. *Madeline* at *10.

{¶28} "The mere fact that, if not for the alleged ineffective assistance of counsel, the defendant would not have entered a guilty plea is *not* sufficient to establish the requisite connection between the guilty plea and the ineffective assistance." (Emphasis sic.) Id*.,* citing *State v. Sopjack* (Dec. 15, 1995), 11th Dist. No. 93-G-1826, 1995 Ohio App. LEXIS 5572, *11, citing *State v. Haynes* (Mar. 3, 1995), 11th Dist. No. 93-T-4911, 1995 Ohio App. LEXIS 780, *4-*5. "Rather, ineffective assistance of trial counsel is

found to have affected the validity of a guilty plea when it precluded a defendant from entering his plea knowingly and voluntarily." *Madeline*, supra.

{¶29} A guilty plea represents a break in the chain of events that preceded it in the criminal process. Thus, *a defendant who admits his guilt waives the right to challenge the propriety of any action taken by the court or counsel prior to that point in the proceedings unless it affected the knowing and voluntary nature of the plea*. Id. at *10-*11; *Haynes,* supra, at *3-*4. This waiver applies to a claim of ineffective assistance of counsel, unless the alleged conduct caused the plea not to be knowing and voluntary. *Madeline*, supra, at *11.

{¶30} Generally, a guilty plea is deemed voluntary if the record demonstrates the trial court advised the defendant of (1) the nature of the charge and the maximum penalty involved, (2) the effect of entering a guilty plea, and (3) that the defendant will be waiving his constitutional rights by entering the plea. Id., citing S*opjack,* supra, at *27-*28.

{¶31} A claim that a guilty plea was induced by ineffective assistance of counsel must be supported by evidence where the record of the guilty plea shows it was voluntarily made. *State v. Malesky* (Aug. 27, 1992), 8th Dist. No. 61290, 1992 Ohio App. LEXIS 4378; see, also, *State v. Kapper* (1983), 5 Ohio St.3d 36. In *Malesky*, the court held:

{¶32} "A naked allegation by a defendant of a guilty plea inducement, is insufficient to support a claim of ineffective assistance of counsel, and would not be upheld on appeal unless it is supported by affidavits or other supporting materials,

substantial enough to rebut the record which shows that his plea was voluntary." Id. at *5.

{¶33} In *Kapper,* the Supreme Court adopted the following rationale:

{¶34} "'*** [A]n allegation of a coerced guilty plea involves actions over which the State has no control. Therefore, the defendant must bear the initial burden of submitting affidavits or other supporting materials to indicate that he is entitled to relief. *Defendant's own self-serving declarations or affidavits alleging a coerced guilty plea are insufficient to rebut the record on review which shows that his plea was voluntary. A letter or affidavit from the court, prosecutors or defense counsel alleging a defect in the plea process may be sufficient to rebut the record on review and require an evidentiary hearing.*'" (Emphasis added.) Id. at 38, citing *State v. Jackson* (1980), 64 Ohio St. 2d 107.

{¶35} Under his first assignment of error, appellant argues the trial court abused its discretion in denying his motion to withdraw his guilty plea because he has established manifest injustice in that "[t]here is fraud on the Court, false testimony, entrapment by State officials, perjury," and because the court erred in failing to conduct an evidentiary hearing. We do not agree.

{¶36} Initially, we note that appellant's argument in support of his claim of manifest injustice is vague and nearly inscrutable. He refers to "evidence" submitted in his motion to withdraw and states that it was sufficient to allow him to withdraw his guilty plea. Appellant appears to be referring to his claim that he was "set up" by the state. Appellant made the same argument in support of his petition for post conviction relief in *Dudas IV*. In that case we held that appellant was aware of his claim that he was set up

long before he entered his guilty plea and that because he failed to assert such claim in *Dudas I*, it was barred by res judicata. *Dudas IV* at ¶72. Because we have previously held that appellant's argument that he was set up is barred by res judicata, he cannot now rely on such argument to support a claim of manifest injustice. In any event, such claim has no bearing on the voluntary nature of appellant's guilty plea.

{¶37} Next, appellant argues he was entitled to an evidentiary hearing to explain why he entered his guilty plea and also to explain the evidence that "supports his claim of innocence." We do not agree.

