[Cite as *State v. Green*, 2016-Ohio-5399.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102837

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MORRIO R. GREEN

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-14-582071-B
Application for Reopening
Motion No. 495562

RELEASE DATE: August 17, 2016

FOR APPELLANT

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PATRICIA ANN BLACKMON, J.:

{¶1} Morrio R. Green has filed a timely application for reopening pursuant to App.R. 26(B). Green is attempting to reopen the appellate judgment, rendered in *State v. Green*, 8th Dist. Cuyahoga No. 102837, 2016-Ohio-926, that affirmed his plea of guilty to the offenses of drug possession (R.C. 2925.11(A)), trafficking (R.C. 2925.03(A)(2)), possessing criminal tools (R.C. 2923.24(A)), having weapons while under disability (R.C. 2923.13(A)(3)), and endangering children (R.C. 2919.22(A)) as entered in *State v. Green*, Cuyahoga C.P. No. CR-14-582071(B). We decline to reopen Green's appeal.

{¶2} In order to establish a claim of ineffective assistance of appellate counsel, Green 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, Green argues that appellate counsel was ineffective for failing to argue on appeal that Count 1 (drug possession) and Count 2 (trafficking) of the original indictment were defective and not subject to amendment. The purposes of an indictment are to give an accused adequate notice of the charge and enable an accused to protect himself or herself from any future prosecutions for the same incident. *State v. Buehner*, 110 Ohio St.3d 403, 2006-Ohio-4707, 853 N.E.2d 1162, citing *Weaver v. Sacks*, 173 Ohio St. 415, 417, 183 N.E.2d 373 (1962), and *State v. Sellards*, 17 Ohio St.3d 169, 170, 478 N.E.2d 781 (1985). An indictment that tracks the language of the charged offenses and identifies the predicate offenses by statute number and includes each element of the predicate offenses provides the accused with adequate notice of the pending charges. *Id*.; *State v. Horner*, 126 Ohio St.3d 466, 2010-Ohio-3830, 935 N.E.2d 26.

{¶5} We find that Counts 1 and 2 of the original indictment were not defective and properly identified the statute numbers corresponding to the offenses of drug possession (R.C. 2925.11) and trafficking (R.C. 2925.03(A)(2), tracked the language of the charged offenses, and included the elements associated with the offenses of drug possession and trafficking. In addition, the amendments to Counts 1 and 2, which involved the quantity of the illegal drugs, did not change the names or identities of the offenses charged in Count 1 and Count 2 and were thus permissible. *State v. Smith*, 14

Ohio App.3d 366, 471 N.E.2d 795 (8th Dist.1983); *State v. Kennedy*, 8th Dist. Cuyahoga No. 51168, 1986 Ohio App. LEXIS 7072 (June 5, 1986).

{¶6} Finally, a guilty plea is a complete admission of a defendant's guilt. A counseled plea of guilty, that is voluntarily and knowingly given, removes the issue of factual guilt from the case. *State v. Siders*, 78 Ohio App.3d 699, 605 N.E.2d 1283 (11th Dist. 1992). When a defendant enters a plea of guilty, all appealable errors that might have occurred at trial are waived unless the errors precluded the defendant from entering a knowing and voluntary plea. *State v. Barnett*, 73 Ohio App.3d 244, 596 N.E.2d 1101 (2d Dist.1991), citing *State v. Kelley*, 57 Ohio St.3d 127, 566 N.E.2d 658 (1991). A guilty plea waives the right to claim that a defendant was prejudiced by ineffective counsel, except with regard to any defects that caused the plea to be less than knowing and voluntary. *Id.* at 249; *see also State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48. Herein, this court has already determined on appeal that:

> {¶ 15} In this case, the trial court fully complied with its duty to inform Green of his constitutional rights. The record also compels the conclusion that the trial court substantially complied with the other duties imposed by Crim.R. 11(C)(2). When Green told the trial court that he was taking medication, the court wanted the specific names and the reason he required them. The court also specifically asked Green if the medications compromised his understanding of the proceedings. When Green attempted to hedge his answer, the trial judge noted that she, too, took medication for the same disease. After this, Green agreed that the medication did not affect his understanding. Under these circumstances, the trial court was not required to explore further the possible psychological effects of Green's medication for treatment of Lupus in order to determine that his guilty pleas were knowing, voluntary, and intelligent. *State v. Martin*, 8th Dist. Cuyahoga No. 66046, 1994 Ohio App. LEXIS 4569 (Oct.

6, 1994); *State v. McDowell*, 8th Dist. Cuyahoga No. 70799, 1997 Ohio App. LEXIS 113 (Jan. 16, 1997).

{¶ 16} Green must also show that there exists a prejudicial effect resulting from the trial judge accepting his guilty plea. The test for prejudice is "whether the plea would have otherwise been made." *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990). Because the trial judge explicitly and clearly explained Green's rights and the results of his guilty plea, we cannot conclude that he would not have pleaded guilty. There is no evidence in the record that the trial judge did not comply in any way with the standards set forth in Crim.R. 11. The appellant understood the nature of his guilty plea, and the trial court did not unlawfully sentence him.

Green, *supra*, at ¶ 15-16.

{¶7} Because this court has already determined that Green's plea of guilty was entered knowingly, intelligently, and voluntarily, any claimed errors raised by Green are waived. *State v. Wells*, 8th Dist. Cuyahoga No. 100365, 2015-Ohio-297.

{¶8} Accordingly, the application for reopening is denied.

PATRICIA ANN BLACKMON, JUDGE

EILEEN A. GALLAGHER, P.J., and
EILEEN T. GALLAGHER, J., CONCUR