[Cite as *In re J. J.*, 2004-Ohio-1429.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

IN RE: J. J.

C.A. No. 21386

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 02-9-4514/02-06-3144

DECISION AND JOURNAL ENTRY

Dated: March 24, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BATCHELDER, Judge.

{¶1} Appellant, John Jenkins, appeals from the judgment in the Summit County Court of Common Pleas, Juvenile Division, that denied his motion to withdraw his admission of guilt. We affirm.

I.

{¶2} On September 20, 2002, a complaint was filed in the juvenile court alleging that Mr. Jenkins was a delinquent child. The complaint charged Mr. Jenkins with rape, in violation of R.C. 2907.02(A)(2). The record indicates that Mr. Jenkins was on probation at the time of the alleged rape. At the adjudication hearing, Mr. Jenkins entered an admission to the rape and probation violation charges. Thereafter, the trial court accepted the magistrate's proposed decision and found Mr. Jenkins to be a delinquent child. The trial court then committed him to the Ohio Department of Youth Services for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed Mr. Jenkins' attainment of the age of twenty-one years.

{¶3} Mr. Jenkins timely appealed to this Court. He then moved to withdraw his admission of guilt with the trial court, and asked this Court to stay his appeal pending the trial court's consideration of his motion. This Court granted his motion to stay and remanded his case to the trial court to render its decision regarding Mr. Jenkins' motion to withdraw his admission of guilt. The trial court denied his motion to withdraw his admission. Mr. Jenkins amended his notice of appeal, and he asserts two assignments of error for review.

II.

A.

First Assignment of Error

> "[MR. JENKINS] WAS INCOMPETENT TO ENTER AN ADMISSION AND SO HE WAS DENIED HIS DUE PROCESS RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, §16 OF THE OHIO CONSTITUTION.
>
> "ALTHOUGH THE COURT ENTERED INTO COLLOQUY PERTAINING TO RIGHTS AS REQUIRED BY [JUV.R.] 29 SAID ADVISE [sic.] OF RIGHTS WAS INSUFFICIENT AND [MR. JENKINS] WAS NOT SUFFICIENTLY MENTALLY ENABLED [sic.] TO UNDERSTAND THE RIGHTS HE WAS GIVING UP PARTICULARLY WHEN HE DENIED DOING THE OFFENSE IN THE RISK OFFENDER ASSESSMENT WHEN ASKED ABOUT THE FACTS OF THE OFFENSE.
>
> "BEFORE ACCEPTING A JUVENILE'S ADMISSION, THE MAGISTRATE OF COURT MUST PERSONALLY ADDRESS THE JUVENILE TO ENSURE THAT HE OR SHE HAS BEEN MEANINGFULLY INFORMED OF THE JUV.R. 29(D)(2) RIGHTS AND THE EFFECT OF A WAIVER OF THOSE RIGHTS AND THIS THE COURT FAILED TO DO RELATIVE TO [MR. JENKINS'] ABILITIES. (Emphasis sic.)"

{¶4} In his first assignment of error, Mr. Jenkins contends that the trial court failed to adequately and sufficiently advise him of the consequences of his admission as required by Juv.R. 29. Furthermore, Mr. Jenkins contends that the record does not reflect that he understood the implications of entering a guilty plea. As such, Mr. Jenkins contends that the trial court erred when it denied his motion to withdraw his admission of guilt. We disagree.

{¶5} Crim.R. 1(C)(5) provides that the Rules of Criminal Procedure explicitly do not apply to "juvenile proceedings against a child[.]" "Issues involving the withdrawal of a plea of admit under Juv.R. 29(C) should be analyzed according to the Rules of Juvenile Procedure and the constitutional protections springing therefrom which may be applicable to both adult and juvenile criminal prosecutions." *In re L.D.* (Dec. 13, 2001), 8th Dist. No. 78750. Accordingly, an appellate court should proceed to address an assigned error regarding a motion to withdraw an admission under a Juv.R. 29(D) analysis. See *In re McElfresh*, 7th Dist. No. 02 BA 12, 2003-Ohio-1079, quoting *In re L.D.*, supra.

{¶6} Juv.R. 29(D) governs adjudicatory hearings and states, in pertinent part:

> "The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:
>
> "(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;
>
> "(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing."

{¶7} In a delinquency case, "an admission is similar to a guilty plea made by an adult pursuant to Crim.R. 11(C), in that it constitutes 'a waiver of rights to challenge the allegations [in the complaint].'" *In re Christopher R.* (1995), 101 Ohio App.3d 245, 247, quoting *State v. Penrod* (1989), 62 Ohio App.3d 720, 723.

Crim.R. 11 and Juv.R. 29 require the trial court to make thorough inquiries to insure that the admission or guilty plea is entered voluntarily and knowingly. *In re McKenzie* (1995), 102 Ohio App.3d 275, 277.

{¶8} Before the court may accept a juvenile's admission, the court must personally address the juvenile and conduct an on-the-record discussion to ascertain whether the admission is voluntary and is made with an understanding of the nature of the allegations and the possible ramifications of the admission. Juv.R. 29(D)(1); *In re McKenzie*, 102 Ohio App.3d at 277. The test for ascertaining the juvenile's understanding is subjective, rather than objective. *In re Beechler* (1996), 115 Ohio App.3d 567, 571. Further, the court must inform the juvenile of the rights he is waiving by entering the admission, such as the rights to challenge the witnesses and evidence against him, to remain silent, and to introduce evidence at the adjudicatory hearing. Juv.R. 29(D)(2); *In re Jenkins* (1995), 101 Ohio App.3d 177, 180.

{¶9} The trial court need not strictly adhere to the procedures imposed by these rules; however, the trial court must substantially comply with their provisions. See *State v. Billups* (1979), 57 Ohio St.2d 31, 38; *In re Christopher R.*, 101 Ohio App.3d at 247-248; *In re Jenkins*, 101 Ohio App.3d at 179-180. If the trial court does not substantially comply with Juv.R. 29(D), the adjudication must be reversed to allow the minor to "'plead anew.'" *In re Christoper R.*, 101 Ohio App.3d at 248, quoting *In re Meyer* (Jan. 15, 1992), 1st Dist. Nos. C-910292 and C-910404.

{¶10} In the instant case, the following colloquy occurred between the court and Mr. Jenkins:

> "THE COURT: [Mr. Jenkins], you have the right to have a trial on the new charge of rape and you have the right to have a hearing on the allegation that you have violated your probation. At those hearings, the burden of proof would be on the prosecutor to prove these allegations, *** bring in any witnesses who would testify, and then your lawyer would have the chance to cross-examine or ask questions of any of those witnesses that would come to court. Do you understand that?
>
> "MR. JENKINS: Yes.
>
> "THE COURT: Your lawyer could also subpoena witnesses or bring in witnesses that could testify for you or present any evidence that could help you out with these two cases, but if we had a trial, you would not have to testify or say anything unless you wanted to. Do you understand that?
>
> "MR. JENKINS: Yes.
>
> "THE COURT: [Mr. Jenkins], the rape charge is a felony of the first degree. What that means is that the most serious thing that could happen on that charge is you could be sent to DYS, which is prison for juveniles, for a minimum of one year, maximum to the age of 21. Do you understand that?
>
> "MR. JENKINS: Yes.
>
> "THE COURT: On the probation violation, the most serious thing that could happen to you is that you could be sent to DYS for a minimum of six months, maximum to the age of 21. Do you understand that?
>
> "MR. JENKINS: Yes.
>
> "THE COURT: Do you have any questions?
>
> "MR. JENKINS: No.
>
> "THE COURT: We'll start first with the rape charge. Having those rights in mind I just explained to you, what is your plea to that charge, meaning do you admit or deny the rape?

"MR. JENKINS: I admit.

"THE COURT: And the probation violation?

"MR. JENKINS: I admit.

"THE COURT: You understand, [Mr. Jenkins], that by admitting to these two charges, you give up your right to have a trial. That means witnesses won't be coming in, because you admit you did these things. Do you understand? Has anyone promised you anything to get you to admit?

"MR. JENKINS: No.

"THE COURT: Anyone forcing you to admit?

"MR. JENKINS: No.

"THE COURT: The court finds that you knowingly, voluntarily and intelligently waived your right to a trial and admitted the probation violation and the [rape] charge."

{¶11} We find that a comprehensive inquiry was conducted in substantial compliance with Juv.R. 29(D). See *Billups*, 57 Ohio St.2d at 38; *In re Christopher R.*, 101 Ohio App.3d at 247-248; *In re Jenkins*, 101 Ohio App.3d at 179-180. Specifically, the court questioned Mr. Jenkins concerning his awareness of the charge against him, the possible penalties stemming from his admission, and the rights that he would be waiving by entering an admission. Furthermore, there is nothing in the record to support Mr. Jenkins' contention that he did not understand the implications of entering a guilty plea. As such, we conclude that the trial court did not err when it denied Mr. Jenkins' motion to withdraw his admission of guilt. Accordingly, Mr. Jenkins' first assignment of error is overruled.

B.

Second Assignment of Error

"[MR. JENKINS] WAS AFFORDED INEFFECTIVE ASSISTANCE OF COUNSEL IN THAT COUNSEL FAILED TO RAISE THE ISSUE OF COMPETENCY AND [MR. JENKINS'] DENIAL OF THE OFFENSE[.]"

{¶12} In his second assignment of error, Mr. Jenkins avers that his competency was at issue and, therefore, his counsel's failure to raise the issue of his lack of competence denied him effective assistance of counsel. Mr. Jenkins' averment lacks merit.