{¶38} When a trial court is confronted with a post-sentence Crim.R. 32.1 motion to withdraw a guilty plea, an evidentiary hearing is only required if the facts alleged by a defendant, if accepted as true, would require the trial court to grant the motion. *Madeline,* supra, at *17.

{¶39} First, we note the record amply demonstrates that appellant's guilty plea was knowingly, intelligently, and voluntarily made. During the change of plea hearing, the trial court advised appellant of the nature of the charges to which he would be pleading guilty by explaining to him the elements of each offense. Appellant stated he understood each charge and wanted to plead guilty to each.

{¶40} The court then advised appellant that by pleading guilty, he would be giving up the right to assert any defenses and giving the court the power to sentence him immediately and appellant stated he understood.

{¶41} The court advised appellant that by pleading guilty, he would be giving up the right to a jury trial at which the state would be required to prove his guilt beyond a reasonable doubt and at which he would have a right to confront witnesses against him

and to subpoena witnesses in his behalf and at which he could not be compelled to testify and the state could not comment on his failure to testify. Appellant advised the court he understood these rights and voluntarily waived them. He said he understood that if he did not plea guilty, he had the right to appeal the jury's verdict and any decision of the trial court. He said he understood a guilty plea is a complete admission of his guilt of the charges.

{¶42} The trial court advised appellant of the maximum sentence for each crime to which he would be pleading guilty and that the trial court could sentence him to up to 54.5 years if it chose to impose maximum consecutive sentences. Appellant stated that no one had made any promises or threats to secure his guilty plea, and that he was entering his guilty plea freely and voluntarily.

{¶43} Further, the "Written Plea of Guilty and Judgment Entry," signed by appellant and his counsel, provides in pertinent part:

{¶44} "[T]he Court and my counsel have informed me of the charge[s] against me and the penalty provided by law for [those] charge[s].

{¶45} "**Prior to signing this written plea of "guilty," the Court has personally addressed and explained to me that I have the following constitutional rights which I would waive by pleading 'guilty.'**

{¶46} "I understand that this plea means I give up my right:

{¶47} "To a jury trial or court trial;

{¶48} "To question *** witnesses against me;

{¶49} "To use the power of the court to call witnesses to testify for me.

{¶50} "The court informed me and I further understand that:

{¶51} "I have the right to an attorney ***;

{¶52} "At a trial I have the right not to take the witness stand and have no one comment if I decided not to testify;

{¶53} "At a trial the State would be required to prove my guilt beyond a reasonable doubt on every element of the offense;

{¶54} "If I was convicted at trial, I would have a right to appeal.

{¶55} "I hereby state that I understand these rights and privileges and the possible consequences of a guilty plea. I hereby waive and reject all of these rights. I am voluntarily pleading guilty of my own free will. I understand that this written plea of guilty constitutes an admission which may be used against me at a later trial. By pleading guilty I admit committing the offense[s] ***." (Emphasis sic.)

{¶56} The Written Guilty Plea then listed the offenses to which appellant pled guilty and the range of prison term for each. It stated that "[i]f the court should choose to run all my sentences consecutively, the maximum prison term would be 54.5 years ***."

{¶57} The trial court found that appellant made a knowing, intelligent, and voluntary waiver of his rights; that he understood the nature of the charges to which he pled guilty, the effect of his guilty plea, and the maximum penalty; accepted appellant's guilty plea; and found him guilty of the charges to which he had pled guilty.

{¶58} Based on our thorough and complete review of the record, the trial court scrupulously complied with Crim.R.11(C), and the record demonstrates appellant's guilty plea was entered voluntarily. Further, there is no evidence or affidavits showing

trial counsel was deficient or that their representation induced appellant's guilty plea. As a result, an evidentiary hearing on appellant's motion to withdraw was not required.

{¶59} Under appellant's second assigned error, he argues that because the prosecutor allegedly breached the plea bargain by asking for a sentence greater than that to which he agreed in the plea bargain, the trial court should have allowed him to withdraw his guilty plea. However, in *Dudas I*, we held that, based on the circumstances of that case, appellant waived any error in this regard by failing to object to the prosecutor's comment at the sentencing hearing. Id. at ¶93. As a result, this argument lacks merit.

