[Cite as *State v. Crim*, 2020-Ohio-2821.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 108047
v.	:	
DAMON CHRISTOPHER CRIM,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: May 1, 2020

Cuyahoga County Court of Common Pleas
Case No. CR-18-629432-A
Application for Reopening
Motion No. 534424

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jennifer M. Meyer, Assistant Prosecuting Attorney, *for appellee.*

Damon Christopher Crim, *pro se*.

MARY J. BOYLE, J.:

{¶ 1} Damon Crim has filed a timely App.R. 26(B) application for reopening. Crim is attempting to reopen the appellate judgment rendered in *State v. Crim*, 8th Dist. Cuyahoga No. 108047, 2019-Ohio-3771, that affirmed his pleas of

guilty and the imposed sentences with regard to two counts of felonious assault (R.C. 2903.11(A)(2)), one count of kidnapping (R.C. 2905.01(A)(3)), one count of domestic violence (R.C. 2919.25(A)), and one count of drug possession (R.C. 2925.11). We decline to grant Crim's application for reopening because he has failed to establish that he was prejudiced by the performance of his appellate counsel on appeal.

I. Standard of review applicable to App.R. 26(B) application for reopening

{¶ 2} In order to establish a claim of ineffective assistance of appellate counsel under App.R. 26(B), Crim 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 in 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} Moreover, even if Crim establishes that an error by his appellate counsel was professionally unreasonable, Crim must further establish that he was prejudiced; but for the unreasonable error there exists a reasonable probability that the results of his appeal would have been different. Reasonable probability, with regard to an application for reopening, is defined as a probability sufficient to undermine confidence in the outcome of the appeal. *State v. May*, 8th Dist. Cuyahoga No. 97354, 2012-Ohio-5504.

II. Effect of plea of guilty on App.R. 26(B)

{¶ 5} In *State v. Crim*, Cuyahoga C.P. No. CR-18-628432-A, Crim entered a plea of guilty to the offenses of felonious assault, kidnapping, domestic violence, and drug possession. A plea of guilty waives a defendant's right to challenge his or her conviction on all potential issues except for jurisdictional issues and the claim that ineffective assistance of counsel caused the guilty plea to be less than knowing, intelligent, and voluntary. *Montpelier v. Greeno*, 25 Ohio St.3d 170, 495 N.E.2d 581 (1986); *State v. Vihtelic*, 8th Dist. Cuyahoga No. 105381, 2017-Ohio-5818; *State v. Szidik*, 8th Dist. Cuyahoga No. 95644, 2011-Ohio-4093; *State v. Salter*, 8th Dist. Cuyahoga No. 82488, 2003-Ohio-5652; and *State v. May*, 8th Dist. Cuyahoga No. 97354, 2012-Ohio-2766, *reopening disallowed*, 2012-Ohio-5504.

{¶ 6} By entering a plea of guilty, Crim waived all appealable errors that might have occurred at trial unless the errors prevented Crim from entering a

knowing and voluntary plea. *State v. Kelley*, 57 Ohio St.3d 127, 566 N.E.2d 658 (1991); *State v. Barnett*, 73 Ohio App.3d 244, 596 N.E.2d 1101 (2d Dist. 1991).

{¶ 7} Once again, our review of the plea transcript clearly demonstrates that the trial court meticulously complied with the mandates of Crim.R. 11 and that Crim entered a knowing, intelligent, and voluntary plea of guilty. Specifically, the trial court informed Crim that he would be waiving numerous constitutional rights and further informed him of the potential sentence and fine associated with each charged offense: 1) the degree of each charged felony offense (tr. 542-543); 2) the maximum sentence and fine associated with each charged criminal offense (tr. 542-543); 3) waiver of the right to a jury or bench trial (tr. 540); 4) waiver of the right that the state must prove guilt beyond a reasonable doubt (tr. 541); 5) waiver of the right to confront and cross-examine each witness called by the state (tr. 541); 6) Crim could not be compelled to testify against himself (tr. 541); 7) Crim is presumed innocent, but a plea of guilty is a complete admission of the truth of the facts and full guilt (tr. 540); 8) the possibility of consecutive sentences with a maximum sentence as to each count (tr. 544); 9) offenses were not allied and sentences could be run consecutively (tr. 537); 10) mandatory and permissive imposition of postrelease control (tr. 546); and 11) the effects of violation of postrelease control (tr. 546). The trial court also queried Crim as to whether any threats or promises had been made to encourage the entry of a guilty plea. (Tr. 539.) The trial court further determined that Crim was not under the influence of drugs, alcohol or meds and that he was satisfied with the representation of his legal counsel. (Tr. 539-540.)

