

[Cite as *State v. Hardy*, 2020-Ohio-4743.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 108865
 v. :
 :
 CORDERO HARDY, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: September 28, 2020

Cuyahoga County Court of Common Pleas
Case Nos. CR-18-634070-A and CR-19-637655-A
Application for Reopening
Motion No. 539884

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Brandon Piteo, Assistant Prosecuting Attorney, *for appellee*.

Cordero Hardy, *pro se*.

ANITA LASTER MAYS, P.J.:

{¶ 1} Cordero Hardy has filed a timely application for reopening pursuant to App.R. 26(B). Hardy is attempting to reopen the appellate judgment that was rendered in *State v. Hardy*, 8th Dist. Cuyahoga No. 108865, 2020-Ohio-3185, that

affirmed the trial court's decision to deny his motion to vacate guilty plea. We decline to reopen Hardy's original appeal.

{¶ 2} In order to establish a claim of ineffective assistance of appellate counsel, Hardy 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, Hardy raises one proposed assignment of error in support of his claim of ineffective assistance of appellate counsel.

Denied effective assistance of counsel in violation of U.S. Const.,
Amends 6; 8; 14. [sic]

{¶ 5} Hardy, through his single proposed assignment of error, essentially argues that he did not enter a knowing, intelligent, and voluntary plea of guilty. Specifically, Hardy argues that “My guilty plea was induced by a promise of 9 months maximum or probation. My attorney informed me on May 13, 2019 what they discuss on that day in the Judge’s chamber, even though the time by law carried 9 months to 36 months with probation.”

{¶ 6} 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. 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 Hardy was induced to plead guilty, based upon a promise of a nine-month sentence, is predicated 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).

{¶ 7} In addition, a review of the transcript of the plea hearing clearly demonstrates that no promises, with regard to sentencing, were made by the trial court to Hardy in exchange for his plea of guilty: 1) the trial court indicated that a conversation was held with Hardy’s attorneys and the prosecutor in chambers, but that no promises were made with regard to sentencing if Hardy entered a plea of

guilty (tr. 39); 2) Hardy could proceed to trial or enter a plea of guilty, but no promises were made or offered in exchange for a plea of guilty (tr. 39-44); 3) Hardy acknowledged that no threats or promises had been made in order for him to enter a plea of guilty (tr. 52); 4) a plea of guilty did not guarantee any particular sentence (tr. 58); and 5) Hardy faced the possibility of a maximum sentence of 72 months of incarceration (tr. 59). Nothing in the record demonstrates that Hardy was induced to enter a plea of guilty by a promise of a maximum sentence of nine months or probation. Thus, Hardy's proposed assignment of error lacks any reasonable probability of success and there exists no ineffective assistance of appellate counsel on appeal. *State v. Tenace*, 109 Ohio St. 3d 451, 2006-Ohio-2987, 849 N.E.2d 1.

{¶ 8} Application denied.

ANITA LASTER MAYS, PRESIDING JUDGE

LARRY A. JONES, SR., J., and
EILEEN A. GALLAGHER, J., CONCUR