[Cite as *State v. Rutherford*, 2019-Ohio-3827.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 18CA894
vs.	:	
CLINTON L. RUTHERFORD,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Kort Gatterdam and David Hanson, Columbus, Ohio, for appellant.[1]

Robert Junk, Pike County Prosecuting Attorney, and Michael A. Davis, Pike County Assistant Prosecuting Attorney, Waverly, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 9-10-19
ABELE, J.

{¶ 1} Clinton L. Rutherford, defendant below and appellant herein, appeals from the trial court's dismissal of his R.C. 2953.21 petition for postconviction relief and the denial of his request for funds to obtain an expert witness.

{¶ 2} Appellant assigns two errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ABUSED ITS DISCRETION IN MAKING A MERITS DETERMINATION WITHOUT HOLDING A HEARING BECAUSE APPELLANT'S GROUND FOR RELIEF IN HIS

[1]Different counsel represented appellant during the trial court proceedings.

POST-CONVICTION PETITION PROVIDED SUFFICIENT OPERATIVE FACTS TO DEMONSTRATE THAT TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO PRESENT EXPERT TESTIMONY FROM A FALSE CONFESSION EXPERT IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; ARTICLE I, SECTIONS 10 AND 16, OHIO CONSTITUTION; AND R.C. 2953.21. (TRIAL TRANSCRIPT; 7/23/18 DEFENDANT'S PETITION TO VACATE OR SET ASIDE CONVICTION PURSUANT TO R.C. 2953.21; 10/10/2018 DEFENDANT'S REPLY TO THE STATE'S RESPONSE TO PETITION TO VACATE OR SET ASIDE CONVICTION; 10/30/18 DECISION AND ENTRY)."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR APPROPRIATION OF FUNDS FOR A FALSE CONFESSION EXPERT IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; ARTICLE I, SECTIONS 10 AND 16, OHIO CONSTITUTION; AND R.C. 2953.21 (TRIAL TRANSCRIPT; 7/23/18 DEFENDANT'S PETITION TO VACATE OR SET ASIDE CONVICTION PURSUANT TO R.C. 2953.21 AND MOTION FOR APPROPRIATION OF FUNDS; 10/10/2018 DEFENDANT'S REPLY TO THE STATE'S RESPONSE TO PETITION TO VACATE OR SET ASIDE CONVICTION; 10/30/18 DECISION AND ENTRY)."

{¶ 3} In November 2015, a nurse, while prepping appellant's 7-year-old daughter (L.R.) for a tonsillectomy, noticed vaginal bleeding.[2] Further examination revealed that L.R. had abrasions both inside her vagina and outside her vaginal area. After medical staff reported these findings to Pike County Children's Services, an investigation ensued. Subsequently, authorities removed L.R. from the home where she lived with her parents (appellant, her father, and her mother Amber Rutherford), her siblings and other extended family. L.R. and her siblings then resided with a foster family and her parents were provided supervised weekly visits.

[2] The facts are taken from appellant's direct appeal. See *State v. Rutherford*, 4th Dist. Pike No. 17CA883, 2018-Ohio-2638.

{¶ 4} After her referral to the Woodland Center, in January 2016 L.R. began to receive counseling for mental health issues. In March 2016, during a counseling session, L.R. made various statements about appellant and staff reported this information to the appropriate authorities.

{¶ 5} Eventually, Pike County Sheriff's Department Major Tracy Evans interviewed appellant and, during his second interview, appellant explained that one time he had been having sex with his wife, but somehow mistakenly touched L.R.'s vagina with his penis. Appellant blamed this mistake on taking an excessive amount of unspecified medication.

{¶ 6} The Pike County Grand Jury returned an indictment that charged appellant and his wife with numerous felony counts.[3] Appellant and his wife pleaded not guilty and the trial court bifurcated their cases for purposes of trial. Appellant eventually elected to have a bench trial rather than a trial by jury. Also, at the commencement of appellant's trial, the prosecution orally moved to dismiss both counts of child endangering (counts three and four), and the trial court granted the motion.

{¶ 7} During the trial, the prosecution presented testimony from Brittany Bakenhaster, L.R.'s counselor at the Woodland Center; Dr. Sathish Jetty, a pediatrician; Pike County Children's Services investigator Holly Wiggins; and Major Evans. Bakenhaster testified regarding L.R.'s statements that appellant touched her and had sex with her. Dr. Jetty testified that a blunt object

[3] The various counts are as follows:

1) R.C. 2907.02(A)(1)- Rape of a child under ten years of age;
2) R.C. 2907.05(A)(4)- Gross sexual imposition;
3) R.C. 2919.22(B)(2)- Endangering children;
4) R.C. 2919.22(B)(2)- Endangering children;
5) R.C. 2921.04(B)(2)- Intimidation;
6) R.C. 2921.31(A)- Obstructing official business; and,
7) R.C. 2919.22(B)- Endangering children.

caused L.R.'s injuries. The court also admitted several exhibits into evidence, including appellant's videotaped interview with Major Evans. At the close of the prosecution's evidence, the defense made a Crim.R. 29 motion for judgment of acquittal as to counts one, two, five, and six. The court granted the motion as to count five (intimidation).

{¶ 8} The defense presented testimony from L.R.'s foster parent, Heidi Harris. Harris testified in detail about troubling behaviors that she observed in L.R., including violent behavior that involved "rough-housing" or "brawling" with her brothers. Harris also testified that she observed L.R. remove clothing from her dolls, then rub the dolls together and explain "that's what you do when you are naked."

{¶ 9} Appellant testified and denied that he had engaged in any type of sexual activity with L.R. Appellant also stated that L.R. liked rough play with her brothers, liked to ride toy trucks downhill and climb trees, and that he also observed her, approximately forty-eight hours prior to his interview with Major Evans, "messing with herself with her fingers" and with her Barbie dolls. Appellant stated that when he met with Major Evans, he hoped that the meeting would lead to reuniting the family. Appellant, however, also explained that he lied to Major Evans during his interview because he felt trapped and degraded, and he thought that he had no choice but to incriminate himself so "at least the children could go back to their mother."

{¶ 10} After hearing the evidence and counsels' arguments, the trial court found appellant guilty on counts one (rape) and two (gross sexual imposition), and not guilty on count six (obstructing official business). In his direct appeal, appellant asserted that the trial court erred by

permitting an unlicensed psychological counselor to testify as to certain statements from the victim. This court, however, found no merit to appellant's argument and affirmed the trial court's judgment. *State v. Rutherford*, 4th Dist. Pike No. 17CA883, 2018-Ohio-2638. The Supreme Court of Ohio declined to exercise jurisdiction. *State v. Rutherford*, 153 Ohio St.3d 1504, 2018-Ohio-4285, 109 N.E.3d 1260. Appellant then filed an App.R. 26(B) application to reopen his direct appeal and alleged that he received ineffective assistance from his appellate counsel because counsel failed to raise two additional assignments of error. This court denied appellant's application to reopen.

{¶ 11} On July 23, 2018, appellant filed a R.C. 2953.21 petition to vacate or to set aside his conviction and a motion for funds to employ a false confession expert witness. After the trial court held an oral hearing to consider argument concerning appellant's petition, the court overruled appellant's petition and motion without conducting an evidentiary hearing. This appeal followed.

{¶ 12} The postconviction relief process is a collateral civil attack on a criminal judgment, rather than an appeal of the judgment. *State v. Johnson*, 4th Dist. Scioto No. 17CA3814, 2018-Ohio-4516; *State v. Calhoun*, 86 Ohio St.3d 279, 281, 714 N.E.2d 905 (1999). The postconviction process is a means to resolve constitutional claims that cannot be addressed on direct appeal because the evidence that may support the claim is not contained in the record. *State v. McDougald*, 4th Dist. Scioto No. 16CA3736, 2016-Ohio-5080, ¶ 19-20, citing *State v. Knauff*, 4th Dist. Adams No. 13CA976, 2014-Ohio-308, ¶ 18; *Betts, supra*. Further, postconviction relief is not a constitutional right, but instead a narrow remedy that gives the petitioner no more rights than those granted by statute. *Id.*; *State v. Betts*, 4th Dist. Vinton No. 18CA710, 2018-Ohio-2720, ¶ 11.

{¶ 13} Generally, a trial court's decision to grant or to deny a R.C. 2953.21 postconviction petition should be upheld absent an abuse of discretion. "A trial court abuses its discretion when its

decision is unreasonable, arbitrary, or unconscionable." *State v. Rinehart*, 4th Dist. Ross No. 17CA3606, 2018-Ohio-1261, ¶ 10, citing *State v. Knauff* at ¶ 19. Also, reviewing courts should not overrule a trial court's findings if competent and credible evidence supports those findings. *State v. Gondor*, 112 Ohio St.3d 377, 390, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 58; *State v. Black*, 4th Dist. Ross No. 15CA3509, 2016-Ohio-3104, ¶ 7. Additionally, a criminal defendant seeking to challenge a conviction through a petition for postconviction relief is not automatically entitled to an evidentiary hearing. *Calhoun*, 86 Ohio St.3d at 282, citing *State v. Cole*, 2 Ohio St.3d 112, 443 N.E.2d 169 (1982). Before granting an evidentiary hearing, a trial court must consider the petition, supporting affidavits, documentary evidence, files and records including the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript, to determine whether substantive grounds for relief exist. R.C. 2953.21(C). If a court concludes that petitioner has failed to set forth operative facts to establish substantive grounds for relief, no hearing is necessary. See *Calhoun*, 86 Ohio St.3d 279, at paragraph two of the syllabus; see also *State v. Slagle*, 4th Dist. Highland No. 11CA22, 2012-Ohio-1936, ¶14, quoting *State v. Bradford*, 4th Dist. Ross No. 08CA3053, 2009-Ohio-1864, ¶10.

I.

{¶ 14} In his first assignment of error, appellant asserts that his petition sets forth sufficient operative facts to demonstrate that trial counsel's failure to present false confession expert testimony constitutes constitutionally ineffective assistance of counsel.[4]

[4]In the case at bar, the trial court did not dismiss the petition based on res judicata, but rather determined that:

> Being mindful of the evidence adduced at the trial, including the existence of evidence that sexual conduct was perpetrated upon the child victim and that the Defendant was the perpetrator, the

{¶ 15} R.C. 2953.21(A) requires a petitioner for postconviction relief to allege a "denial or infringement" of his or her rights under the Ohio or United States Constitutions. In the case sub judice, appellant argues that he received ineffective assistance of counsel because counsel failed to adduce expert testimony from a false confession expert to support the defense's theory at trial. Appellant also contends that he did, in fact, support this argument with evidence outside the record, including a statement from his trial counsel, and that this evidence constitutes sufficient operative facts to demonstrate that he did not receive the assistance of competent counsel and that he suffered prejudice from that ineffectiveness.

{¶ 16} The Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution provide that defendants in all criminal proceedings shall have the assistance of counsel for their defense. The United States Supreme Court has interpreted this provision to mean that a criminal defendant is entitled to the "reasonably effective assistance" of counsel. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to establish a claim of ineffective assistance of counsel, a defendant must show that (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. *Id.* at 687. In any case presenting an ineffectiveness claim, "the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." *Id.* at 688. Thus, to establish deficient performance, the defendant must prove that counsel's performance fell below an objective level of reasonable representation. *State v. Conway*, 109 Ohio St.3d 412,

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Court concludes that the Defendant has failed to present sufficient operative facts to warrant a hearing on the issue of whether trial counsel was ineffective for failing to secure a false confession expert. The Court further concludes that it has not been shown that the Defendant was denied a fair trial.

2006-Ohio-2815, 848 N.E.2d 810, ¶ 95. Moreover, the court need not analyze both prongs of the *Strickland* test if a claim can be resolved under only one prong. *See State v. Madrigal* (2000), 87 Ohio St.3d 378, 389, 721 N.E.2d 52; *State v. Clark*, 4th Dist. Pike No. 02CA684, 2003-Ohio-1707, ¶ 17.

{¶ 17} To determine whether counsel's representation amounts to deficient performance, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland* at 689. Therefore, "the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* Because a properly licensed attorney is presumed to execute his duties in an ethical and competent manner, *State v. Taylor*, 4th Dist. Washington No. 07CA11, 2008-Ohio-482, ¶ 10, a defendant bears the burden to show ineffectiveness by demonstrating that counsel's errors were "so serious" that counsel failed to function "as the 'counsel' guaranteed * * * by the Sixth Amendment." *Strickland* at 687.

{¶ 18} In the case sub judice, appellant asserts that, in view of the fact that no physical evidence directly linked him to the rape of his daughter, his confession formed the centerpiece of the state's case. Appellant further contends that, although he initially denied that he raped his daughter, only after lengthy and aggressive questioning, and after hearing misrepresentations about evidence that did not exist and the insistence that he had failed the 'test', did appellant tepidly admit to Major Evans that his penis might have penetrated his daughter's vagina on one occasion. At trial, appellant also testified that (1) he lied to Major Evans because he believed that he had no choice but to confess, (2) he lacks education, (3) he suffers from bi-polar disorder, and (4) he takes various medications.

{¶ 19} According to trial counsel's sworn affidavit (attached as Exhibit B to the postconviction petition), counsel worked as an Assistant State Public Defender and served as appellant's trial counsel, along with another state public defender. Counsel states that she served as lead counsel and that her superior was her direct supervising attorney. Counsel acknowledges that the evidence centered largely on the statements that appellant made during his interrogation, and asserts that she should have consulted and employed a false confession expert to view appellant's videotaped interrogation. Counsel also states that, during the course of her representation, she spoke with her direct supervisor regarding the need to consult an expert, but that her supervisor denied her request and stated "Don't say you raped your kid if you didn't rape your kid." Counsel also asserts that her supervisor continued to respond in this same manner whenever she attempted to discuss the issue. Counsel further indicates that she also spoke to the director of the multi-county public defender program regarding the need for an expert, and he again referred her to her supervising attorney to discuss and resolve the matter. Counsel thus concludes that the reason she did not make a written request to the trial court for a false confession expert is because the request first required her supervising attorney's approval, and that she believes based upon past conversations her supervisor would have denied her request. Counsel further opines that her failure to consult a false confession expert constitutes deficient performance and "*may have prejudiced*" appellant's case.

{¶ 20} In general, an indigent defendant who can show that a reasonable probability exists that an expert will aid in his or her defense is constitutionally entitled to state-funded expert assistance at trial. *Caldwell v. Mississippi*, 105 S.Ct. 2633, 472 U.S. 320, 86 L.Ed.2d 231 (1985). Appellant asserts that, in the case at bar, no alternative device would have adequately conveyed the

same information as an expert witness. However, the Supreme Court of Ohio has held that the decision whether to call a witness "falls within the rubric of trial strategy and will not be second-guessed by a reviewing court." *State v. Treesh*, 90 Ohio St.3d 460, 490, 2001-Ohio-4, 739 N.E.2d 749; *State v. Williams*, 99 Ohio St.3d 493, 2003-Ohio-4396, 794 N.E.2d 27, ¶ 127 (Decisions about what evidence to present and which witnesses to call involve trial strategy and are committed to counsel's professional judgment); *Betts, supra*, at ¶ 18 (testimony, if believed, would not have exonerated Betts or created a strong probability of a different result at trial, and it is possible that trial counsel may have reasonably concluded that the better strategy was to discredit the state's witnesses through aggressive cross-examination as opposed to presenting a witness who may not have been helpful to Betts' defense). Although appellant contends that his trial counsel's affidavit indicates that the failure to call a false confession expert was not a matter of trial strategy, the failure to call an expert witness, and to instead rely on cross-examination, will not necessarily constitute ineffective assistance of counsel. *State v. Nicholas*, 66 Ohio St.3d 431, 436, 613 N.E.2d 225 (1993); *State v. Thompson*, 33 Ohio St.3d 1, 10-11, 514 N.E.2d 407 (1987); *State v. Hartman*, 93 Ohio St.3d 274, 2001-Ohio-1580, 754 N.E.2d 1150. Further, as the state points out, "hindsight is not permitted to distort the assessment of what was reasonable in light of counsel's perspective at the time." *In re: J.B.*, 12th Dist. Butler No. CA2005-06-176, CA2005-07-193, CA2005-08-377, 2006-Ohio-2715, ¶ 18, citing *State v. Gapen*, 2d Dist. Montgomery No. 20454, 2005-Ohio-441, ¶ 30. "[T]o show that a defendant has been prejudiced by counsel's deficient performance, the defendant must prove that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different." *Bradley, supra*, at 143.

{¶ 21} In the case sub judice, appellant's petition primarily relies on trial counsel's affidavit.

However, after our review of this matter, including the evidence adduced at trial, we find no evidence to indicate that a false confession expert would have, in fact, created a strong possibility of a different result at the bench trial.

{¶ 22} We recognize that other Ohio courts have considered issues similar to the issue in the case at bar. For example, in *State v. Krzywkowski*, 8th Dist. Cuyahoga No. 83599, 83842, 84056, 2004-Ohio-5966, a postconviction relief petitioner included a report from a psychologist expert witness that the petitioner claimed to have been necessary to assist in his defense. The Eighth District noted that the psychologist's report did not state that the psychologist's testimony, or his help in cross-examining the prosecution's witnesses, would have changed the outcome of the trial, and also noted that the report did not allege that the testimony that he could have provided would have supported the appellant's innocence or acquittal. *Id.* at ¶ 24-25. See, also, *State v. Durgan*, 1st Dist. Hamilton No. C-170148, 2018-Ohio-2310 (counsel not ineffective for failing to present expert testimony on police interrogation techniques and false confessions); *State v. Simpson*, 10th Dist. Franklin No. 01AP-757, 2002-Ohio-3717 (trial counsel not ineffective for failing to call expert witness in field of false confessions as record is silent as to what testimony expert would have given at trial); *In re B.C.S.*, 4th Dist. Washington No. 07-CA60, 2008-Ohio-5771 (no prejudice resulted from trial counsel's failure to secure false confession expert as the issues raised, including lack of physical evidence linking defendant to the crime, were addressed at trial and vigorously argued); *State v. Teets*, 4th Dist. Pickaway No. 17CA21, 2018-Ohio-5019.

{¶ 23} As in K*rzywkowski,* our review of the record in the case at bar reveals that appellant's trial counsel performed in a competent, thorough and effective manner. Trial counsel thoroughly and vigorously cross-examined the state's witnesses and presented evidence regarding appellant's

educational level and bi-polar disorder. Counsel also conducted a detailed and exhaustive cross-examination of Major Evans concerning his aggressive interrogation techniques in general, and as it related to appellant's interrogation in particular. Moreover, although appellant's interview involved intense questioning, the record reveals that appellant did not simply agree with a story presented by Major Evans, the interviewer. Rather, appellant related how he had sex with his wife, left his wife to go upstairs to go to the bathroom, returned to bed, thought he was again having sex with his wife, but eventually realized he was instead having sex with his seven-year-old daughter. Appellant stated that once he realized his mistake, he stopped immediately. Appellant also recounted those statements and indicated that he was "f***d up" on a prescription drug, the name of which he could not recall. Appellant also testified at trial and (1) denied any improper touching; (2) stated only he admitted wrongful, albeit in his view unintentional, conduct. However, other evidence adduced at trial also included statements attributed to the victim that incriminated appellant and evidence concerning the nature of the victim's injuries. Thus, although appellant may have testified at trial that he lied to Major Evans during the interview because "I kind of felt like I had no other choice," the trial court obviously did not believe appellant's trial testimony - a very reasonable conclusion in our view.

{¶ 24} Moreover, we point out that trial counsel's own affidavit provides that the failure to consult with a false confession expert "*may* have prejudiced" appellant's case. (Emphasis added.) Speculation concerning some possible impact that an expert witness may, or may not, have had on the result of the proceeding does not rise to the level necessary to conclude that a false confession expert's participation would have created a strong possibility of a different result at trial.

{¶ 25} After our review of the appellant's postconviction relief petition, trial counsel's

affidavit and the trial court record, we agree with the trial court's conclusion that appellant failed to set forth sufficient operative facts to establish a claim of ineffective assistance of counsel. Thus, we believe that the trial court did not act in an unreasonable, arbitrary or unconscionable manner by dismissing the appellant's postconviction relief petition without first conducting an evidentiary hearing.

{¶ 26} Accordingly, we overrule appellant's first assignment of error.

II.

{¶ 27} In his second assignment of error, appellant asserts that the trial court's denial of appellant's request for funds to employ a false confession expert constitutes an abuse of discretion. In particular, appellant contends that in view of the lack of physical evidence in this case, his confession became the centerpiece of the state's case. Thus, it was imperative for the trier of fact to understand why appellant would confess to the commission of the rape of his daughter. In that regard, appellant argues that an expert witness may have been able to shed light on the impact of appellant's lack of education, mental illness and medications.

{¶ 28} First, we point out that the cases appellant cites in his brief all involve expert assistance at the trial level, not postconviction proceedings. Ohio appellate courts have consistently held that the postconviction relief statute does not provide a right to funding or appointment of expert witnesses or assistance in a postconviction petition. *See State v. Hicks*, 4th Dist. Highland No. 09CA15, 2010-Ohio-89, ¶ 22 (Hicks sought funding for a handwriting examiner, a linguist, and an investigator, but R.C. 2953.21 does not provide a right to funding or appointment of expert witnesses or assistance in a postconviction petition); *State v. Madison,* 10th Dist. Franklin No. 08AP-246, 2008-Ohio-5223, ¶ 16 (R.C. 2953.21 does not provide a right to funding or appointment

of expert witnesses or assistance in a postconviction petition), citing *State v. Tolliver*, 10th Dist. Franklin No. 04AP-591, 2005-Ohio-989, ¶ 25 (Neither the post-conviction statute nor the constitution warrants funding for a psychiatrist or other expert assistance to testify regarding suicide in a post-conviction petition). *See also State v. Smith*, 9th Dist. Lorain No. 98CA007169, 2000 WL 277912 (Mar. 15, 2000) (We conclude that the trial court properly dismissed Defendant's motion for an expert regarding the venire); *State v. Hooks*, 2nd Dist. Montgomery Nos. CA 16978 & CA 17007, 1998 WL 754574 (Oct. 20, 1998) (We find it logical to infer that if there is no state or federal constitutional right to the appointment of counsel in postconviction proceedings, there can be no right to the funding of experts); *State v. Simpson*, 2016-Ohio-1267, 61 N.E.3d 899, ¶ 15 (2d Dist.) (Indigent prisoners are not entitled to funding for experts when pursuing collateral attacks on their convictions).

{¶ 29} Moreover, even if the trial court could have entertained appellant's request for an expert during a post-conviction relief proceeding, we point out that, in light of our disposition of appellant's first assignment of error and conclusion that no evidence exists that a false confession expert witness would have, in fact, created a strong possibility of a different result at the trial, the trial court's decision to deny appellant's request would not constitute an abuse of discretion.

{¶ 30} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be 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 Pike County Common Pleas Court to carry this judgment into execution.

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

McFarland, J. & Hess, J.: Concur in Judgment & Opinion

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.