

[Cite as *State v. Campbell*, 2016-Ohio-5510.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102788

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

PARIS CAMPBELL

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-14-588251-A
Application for Reopening
Motion No. 494945

RELEASE DATE: August 19, 2016

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MELODY J. STEWART, J.:

{¶1} Paris Campbell has filed a timely application for reopening pursuant to App.R. 26(B). Campbell is attempting to reopen the appellate judgment that was rendered in *State v. Campbell*, 8th Dist. Cuyahoga No. 102788, 2016-Ohio-389, that affirmed his plea of guilty to the offenses of trafficking in drugs and attempted illegal conveyance into a detention facility. We decline to reopen Campbell's original appeal.

{¶2} In order to establish a claim of ineffective assistance of appellate counsel, Campbell is required to establish that the performance of his appellate counsel was deficient and the deficiency resulted in prejudice. *Strickland v. Washington*, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), *cert. denied*, 497 U.S. 1011, 110 S.Ct. 3258, 111 L.Ed.2d 767 (1990).

{¶3} In *Strickland*, the United States Supreme Court held that a court's scrutiny of an attorney's work must be highly deferential. The court further stated that it is all too tempting for a defendant to second-guess his attorney after conviction and that it would be too easy for a court to conclude that a specific act or omission was deficient, especially when examining the matter in hindsight. Thus, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. *Strickland*.

{¶4} Herein, Campbell raises one proposed assignment of error in support of his claim of ineffective assistance of appellate counsel.

Paris Campbell's guilty plea was improperly coerced by the revocation of his bond and therefore, was not voluntarily entered as required by the due process clauses of the Ohio and United States Constitution.

Campbell, through his single proposed assignments of error, essentially argues that he did not enter a knowing, intelligent, and voluntary plea of guilty vis-a-vis the trial court's revocation of bond. Specifically, Campbell argues that "the trial court improperly coerced [his] plea by vacating his bond when we decided not to plead, refusing to reconsider reinstatement of the bond unless, and then, only after achieving its desired goal of obtaining a guilty plea, reinstating the bond prior to sentencing."

{¶5} It is also well settled, that matters outside of the record do not provide a basis for reopening under App.R. 26(B). *State v. Hicks*, 8th Dist. Cuyahoga No. 83981, 2005-Ohio-1842. More properly, any allegations of ineffectiveness of counsel based upon facts not appearing in the trial court record must be reviewed through postconviction remedies. *State v. Coleman*, 85 Ohio St.3d 129, 707 N.E.2d 476 (1999); *State v. Carmon*, 8th Dist. Cuyahoga No. 75377, 2005-Ohio-5463. Herein, the claim that the trial court vacated Campbell's bond as an inducement to plead guilty is based upon facts and evidence that dehors the record. Any allegations of ineffectiveness based on facts and evidence not appearing in the record must be reviewed through the postconviction remedies of R.C. 2953.21. *State v. Cooperrider*, 4 Ohio St.3d 226, 448 N.E.2d 452 (1983).

{¶6} The principles of res judicata may also be applied to bar the further litigation of issues that were raised previously or could have been raised previously in an appeal. *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967). Claims of ineffective assistance of appellate counsel in an application for reopening may be barred from further review by the doctrine of res judicata unless circumstances render the application of the doctrine unjust. *State v. Murnahan*,

63 Ohio St.3d 60, 584 N.E.2d 1204 (1992); *State v. Logan*, 8th Dist. Cuyahoga No. 88472, 2008-Ohio-1934.

{¶7} Herein, this court has already determined that Campbell's plea of guilty was properly entered pursuant to Crim.R. 11 and that the statement of having "no choice" did not result in a defective plea.

Campbell next contends that the "trial court violated Crim.R. 11 because it knew as a matter of law that Campbell did not enter knowing, intelligent or voluntary guilty pleas." Specifically, Campbell cites to the statement he made that he "had no choice" but to enter a guilty plea to the charges. The statement occurred during the Crim.R. 11 colloquy following the court's explanation of the potential consequences of pleading guilty to crimes that were committed while on PRC in a different case:

"The court: Have you been in contact with the parole officer?"

Campbell: No.

[Counsel]: Your Honor, they're aware of it, because that's why they didn't put a hold on him while this case was pending. So they were waiting for the outcome to make a determination on what they were going to do with the parole.

The court: Yeah, you got a tail of two-and-a-half years; did you know that?

Campbell: No.

The court: Well, now that you know that, you understand the jeopardy, is it then your intention to continue with the plea?

Campbell: I have no choice.

The court: So the answer is yes?

Campbell: Yes, I have no choice.

The court: Okay."

The court went on to accept Campbell's plea and find him guilty on the charges.

Campbell contends that his statement that "he had no choice" evidences the fact that he felt coerced into taking the plea because he was represented by an attorney

that he did not wish to have and was not afforded a meaningful opportunity to find new counsel. In support of this argument, he cites to *State v. Gordon*, 149 Ohio App.3d 237, 2002-Ohio-2761, 776 N.E.2d 1135 (1st Dist.). In *Gordon*, the First District vacated a defendant's guilty plea after finding the plea involuntary when the facts showed that the trial court refused to appoint new defense counsel and that the defendant entered a guilty plea after repeatedly saying that he was entering the plea because it was preferable to going to trial represented by his current attorney. *Id.*

The record before us does not lead us to the same conclusion as the court in *Gordon*. Unlike the defendant in *Gordon*, Campbell never told the court that he felt like he had no choice but to enter a plea because he was not represented by counsel of choice. Instead, Campbell simply stated that he had no choice. And when the court asked if that was a "yes," Campbell replied that it was. Although the trial court would have made a better record with further inquiry as to why Campbell felt as if he had "no choice," we cannot say that Campbell has proven his claim that his plea was involuntary.

Campbell at ¶ 18-20.

{¶8} This court has already examined Campbell's plea of guilty and the issue that he "had no choice" to enter a guilty plea and found that his plea of guilty was not involuntary. Thus, res judicata prevents this court from once again determining whether Campbell's plea of guilty was entered in a knowing, intelligent, and voluntary manner. *State v. Tate*, 8th Dist. Cuyahoga No. 81682, 2004-Ohio-973. Campbell has failed to demonstrate that the performance of his appellate counsel was deficient and that he was prejudiced by the claimed deficiency.

{¶9} Application denied.

MELODY J. STEWART, JUDGE

EILEEN T. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR