

[Cite as *State v. Smith*, 2010-Ohio-4122.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. **93733**

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**WILLIE SMITH**

DEFENDANT-APPELLANT

---

**JUDGMENT:  
AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-511860

**BEFORE:** Boyle, J., Blackmon, P.J., and Cooney, J.

**RELEASED AND JOURNALIZED:** September 2, 2010

**ATTORNEY FOR APPELLANT**

Thomas A. Rein  
Leader Building  
Suite 940  
526 Superior Avenue  
Cleveland, Ohio 44114

**ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor  
BY: Marc D. Bullard  
Assistant County Prosecutor  
The Justice Center, 9<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶ 1} Raising a single assignment of error, defendant-appellant, Willie Smith, contends that his convictions should be reversed because his trial counsel was ineffective for failing to obtain a mental health evaluation regarding his competency and sanity. After review, we find Smith's argument lacks merit and

therefore affirm.

{¶ 2} In August 2007, the grand jury indicted Smith on three counts: robbery, in violation of R.C. 2911.02(A)(2); possession of criminal tools, in violation of R.C. 2923.24(A); and theft, in violation of R.C. 2913(A)(1). The charges against Smith arose after he allegedly robbed a Key Bank branch in Cleveland, Ohio. Smith pled not guilty to the charges and was assigned counsel.

{¶ 3} In June 2008, Smith's case was dismissed for defective indictment in light of the Ohio Supreme Court's ruling in *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917. Smith was reindicted on the exact same charges based upon the same facts.

{¶ 4} A jury trial commenced in May 2009. The jury found Smith guilty of robbery and theft, but not guilty of possessing criminal tools. The trial court sentenced him to eight years in prison. Five years of postrelease control was also part of his sentence. It is from this judgment that Smith appeals.

{¶ 5} To succeed on a claim of ineffective assistance, a defendant must establish that counsel's performance was deficient and that the defendant was prejudiced by the deficient performance. *Strickland v. Washington* (1984), 466 U.S. 668, 687; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373. Counsel will only be considered deficient if his or her conduct fell below an objective standard of reasonableness. *Strickland* at 688.

{¶ 6} When reviewing counsel's performance, this court must be highly deferential and "must indulge a strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." *Id.* at 689. To establish resulting prejudice, a defendant must show that the outcome of the proceedings would have been different but for counsel's deficient performance. *Id.* at 694.

{¶ 7} Smith's entire argument centers upon the docket of his reindicted case. He contends that there is nothing in the record to indicate that his trial counsel requested that he receive a mental health evaluation, and he claims his counsel was deficient for failing to do so.

{¶ 8} While Smith is correct that the docket in his reindicted case does not indicate that his counsel requested a psychiatric referral, it is not true that his counsel ignored his possible mental health issues. Contrary to Smith's claims, his counsel not only requested that Smith be evaluated for competency and sanity, the court ordered it, Smith was evaluated, and the court held a competency hearing.

{¶ 9} In January 2008, in the first indicted case, Smith's counsel requested that Smith be referred to the court's psychiatric clinic for a competency evaluation pursuant to R.C. 2945.371. Smith, however, refused to participate in the evaluation. Thus, the court ordered Smith to be transported to Northcoast Behavioral Healthcare for a twenty-day inpatient competency evaluation. On

March 3, 2008, Dr. Michael Christie submitted a report, finding Smith was competent to stand trial.

{¶ 10} The trial court then held a competency hearing. The prosecutor and defense counsel stipulated to the findings and conclusions contained in Dr. Christie's report, and the trial court adopted them. Dr. Christie opined that Smith understood the nature and objectives of the proceedings against him and was capable of assisting in his own defense. Dr. Christie further reported that Smith: (1) "was minimally cooperative during the evaluation"; (2) "does not have a mental illness or mental retardation"; (3) has a "borderline of low average range" intelligence; (3) was "malingering cognitive deficits"; (4) had polysubstance dependence; and (5) had antisocial personality disorder.

{¶ 11} Accordingly, we find Smith's counsel's performance was not deficient and overrule his sole assignment of error.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

---

MARY J. BOYLE, JUDGE

PATRICIA ANN BLACKMON, P.J., and  
COLLEEN CONWAY COONEY, J., CONCUR