[Cite as *State v. Koster*, 2017-Ohio-7499.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA25
vs.	:	
RONALD K. KOSTER,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Ronald K. Koster, appellant pro se.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and Jeffrey M. Smith, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 8-16-17
ABELE, J.

{¶ 1} This is a reopened appeal by Ronald Koster, plaintiff-appellant, from a Lawrence County Common Pleas Court judgment of conviction and sentence on (1) two counts of retaliation in violation of R.C. 2921.05(A), and (2) one count of aggravated menacing in violation of R.C. 2903.21(A). Appellant argues that he was deprived of the effective assistance of counsel. Because we find no prejudice, we affirm our prior judgment that affirmed the trial court's judgment.

I. FACTS

{¶ 2} In 2010, Sgt. Randy Goodall of the Lawrence County Sheriff's Department arrested

appellant for weapons and domestic violence charges.[1] Appellant later made threats to rape Sgt. Goodall's daughter and wife, kill them, and burn down their house. Appellant was subsequently charged and convicted of the offenses of retaliation and ordered to serve a prison sentence.

{¶ 3} After appellant's parole, on February 9, 2011 Lawrence County Sheriff's Department Detective Aaron Bollinger accompanied the probation department to appellant's home to investigate whether he had violated the terms of his parole. While there, the authorities found firearms that appellant was forbidden to have in his car. The officers seized those weapons as evidence of a probation violation.

{¶ 4} In the evening of March 6, 2014, and extending into the early morning hours of March 7, 2014, the Lawrence County Sheriff's Office received a number of phone calls from appellant that insulted the dispatcher, impugned the sexuality of various Sheriff's deputies, and threatened Det. Bollinger and Sgt. Goodall.

{¶ 5} On March 25, 2014, the Lawrence County Grand Jury returned an indictment that charged appellant with (1) two counts of retaliation in violation of R.C. 2921.05(A), and (2) one count of aggravated menacing in violation of R.C. 2903.21(A). Appellant pled not guilty and the matter came on for a two-day jury trial. During the trial, Sgt. Goodall testified about his contact with appellant in 2010, Det. Bollinger testified regarding his contact with him in 2011 (when he accompanied probation officials to appellant's home), and Lonnie Best (Director of Lawrence County 911) submitted recordings of appellant's March 6 and 7, 2014 phone calls.

{¶ 6} At the conclusion of the trial, the jury found appellant guilty of all three charges. The

[1] We take the majority of the facts in this case from our recent decision in *State v. Koster*, 4th Dist. Lawrence No. 14CA25, 2016-Ohio-2851.

trial court sentenced appellant to serve 36 months in prison on each retaliation charge, as well as 180 days on the aggravated menacing charge, with all sentences to be served consecutively. We affirmed his convictions in *State v. Koster*, 4th Dist. Lawrence No. 14CA25, 2016-Ohio-2851.

{¶ 7} On July 12, 2016, appellant filed a pro se App.R. 26(B) application for reopening appeal and argued that he received ineffective legal assistance from appellate counsel. On December 16, 2016, this court concluded that appellant had raised a genuine issue as to whether he received effective assistance from counsel for purposes of App.R. 26(B)(5). Thus, we granted appellant's application and ordered the appeal to be reopened for the purpose of addressing the three issues raised in the application. The parties have now submitted their briefs on reopening.

II. ASSIGNMENTS OF ERROR

FIRST ASSIGNMENT OF ERROR:

"THE STATE'S INTRODUCTION OF OTHER ACTS EVIDENCE AND PREJUDICIAL HEARSAY STATEMENTS FROM UNAVAILABLE DECLARANTS VIOLATED EVID.R. 404(B) AND DEPRIVED THE DEFENDANT OF HIS RIGHTS UNDER THE CONFRONTATION CLAUSE EMBODIED IN THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION."

SECOND ASSIGNMENT OF ERROR:

"THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION AS TO COUNT TWO IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION."

THIRD ASSIGNMENT OF ERROR:

"DEFENSE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE AT TRIAL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION."

