[Cite as *State v. Miller*, 2017-Ohio-8057.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 104427 and 104428

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DONALD K. MILLER

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case Nos. CR-15-597601-B and CR-15-601335-D
Application for Reopening
Motion No. 507697

RELEASE DATE: October 2, 2017

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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SEAN C. GALLAGHER, J.:

{¶1} Donald K. Miller has filed a timely application for reopening pursuant to App.R. 26(B). Miller is attempting to reopen the appellate judgment, rendered in *State v. Miller*, 8th Dist. Cuyahoga Nos. 104427 and 104428, 2017-Ohio-961, that affirmed his conviction and the sentence of the trial court imposed with regard to the offenses of engaging in a pattern of corrupt activity, burglary with notice of prior conviction and repeat violent offender specifications, grand theft, possession of criminal tools, and associated firearm specifications, but reversed and remanded solely for the limited purpose of considering the imposition of court costs. We decline to reopen Miller's original appeals.

{¶2} In order to establish a claim of ineffective assistance of appellate counsel, Miller 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, Miller has raised two proposed assignments of error in support of his application for reopening. Miller's initial proposed assignment of error is that:

> Appellant was denied due process of law when denied the effective assistance of appellate counsel where counsel failed to raise (1) that appellant was denied the effective assistance of trial court [counsel] for failing to file a "motion to dismiss" indictment as being invalid, because it fails to comply with R.C. 2941.03(D), pursuant to precedent law *State v. Luna*, 1994 Ohio App. LEXIS 3265.

{¶5} Miller's second proposed assignment of error is that:

> Appellant was denied due process of law under Ohio and United States Constitutions when denying the effective assistance of appellate counsel for failing to raise "plain error" when the indictments failed to comply with R.C. 2941.03(D), pursuant to precedent law *State v. Luna*, 1994 Ohio App. LEXIS 3265.

{¶6} Miller, through his two proposed assignments of error, argues that appellate counsel was deficient and that he was prejudiced because the indictments in Cuyahoga C.P. Nos. CR-15-597601-B and CR-15-601335-D were defective because they failed to specify the "place" within the county of Cuyahoga where the charged offenses were committed and that the trial court, therefore, lacked subject matter jurisdiction over the cases.

{¶7} Contrary to Miller's argument, the jurisdiction of a court of common pleas in a criminal case in Ohio does not depend upon the precise location within the county

where an offense is committed. In *State v. Malone*, 8th Dist. Cuyahoga No. 71094, 1997 Ohio App. LEXIS 306 (Jan. 30, 1997), this court held that where the indictment stated that the charged offense occurred in Cuyahoga County, the indictment was sufficient "[a]s the location of the alleged offense was within the jurisdiction of the trial court," and the trial court had subject matter jurisdiction to determine the case. *See also State v. Munici*, 8th Dist. Cuyahoga No. 70405, 1996 Ohio App. LEXIS 3544 (Aug. 22, 1996), where this court held that if the indictment stated that the charged offense was committed in the county of Cuyahoga, the indictment was sufficient under R.C. 2941.03(D) and was not void for lack of subject matter jurisdiction. Herein, the indictments returned against Miller clearly provided that the charged offenses occurred within the county of Cuyahoga.

{¶8} Finally, courts of common pleas possess statewide jurisdiction. *See* Ohio Constitution Article IV, Section 4(A); *State v. Wyley*, 8th Dist. Cuyahoga No. 102889, 2016-Ohio-1118; *Wiegand v. Deutsche Bank Natl. Trust*, 8th Dist. Cuyahoga No. 97424, 2012-Ohio-933 ("The Ohio Constitution created the several courts of common pleas and granted them statewide jurisdiction.").

{¶9} The courts of common pleas have "original jurisdiction of all crimes and offenses, except * * * minor offenses[.]" R.C. 2931.03. Further, R.C. 2901.11 provides that "[a] person is subject to criminal prosecution and punishment in this state if * * * [t]he person commits an offense under the laws of this state, any element of which takes place in this state." Thus, the trial court did not lack subject matter jurisdiction to

preside over Miller's two criminal cases. *State v. Vihtelic*, 8th Dist. Cuyahoga No. 105381, 2017-Ohio-5818.

{¶10} Miller, through his two proposed assignments of error, has failed to demonstrate that he was prejudiced by his appellate counsel and that the outcome of his appeal would have been different had the claimed error been raised in his original appeal.

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

SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and
ANITA LASTER MAYS, J., CONCUR