{¶60} Under appellant's third and fifth assigned errors, he argues his trial counsel was ineffective in not objecting to the testimony of various persons who testified at his sentencing concerning his criminal conduct; in failing to file motions to suppress evidence; in failing to investigate the alleged taking of files by the state; in failing to challenge the search warrant for his business; in failing to interview and subpoena witnesses; and in failing to challenge Judge Matia's victim impact statement. Appellant fails to demonstrate that any of these alleged deficiencies resulted in prejudice or affected the voluntary nature of his guilty plea.

{¶61} Appellant further argues that his guilty plea was induced by his counsel's "erroneous advice." However, there is no evidence in the record that appellant's trial counsel gave him erroneous advice or that such advice played any part in inducing his guilty plea.

{¶62} Appellant also argues that his trial counsel and the trial court failed to advise him of his right to appeal or "all waivers involved in a guilty plea." However, as

noted supra, the trial court fully advised appellant orally and in writing of the rights that he would be waiving by pleading guilty, in compliance with Crim.R. 11(C). Further, while this rule does not require the trial court to advise a defendant of any right to appeal, we note the trial court advised appellant on the record and in writing of his appellate rights. The court informed appellant that if convicted at trial, he would have the right to appeal the verdict and any decision of the court. Further, in his written plea, appellant acknowledged that his trial counsel had explained to him his right to appeal. Thus, appellant's argument is not supported by the record.

{¶63} Further, appellant argues that the prosecutor knew the testimony of the state's "two lead witnesses" was false and that the report of a laboratory technician was incorrect. Appellant asserted the identical argument in *Dudas IV* . Our holding in that case applies with equal force here:

{¶64} "*** [A]ppellant points to no evidence in the record that the state had such knowledge or that the Crime Lab erred in its conclusion. An appellate court in determining the existence of error is limited to a review of the record. *State v. Sheldon* (Dec. 31, 1986), 11th Dist. No. 3695, 1986 Ohio App. LEXIS 9608, *2; *Schick v. Cincinnati* (1927), 116 Ohio St. 16 ***, at paragraph three of the syllabus. Without any evidence in support of appellant's argument, there is nothing for us to consider. On appeal it is the appellant's responsibility to support his argument by evidence in the record that supports his or her assigned errors. *City of Columbus v. Hodge* (1987), 37 Ohio App.3d 68 ***." (Parallel citations omitted.) *Dudas IV* at ¶52.

{¶65} Further, by pleading guilty, appellant waived this argument. Moreover, by failing to make this argument in *Dudas I*, it is barred by res judicata. In the context of

criminal cases, "a convicted defendant is precluded under the doctrine of res judicata from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on appeal from that judgment." *State v. Szefcyk*, 77 Ohio St.3d 93, 96, 1996-Ohio-337.

{¶66} Under his fourth assigned error, appellant argues he should have been permitted to withdraw his guilty plea because the prosecutor instructed the Golics to turn over to the state his laptop computer and files he allegedly left behind in their home after he defrauded them and was incarcerated. He argues the state conspired with the Golics to steal his property and, to avoid our prior holding that this claim is barred by res judicata, he now argues he only discovered the state's conspiracy after he was sentenced. However, as we held in *Dudas III*, appellant was aware of this claim before he entered his guilty plea, and it is therefore barred by res judicata. Id. at ¶18. In fact, in *Dudas II*, *Dudas III*, *Dudas IV,* and *Dudas V*, we held this argument was barred by res judicata.

{¶67} Morevoer, there is no evidence in the record that would support such argument. Finally, by pleading guilty, appellant waived the right to assert any antecedent constitutional violation that did not affect the voluntary nature of his guilty plea.

{¶68} In summary, there is no evidence trial counsel was deficient and we therefore cannot conclude that counsel's performance fell below an objective standard of reasonableness. Further, appellant cannot meet the second prong of the *Hill* test because he admitted he understood the terms of the plea bargain and, when asked by

the court, stated that his attorneys had done everything he had asked them to do and that he was completely satisfied with their representation. We therefore cannot conclude that appellant was prejudiced by any alleged deficient conduct on the part of his counsel. Finally, there is no evidence in the record that any alleged deficiencies of trial counsel induced appellant to enter his guilty plea.

{¶69} For the foregoing reasons, appellant failed to demonstrate manifest injustice. As a result, the trial court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.

{¶70} For the reasons stated in the Opinion of this court, the assignments of error are without merit, and it is the judgment and order of this court that the judgment of the Lake County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J., TIMOTHY P. CANNON, J., concur.