{¶ 8} Because Crim's plea was knowingly, intelligently, and voluntarily made, and the claimed errors raised by Crim are not based upon any jurisdictional defects, the raised proposed assignments of error are waived. We further find that no prejudice can be demonstrated by Crim based upon appellate representation on appeal. *State v. Bates*, 8th Dist. Cuyahoga No. 100365, 2015-Ohio-297.

III. Proposed assignments of error

{¶ 9} Finally, even if this court were to review Crim's two proposed assignments of error, we find that he has failed to establish any prejudice that resulted from the conduct of appellate counsel on appeal. Crim's two proposed assignments of error are:

> Appellate counsel was ineffective for failing to argue the trial court's acceptance of appellant's guilty pleas without advising him he was ineligible for judicial release which rendered his guilty pleas not knowingly and voluntarily made in violation of his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.
>
> Appellate counsel was ineffective for failing to argue the trial court's acceptance of appellant's guilty pleas to two counts of felonious assault without informing him [that a] mandatory term of post-release control was part of each sentence imposed for both counts, [which] rendered his pleas not knowing and voluntarily made, in violation of his due-process rights under the Fourteenth Amendment to the United States constitution.

{¶ 10} Crim, through his first proposed assignment of error, argues that the trial court improperly informed him of the possibility of judicial release. However, a review of the transcript clearly shows that the trial court did not discuss the possibility of judicial release:

> COURT: Okay. So there's a minimum of the mandatory one year and a maximum of 29 years. That's the range you are looking at with this plea, Mr. Crim.
>
> Now, on the underlying offenses, once you have completed your one year maximum sentence, the Court may consider placing you on a community control sanction for up to five years instead of prison.
>
> If you violate the terms of your community control sanction, you may receive a more-restrictive sentence, which may include that prison time.

(Tr. 545.)

{¶ 11} The trial court simply stated that there existed the possibility of Crim being sentenced to community control, not judicial release per R.C. 2929.20. *State v. Bartel*, 8th Dist. Cuyahoga No. 97411, 2012-Ohio 3944.

{¶ 12} Crim, through his second proposed assignment of error, argues that the trial court improperly instructed him with regard to postrelease control. A review of the transcript clearly demonstrates that the trial court properly instructed Crim with regard to mandatory postrelease control:

> THE COURT: If you are sentenced to prison, upon completion of your prison term, you are subject to a mandatory period of five years of post-release control, commonly called parole. That is five years mandatory on the first degree felony. So that will trump all of the other offenses, so it is a mandatory five years.
>
> When you are placed on post-release control, if you violate, the Adult Parole Authority can send you back to prison for up to half of the original sentence imposed.
>
> If you are convicted of a new felony while on post-release control, in addition to being punished for the new offense, the judge may add an additional prison term of one year or what time remains on your post-release control term, whichever is greater, as a maximum.

> While on post-release control, if you fail to report to your parole officer, you may be charged with another felony offense, which is called escape. While on post-release control, you will undergo random drug testing.
>
> Do you have any questions about your rights, the charges, the penalties or anything that we have done here today?
>
> THE DEFENDANT: No, your Honor.

(Tr. 546 – 547.)

{¶ 13} The trial court's instruction, with regard to postrelease control, was correct and did not violate R.C. 2929.14(F)(1) and 2967.28. *State v. Bishop*, 156 Ohio St.3d 156, 2018-Ohio-5132, 124 N.E.3d 766; *State v. Mincik*, 8th Dist. Cuyahoga No. 108625, 2020-Ohio-1385. We further find that Crim, based upon his two proposed assignments of error, has failed to raise any jurisdictional defects or establish that his guilty pleas to the offenses of felonious assault, kidnapping, domestic violence, and drug possession were less than knowing, intelligent, and voluntary. *State v. Bishop*, *supra*; *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, 881 N.E.2d 1224.

{¶ 14} Application for reopening is denied.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR