

[Cite as *State v. Logan*, 2018-Ohio-5350.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106868

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CARLTON R. LOGAN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-91-272143-B

BEFORE: Jones, J., E.A. Gallagher, A.J., and Keough, J.

RELEASED AND JOURNALIZED: December 27, 2018

ATTORNEY FOR APPELLANT

J. Philip Calabrese
Porter Wright Morris & Arthur L.L.P.
950 Main Avenue, Suite 500
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor

BY: Daniel T. Van
Assistant County Prosecutor
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant Carlton Logan (“Logan”) filed this appeal pro se, challenging the trial court’s judgment denying as moot his January 2018 motion to dismiss a sexual predator hearing and after the hearing, labeling him a sexually oriented offender. This court appointed counsel for appellant, who has briefed the issues for consideration. For the reasons that follow, we affirm.

I. Procedural and Factual History

{¶2} In 1992, a jury found Logan guilty of aggravated robbery, felonious assault, kidnapping, having weapons while under disability, disruption of public service, rape, failure to comply with order or signal, and felonious sexual penetration. The counts contained various specifications, including firearm specifications. The trial court sentenced Logan to a term of 146 years.

{¶3} Over the years, Logan has unsuccessfully challenged his convictions. On direct appeal, this court affirmed the convictions. *State v. Logan*, 8th Dist. Cuyahoga No. 63943, 1993 Ohio App. LEXIS 5389 (Nov. 10, 1993). He filed a petition for postconviction relief, that was denied; the denial of the petition was upheld on appeal. *State v. Logan*, 8th Dist. Cuyahoga No. 85313, 2005-Ohio-3712.

{¶4} In 2004, Logan filed an application for DNA testing, which the trial court denied. Logan did not appeal from the judgment. In 2005, he filed a motion for a new trial, that was also denied. He attempted to file a delayed appeal, but this court denied it. *State v. Logan*, 8th Dist. Cuyahoga No. 87437, Motion No. 378760 (2006). His attempt to appeal to the Ohio Supreme Court was also unsuccessful. *State v. Logan*, Ohio Supreme Court No. 06-0383.

{¶5} In 2017, Logan was ordered to submit to a sexual predator evaluation. On January 9, 2018, Logan filed a motion for DNA analysis and appointment of a DNA expert, as well as a motion to dismiss the sexual predator hearing. On January 11, 2018, the trial court granted the motion for DNA analysis and the appointment of a DNA expert. On January 16, 2018, the state filed a motion to vacate the order allowing DNA analysis and a brief in opposition to Logan's motion to dismiss. The state contended that Logan's DNA request was not properly before the trial court because it had not been properly submitted in accordance with the Ohio attorney general's requirements.

{¶6} The trial court held a hearing on January 16, 2018. The court stated the following to Logan:

your lawyer * * * has filed a motion to dismiss, which has been opposed by the State of Ohio. And it is my understanding the motion to dismiss will become moot as your lawyer and the State's lawyer have agreed to a finding that you would be the lowest registering offender, which would have the least stringent requirements for reporting.

{¶7} Defense counsel stated that the court’s summation was correct and that he and Logan had read the “explanation of duties to register as a sex offender” documentation together. The document was signed and dated by Logan, and Logan told the court that he did not have any questions about it. The assistant prosecuting attorney advised the court that, per in-chambers discussions, the defense’s motion for DNA analysis would be withdrawn as part of the agreement. Defense counsel confirmed that was true, and the court withdrew the motion for DNA analysis and denied the motion to dismiss as moot.

{¶8} Thereafter, the trial court issued a judgment entry that provided in substantive part as follows: “Defense counsel and prosecutor agree to the finding that the Defendant is the lowest registering offender; sexually oriented offender. Duties of registering as a sex offender placed on the record.” The trial court also issued a judgment entry stating that “Defendant’s motion for DNA analysis is withdrawn.”

{¶9} Logan, pro se, appealed on February 1, 2018. On that same date, Logan, pro se, also filed in the trial court a motion for relief from judgment and to reinstate the order granting his motion for DNA analysis and appointment of DNA expert and funds.

{¶10} On February 7, 2018, the trial court denied Logan’s motion for relief from judgment and to reinstate the order granting his motion for DNA analysis and appointment of DNA expert and funds. The docket indicates that on February 27, 2018, Logan filed another notice of appeal.

{¶11} This court appointed Logan appellate counsel, who has raised and briefed the following two assignments of error for our review:

- I. Mr. Logan’s motion for DNA testing was properly before the trial court, which erred by vacating its journal entry ordering DNA testing and by not

granting Mr. Logan relief from that judgment.

II. Defendant received ineffective assistance of counsel when his appointed trial counsel agreed to withdraw defendant's request for DNA testing *after* the trial court ordered DNA testing that will show defendant's actual innocence. Defendant is entitled to representation by the counsel guaranteed by the Sixth Amendment and Ohio law.

(Emphasis sic.)

{¶12} In regard to Logan's motion for DNA analysis, we note that it was not denied under the state's theory — that is, that it was not properly before the trial court. Rather, the record indicates that, in exchange for being labeled the lowest category of sexual offender classification, Logan agreed to withdraw his motion for the analysis. Under the invited error doctrine, a party is not “permitted to take advantage of an error which he himself invited or induced the trial court to make.” *State ex rel. Bitter v. Missig*, 72 Ohio St.3d 249, 254, 648 N.E.2d 1355 (1995).

{¶13} However, Logan contends that his trial counsel agreed to withdraw his motion during an in-chambers discussion, at which he was not present, and that he only became fully aware of what had transpired when he received the trial court's January 17, 2018 judgment stating that his motion had been withdrawn, after which he filed a notice of appeal on February 1, 2018.

{¶14} Logan's February 1, 2018 notice of appeal stated that he was appealing the trial court's January 16, 2018 judgment denying his motion to dismiss as moot and sexual predator classification. He did not make any mention of the trial court's entry stating that his motion for DNA analysis was withdrawn. The motion to dismiss was premised on Logan's contention that the state had failed to provide him with discovery and therefore he was “impeded in his investigation, unable to identify other witnesses, and most importantly, unable to develop a

strategy and present a cogent theory of defense.” And in his February 1 notice of appeal, Logan’s brief summation of the anticipated assignment of error was “error in refusing to dismiss, *Brady* violations.”

{¶15} In light of the above, the trial court’s entry stating that Logan’s motion for DNA analysis was withdrawn is not properly before this court.

{¶16} In this first assignment of error, Logan also challenges the trial court’s judgment denying his motion for relief from judgment, which he contends he appealed on February 27, 2018. The state contends that the issue is not properly before the court, however.

{¶17} Logan is correct that the docket indicates that he filed a notice of appeal on February 27, 2018. However, a review of what was actually filed demonstrates that he did not appeal the trial court’s judgment denying his motion for relief from judgment and, thus, the February 27 docket entry is misleading. Rather, the same documentation that was filed on February 1, 2018 was refiled on February 27, 2018: a notice of appeal from the trial court’s January 16, 2018 judgment denying his motion to dismiss as moot and labeling him a sexually oriented offender; an affidavit of indigence; a praecipe to transmit the record; and a docketing statement. Additionally, on February 27, Logan filed motions to (1) appoint counsel, (2) order production of transcripts at the state’s expense, and (3) for leave to proceed in forma pauperis.

{¶18} Simply, Logan did not appeal from the trial court’s judgment denying his motion for relief from judgment.

{¶19} On this record, the first assignment of error is without merit and overruled.

{¶20} In his second assignment of error, Logan contends that his trial counsel was ineffective for agreeing to withdraw Logan’s motion for DNA testing after the trial court had already granted his request.

{¶21} For a defendant to establish a claim for ineffective assistance of counsel, he or she must show that trial counsel’s performance was deficient and that the deficient performance prejudiced his or her defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). To establish prejudice, the defendant must demonstrate there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland* at 694.

{¶22} In evaluating a claim of ineffective assistance of counsel, a court must give great deference to counsel’s performance. *Id.* at 689. “A reviewing court will strongly presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *State v. Pawlak*, 8th Dist. Cuyahoga No. 99555, 2014-Ohio-2175, ¶ 69. Thus, “[t]rial strategy or tactical decisions cannot form the basis for a claim of ineffective counsel.” *State v. Foster*, 8th Dist. Cuyahoga No. 93391, 2010-Ohio-3186, ¶ 23, citing *State v. Clayton*, 62 Ohio St.2d 45, 402 N.E.2d 1189 (1980).

{¶23} The record before us demonstrates that counsel’s decision to withdraw the DNA analysis was strategic — he did so in exchange for Logan being subjected to the least stringent form of a sexual offender. The record further demonstrates that Logan was present at the hearing where the trial court stated that the request for DNA analysis was withdrawn, and had the opportunity to ask questions about what was occurring; Logan indicated that he did not have any questions.

{¶24} In light of the above, the second assignment of error is without merit and therefore overruled.

{¶25} 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.

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

LARRY A. JONES, SR., JUDGE

EILEEN A. GALLAGHER, A.J., and
KATHLEEN ANN KEOUGH, J., CONCUR