III. STANDARD OF REVIEW

{¶ 8} The two-pronged analysis in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), is the appropriate standard to determine whether a defendant has received ineffective assistance of appellate counsel. *State v. Were*, 120 Ohio St.3d 85, 2008-Ohio-5277, 896 N.E.2d 699, ¶ 10, *State v. Mockbee*, 4th Dist. Scioto No. 14CA3601, 2015-Ohio-3469, ¶ 14. Reversal of a conviction for ineffective assistance of counsel requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, 854 N.E.2d 1038, ¶ 205. To establish prejudice, an appellant must show a reasonable probability exists that, but for the alleged errors, the result of the proceeding would have been different. *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, 848 N.E.2d 810 ¶ 95, citing *Strickland, supra*, at 687; *State v. Bradley*, 42 Ohio St.3d 136, 143, 538 N.E.2d 373 (1989).

{¶ 9} The Supreme Court of Ohio instructed in *State v. Sanders*, 94 Ohio St.3d 150, 2002-Ohio-350, 761 N.E.2d 18, "*Strickland* charges us to '[apply] a heavy measure of deference to counsel's judgments,' 466 U.S. at 691, 104 S.Ct. at 2066, 80 L.Ed.2d at 695, and to 'indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance,' *id*. at 689, 104 S.Ct. at 2065, 80 L.Ed.2d at 694. * * * [W]e note that courts must 'judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the

time of counsel's conduct.' *Strickland*, 466 U.S. at 690, 104 S.Ct. at 2066, 80 L.Ed.2d at 695." *Sanders* at ¶ 3-5.

{¶ 10} Moreover, we review an App.R. 26(B) application as on an initial appeal in accordance with these rules, except that we limit our review to those assignments of error and arguments not previously considered. App.R. 26(B)(7). If we were to find that the performance of appellate counsel was deficient and the applicant was prejudiced by that deficiency, the court shall vacate its prior judgment and enter the appropriate judgment. If the court does not so find, the court shall issue an order confirming its prior judgment. App.R. 26(B)(9).

IV. LAW AND ANALYSIS

A. Other Acts Evidence and Prejudicial Hearsay Statements from Unavailable Declarants

{¶ 11} In his first assignment of error, appellant argues that the state's introduction of other acts evidence and prejudicial hearsay statements from unavailable declarants violates Evid.R. 404(B) and deprived him of his rights under the confrontation clause embodied in the Sixth Amendment to the United States Constitution. While appellant's 2010 conviction for retaliation against Goodall was admissible to prove the element that he retaliated against Goodall for performing his duty, appellant contends that the facts from the 2010 case should not have been relitigated as the state introduced the entire trial record from 2010.

{¶ 12} Evid.R. 404(B) prohibits the admission of other acts evidence to prove the character of a person in order to show that the person acted in conformity with the evidence. However, the rule permits the admission of other acts evidence as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake." Evid.R. 404(B); *see also See, State v. Lowe*, 69 Ohio St.3d 527, 539, 634 N.E.2d 616 (1994). Moreover, the admission or exclusion of

evidence lies in the trial court's sound discretion. *State v. Sage*, 31 Ohio St.3d 173, 510 N.E.2d 343 (1987), and this applies to admission of other acts evidence as well. *State v. Bey*, 85 Ohio St.3d 487, 489-490, 709 N.E.2d 484 (1999).

{¶ 13} First, appellant argues that his counsel did not object to details from his 2010 case being entered into evidence. However, that statement appears to be inaccurate. Counsel did in fact object to the introduction of State's Exhibit 4, the 2010 trial record, on the basis of relevance and prejudice. Further, when the state referred to an inventory of the items in appellant's possession when he was placed under arrest in 2010, counsel again objected to the foundation/relevance, as well as renewing his objection on prejudicial grounds. The trial court, however, overruled both objections.

{¶ 14} Second, appellant cites to *State v. Adkins*, 3d Dist. Union Nos. 14-03-47, 14-03-48, 2004-Ohio-4019, to support his argument. We, however, find *Adkins* to be distinguishable. Adkins involved a defendant charged with harassment and assault, whereas appellant is challenging his conviction for retaliation against Sgt. Goodall. As noted above, to prove retaliation the state needed to show appellant's purpose to retaliate against the two law enforcement officers in question, and some of facts from the 2010 convictions that involved the same officers provided context for the 2014 charges. Moreover, even in *Adkins* when the court found that testimony relating to the details of the defendant's prior crime was error, the court still found that it did not affect the outcome of the trial and affirmed the judgment. *Adkins* at ¶ 14.

{¶ 15} With regard to the admission of testimony and the record from the 2010 trial, the state asserts that a trial on an indictment for retaliation necessarily involves evidence of prior acts by the defendant. The state notes that to obtain a conviction for retaliation, the mental element the state

must prove beyond a reasonable doubt is "purposely." "A person acts purposely when it is the person's specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender's specific intention to engage in conduct of that nature." R.C. 2901.22(A). Thus, the state argues that evidence of non-specific, general wrongdoing is not enough; evidence of "specific intention" is required, and appellant's specific intention" is demonstrated only in the full context of the threats he made. Thus, the state argues that to simply introduce a certified copy of his earlier conviction to "establish the necessary element" ignores the state's burden of persuasion as to the purposeful nature of the defendant's actions.

{¶ 16} The state also contends that appellant's statements were admissible to show his motive (why he was angry with Det. Bollinger and Sgt. Goodall), his intent (his specific purpose to retaliate against the officers), his preparation and plan (the repeated challenges to officers to come to his location for a confrontation), his knowledge (knowledge of who he was talking about despite sometimes forgetting Goodall's name and instead referring to him by the location of his residence - "out 93," or stating that his name will be "in Phillips)" and the lack of mistake or accident (these were not merely disrespectful statements made in a drunken state of ignorance with no direct threat made).

{¶ 17} While the state acknowledges that the other acts evidence was "prejudicial," the state argues that it was not unfairly prejudicial as per Evid.R. 403(A). For support, the state cites the First District's decision in *State v. Simms*, 1st Dist. Hamilton Nos. C 030138, C 030211, 2004-Ohio-652, ¶ 6. *Simms* involved information about a defendant's prior conduct (rape of the same victim as involved in a later retaliation case) that was helpful to a jury tasked to determine

whether a defendant's statements rose to the level of retaliation. In *Simms*, the court's reasoning was "because Simms's actions might have appeared somewhat innocuous at first glance, the trial court could have correctly permitted the introduction of the rape conviction to demonstrate both motive and intent to retaliate, as well as to show the legitimacy of the threat of harm Simms presented to the victim by his current conduct." *Simms* ¶ 6. The state analogizes that without offering the jury evidence about the context of the retaliatory statements, the state would have been unfairly disadvantaged in proving that the defendant *purposely* retaliated against the public officials involved in this case.

{¶ 18} We agree with the appellee that testimony regarding the 2010 case provided context for the 2014 charges, and is relevant to show motive, intent, etc. For example, in *State v. Webb*, 2d Dist. Greene No. 99 CA 74, 2000 WL 1064295 (Aug. 4, 2000), the defendant retaliated against a magistrate. Webb objected on appeal that an officer's testimony about Webb's prior statements that Webb was angry and had "nothing to live for and he was going to take one of them with him" was evidence of Webb's intent of retaliation against court personnel and was evidence of a plan to retaliate against the magistrate for ruling against him. Similarly, the court held that other testimony about appellant's prior conversations with a sheriff were evidence to establish Webb's purposeful intent and plan to harm the magistrate.

{¶ 19} However, while we agree that establishing appellant's purpose in his threats made against the officers was critical to the state's case, we question the need for entering the entire court file from the 2010 case in the record in this case. We find *State v. Andrejic*, 8th Dist. Cuyahoga No. 79700, 2002-Ohio-1649, instructive. In *Andrejic*, the state introduced and played for the jury a highly inflammatory video tape of the defendant (who was charged with conspiracy to murder his

wife) engaging in sexual conduct with his wife while she was in a drug-induced state. The Eighth District agreed with the defendant that the state could not use the video tape as other acts evidence under Evid.R. 404(B). However, the court noted that "No error is reversible unless it can be shown that the error contributed to the verdict." *Andrejic* at 6, citing *State v. Fears*, 86 Ohio St.3d 329, 715 N.E.2d 136 (1999). The court went on to hold: "Although we are troubled by the playing of the video tape, we cannot say that this error contributed to the guilty verdict. The evidence of the defendant's conspiracy to commit murder was overwhelming * * *. On this record, we cannot find that the error was so prejudicial that it mandates reversal." *Andrejic* at 5.

{¶ 20} Similarly, while we are troubled that the entire 2010 case file was entered into the record, we cannot say that this error contributed to the guilty verdict, as we, too, find overwhelming evidence of appellant's guilt based on the testimony adduced at trial regarding the current threats, including the playing of the seven 911 calls and other testimony. Thus, we find no prejudice.

{¶ 21} Finally, appellant argues that the state deprived him of the ability to confront witnesses in his former trial, in violation of his Sixth Amendment rights. Specifically, appellant refers to a one-page statement by Mark Stuntebeck, a fellow inmate of appellant's in 2010, where Stuntebeck alleged that appellant made threats to use "untraceable" gun powder to blow up Sgt. Goodall's house. Appellant also refers to a prior business associate, Ernest Hess, who made a statement asserting that appellant made threats against Sgt. Goodall and his family in 2011. Appellant argues that although charges were never filed in relation to Hess's statement, on February 11, 2011 the probation department, accompanied by Dep. Bollinger, "escorted appellant to his residence for the purpose of searching it and confiscated a number of firearms * * *." Again, we reiterate that while admitting these statements into evidence may constitute error, the evidence in this

case is overwhelming and no prejudice resulted.

B. Sufficiency of the Evidence

{¶ 22} In his second assignment of error, appellant asserts that insufficient evidence exists to sustain a conviction as to Count 2 in violation of the Fourteenth Amendment to the United States Constitution.

{¶ 23} First, we note that appellate counsel challenged the sufficiency of the evidence in appellant's direct appeal. However, this court's opinion mostly focused on the sufficiency of the evidence with regard to the retaliation charge that related to Det. Bollinger rather than the charge that related to Sgt. Goodall. With that, we turn to the sufficiency of the evidence as it related to the retaliation conviction involving Sgt. Goodall.

{¶ 24} The function of an appellate court, when reviewing a case to determine if the record contains sufficient evidence to support a criminal conviction, "is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Johnson*, 4th Dist. Scioto No. 07CA3158, 2008-Ohio-1369, ¶ 13, citing *State v. Smith*, 4th Dist. Pickaway No. 06CA7, 2007-Ohio-502, ¶ 33, citing *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1992), paragraph two of the syllabus.

{¶ 25} Retaliation set forth in R.C. 2921.05(A), states in relevant part "No person, purposely and by force or by unlawful threat of harm to any person or property, shall retaliate against a public servant * * * who was involved in a * * * criminal action * * * because the public servant * * *

discharged the duties of the public servant[.]"

{¶ 26} We note that in his statement of the facts, appellant contends that "[h]e was vulgar and insensitive," but "this Court observed in *State v. Koster*, [4th Dist. Lawrence No. 14CA25,] 2016-Ohio-2851, there was no direct threat made." This court's review of our decision reveals no such observation. To the contrary, in appellant's direct appeal this court stated "[o]ur review of the transcript reveals that the uncontroverted evidence adduced at trial is that appellant telephoned threats against Detective Bollinger." *Koster* at paragraph 9. Further, after outlining those threats, we held: "We do not know how these comments could be taken as anything other than threats of harm to Detective Bollinger."

{¶ 27} Appellant argues that the facts supporting his conviction with regard to Sgt. Goodall come not from the 911 calls of March 6 and 7, 2014, but from the 2010 case. We disagree. As the state argues, while it is true that appellant appeared to focus more on Det. Bollinger during his recorded phone calls than he did on Sgt. Goodall, there were still several specific threatening references to Sgt. Goodall:

- Second Call: " * * * you know the gun that Goodall shot the hog with? He stole it out of my truck."
- Fifth Call: "* * * you tell Bollinger * * * I'll be here on top of this hill * * * him and his buddy Goodall, Goodall that's the other qu**r * * * take this recording * * * You tell them I said so * * * if they don't like it, come and deal with me like a man * * * They have f**ked over me, they've tried to put me in jail, tried to steal my land, tried to do everything * * * Come down here and lie, cheat and steal to try to take everything away from me."

- Seventh Call: "* * * Bollinger and that other son of a b**ch out there on 93 * * * what's his name * * * he come up on my property * * * He tried to arrest me * * * What's his name * * * I'll tell you what, you'll find his name in Phillips', okay? [an apparent reference to a local funeral home] * * * I'm gonna tell you what * * * what's his name out here * * * Goodall * * * brought me over one night and said I was domestic violence. I ended up doing about 5 months down in Portsmouth * * *."
- State's Witness, Sergeant Cartmell: "The first thing that I hear is he was trying to find out what Sargent (sic) Goodall's name was and he mentioned that you'll read about him in Phillips', That kind of alarmed me * * * I took it as Phillips Funeral Home * * *."
- Sergeant Cartmell: (referring to appellant's statement about another officer who lives "out [State Route] 93") - "There's two officers that live on 93. Myself and Sargent (sic) Goodall."
- Sergeant Goodall: "Q. Without telling us exactly where, what road do you live on? A: Forty-one south. Q: And it's off? A. State Route 93."
- State's Witness Investigator Perry Adkins: " * * * he referred to where Goodall lived and indicated that we would find his name in Phillips and in this area Phillips Funeral Home is the only Phillips I'm aware of."

{¶ 28} Moreover, as the state points out, from the beginning of the first call, through the seventh and final call, appellant appeared to be intent to draw the officers to his location for a confrontation:

- First Call: " * * * you got my number?" "* * * you got my number don't you * * *"

"* * * I've been prosecuted by you people, I've been persecuted by you people, I've been, I've been, hey I've done prison time behind your lies and your dumb s**t, you tell them that I'm not done. The war's not over. Kiss my ass. Bye, bye."

- Second Call: "* * * haven't you sent anybody out here yet * * * (dispatcher: "do you want me to send somebody out?") * * * "* * * I figured I'd be in jail by now." "Send somebody with some balls out here to take a report * * *."
- Third Call: "* * * the Sheriff should be out at my house by now" "* * * I figured you'd come out here and want to put me in jail * * *."
- Fifth Call: "* * * tell them I live out here * * * you got my address, you got my number, tell them sons of bitches if they ever grow some balls come and see me." "I'll be looking for you guys okay? * * * I live out here, you know where I'm at? * * * You going to send somebody out to see me? I live at 57 County Road 16."
- Sixth Call: "* * * you know who I am, you got my number * * * I dare you * * * Come on out and see me * * *."
- Seventh Call: " * * * you haven't got a deputy in that * * * jailhouse * * * to come out here and confront me * * *" "I'll tell you what * * * meet me at Ellisonville Park and have your pistol ready.* * *" "* * * come on, come on, I want you to come and f**k with me * * *."

{¶ 29} Appellant asked this court "to review the 911 calls to see if any reasonable jurist could find a threat against Goodall." We assure appellant that we have done so, and we find that a jury could reasonably conclude, based on the evidence presented at trial on the 2014 facts, that the appellant was guilty of both counts of retaliation. The guilty verdicts were supported by sufficient

evidence. As such, we overrule appellant's second assignment of error.

C. Ineffective Assistance of Counsel

{¶ 30} In this third assignment of error, appellant argues that his attorney made several critical errors prior to and during trial that deprived appellant of his fundamental constitutional right to the effective assistance of counsel. First, appellant contends that counsel made a critical mistake each time he completely failed to object to the state's consistent introduction of facts from appellant's 2010 case, mainly Stuntebeck and Hess' out-of-court, unsworn, highly prejudicial statements. Again, appellant argues that every fact related to his 2010 case, except that of the judgment entry of conviction, should have been vigorously challenged, and counsel should have also first filed a motion in limine to adjudicate the issue outside of the presence of the jury. As we observed above, appellant's assertion that his counsel completely failed to object to the state's introduction of facts from appellant's 2010 case is incorrect. Moreover, as we held above, any error in allowing evidence from appellant's 2010 case was not outcome-determinative and thus did not prejudice appellant.

{¶ 31} Next, appellant objects to trial counsel's handling of the jury selection process, arguing that counsel allowed friends or acquaintances of Det. Bollinger and Sgt. Goodall to serve on the jury. As noted above, reversal of a conviction for ineffective assistance of counsel requires that the defendant show that counsel's performance was deficient and that the deficient performance prejudiced the defendant so as to deprive him of a fair trial. *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674. *Accord State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph two of the syllabus.

{¶ 32} With regard to jury selection, there is a strong presumption that defense counsel has

exercised discretion in excusing prospective jurors in accordance with sound trial strategy. *See State v. Goodwin*, 84 Ohio St.3d 331, 341, 703 N.E.2d 1251 (1999), *State v. Hess*, 4th Dist. Washington No. 13CA15, 2014-Ohio-3193, ¶ 39. Trial counsel, who observe the jurors firsthand, are in a much better position to determine whether a prospective juror should be peremptorily challenged. *State v. Trimble*, 122 Ohio St.3d 297, 2009-Ohio-2961, 911 N.E.2d 242, ¶ 99, citing *State v. Keith*, 79 Ohio St.3d 514, 521, 684 N.E.2d 47 (1997).

{¶ 33} As the state acknowledges, defense counsel exercised all three peremptory challenges in accordance with R.C. 2945.21. Further, counsel is not ineffective for failing to challenge prospective jurors, where, as in the present case, review of the record demonstrates that each of the jurors informed the trial court that each could be fair and impartial. *State v. Armas*, 12th Dist. Clermont No. CA2004-01-007, 2005-Ohio-2793, ¶ 15, *Lakewood v. Town* (1995), 106 Ohio App.3d 521, 526, 666 N.E.2d 599. We find no evidence of ineffective assistance of counsel with regard to this issue.

{¶ 34} Further, appellant argues that he received ineffective assistance of counsel due to counsel's lack of care or interest and malfeasance in prosecuting his appeal. In support of his argument, appellant cites counsel's appellate brief that combined a sufficiency of the evidence challenge with a manifest weight of the evidence challenge. While this court noted that this was improper, see *State v. Koster*, 4th Dist. Lawrence No. 14CA25, 2016-Ohio-2851, footnote 2, we also addressed the merits of the issues in appellant's direct appeal, concluding that there was sufficient evidence to support the convictions on both Counts One and Two, and that the guilty verdicts on those counts were not against the manifest weight of the evidence. Thus, we find no prejudice resulted.

{¶ 35} Finally, appellant also asserts that it was an abuse of discretion and unreasonable for the trial court to appoint trial counsel to represent appellant on appeal. However, as the state points out, no objection of record was made by appellant. A defendant bears the burden of demonstrating proper grounds for the appointment of new counsel. "If a defendant alleges facts which, if true, would require relief, the trial court must inquire into the defendant's complaint and make the inquiry part of the record." *State v. Patterson*, 8th Dist. Cuyahoga No. 100086, 2014-Ohio-1621, ¶ 18, citing *State v. Deal*, 17 Ohio St.2d 17, 20, 244 N.E.2d 742 (1969). The record does not reflect that appellant expressed any displeasure over trial counsel being appointed as appellate counsel. Consequently, we find no merit to this argument.

{¶ 36} Accordingly, we overrule appellant's third assignment of error and we reaffirm our prior affirmance of the trial court's judgment of conviction and sentence.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment is affirmed and that appellee recover of appellant the 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 Lawrence County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty-day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Supreme Court of Ohio in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

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

Harsha, J.: Concurs in Judgment & Opinion
McFarland, J.: Concurs in Judgment & Opinion as to Assignment of Errors II & III & Concurs in Judgment Only as to Assignment of Error I

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.