{¶13} An accused juvenile has a constitutional right to counsel, and the same rights to effective assistance of counsel as an adult criminal defendant. *In re Gault* (1967), 387 U.S. 1, 41, 18 L.Ed.2d 527; *In re Dunham* (Nov. 7, 1997), 1st Dist. Nos. C-960399 and C-960400. The standard for determining whether counsel was ineffective in actions affecting orders of dispositions made by juvenile courts is the same as that applied in criminal cases. *In re Rackley* (July 16, 1997), 9th Dist. No. 18139.

{¶14} The United States Supreme Court enunciated a two-part test to determine whether counsel's assistance was ineffective as to justify a reversal of sentence or conviction. *Strickland v. Washington* (1984), 466 U.S. 668, 687, 80 L.Ed.2d 674. "First, the defendant must show that counsel's performance was deficient." Id. To show the deficiencies in counsel's performance, a defendant must prove "errors so serious that counsel was not functioning as the 'counsel'

guaranteed the defendant by the Sixth Amendment." Id. Second, a defendant must establish that counsel's deficient performance resulted in prejudice to the defendant which was "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. Ultimately, the reviewing court must decide whether, in light of all the circumstances, the challenged act or omission fell outside the wide range of professionally competent assistance. See *State v. DeNardis* (Dec. 29, 1993), 9th Dist. No. 2245.

{¶15} Upon reviewing counsel's performance, there is a strong presumption that counsel's actions were part of a valid trial strategy. *Strickland*, 466 U.S. at 689. "A strong presumption exists that licensed attorneys are competent and that the challenged action is the product of a sound strategy." *State v. Watson* (July 30, 1997), 9th Dist. No. 18215. We note that there are numerous avenues in which counsel can provide effective assistance of counsel in any given case, and debatable trial strategies do not constitute ineffective assistance of counsel. *State v. Gales* (Nov. 22, 2000), 9th Dist. No. 00CA007541; *State v. Clayton* (1980), 62 Ohio St.2d 45, 49. A defendant should put forth a showing of a substantial violation of an essential duty. *Watson*, supra.

{¶16} Prejudice entails a reasonable probability that, but for counsel's errors, the result of the trial would have been different. *State v. Bradley* (1989), 42 Ohio St.3d 136, paragraph three of the syllabus. The court is also to consider "'the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.'" *State v. Colon*, 9th Dist. No. 20949,

2002-Ohio-3985, at ¶49, quoting *Strickland*, 466 U.S. at 690. An appellate court may analyze the second prong of the *Strickland* test alone if such analysis will dispose of a claim of ineffective assistance of counsel on the ground that the defendant did not suffer sufficient prejudice. See *State v. Loza*, 71 Ohio St.3d 61, 83, 1994-Ohio-409.

{¶17} Mr. Jenkins argues that his counsel should have suggested to the court that a competency issue existed as to Mr. Jenkins. However, the record indicates that the court was made aware of the state of Mr. Jenkins' competency. Particularly, the court learned that Mr. Jenkins was diagnosed with bipolar disorder and attention deficit hyperactive disorder. Furthermore, the record does not indicate, nor does Mr. Jenkins demonstrate, that these disorders affected Mr. Jenkins' understanding of the issues involved in his case. The record reveals that the trial court questioned Mr. Jenkins regarding his understanding of the charges against him, the possible penalties, and his constitutional rights; the court further asked Mr. Jenkins if he had any questions. Mr. Jenkins responded, and asserted that he understood the charges, the possible penalties, and his rights. He also declined to ask any questions.

{¶18} Additionally, we find that Mr. Jenkins has failed to illustrate to this Court how he has been prejudiced by his attorney's actions. Therefore, we conclude that counsel's performance did not constitute ineffective assistance of counsel. Accordingly, Mr. Jenkins' second assignment of error is overruled.

III.

{¶19} Mr. Jenkins' assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

WILLIAM G. BATCHELDER
FOR THE COURT

WHITMORE, J.
CONCURS

CARR, P.J.
DISSENTS SAYING:

{¶20} I respectfully dissent. John is a twelve year old boy who is mildly mentally retarded with an IQ of 63. He is bipolar and has Attention Deficient Hyperactive Disorder. Under the totality of circumstances here, I cannot say that John's admission was knowingly, intelligently and voluntarily made and/or that he received effective assistance of counsel. Consequently, the trial court erred in not granting his motion to withdraw his admission of guilt.

With regard to a juvenile's entry of an admission, Juv.R. 29(D) provides, in relevant part:

> "The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:
>
> "(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

> "(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing."

{¶21} The record here does not support that Appellant voluntarily, knowingly, and intelligently entered an admission of guilt under Juv.R. 29(D).

> "The best method for the trial court to comply with Juv.R. 29(D) is to use the language of the rule itself, 'carefully tailored to the child's level of understanding, stopping after each right and asking whether the child understands the right and knows that he is waiving it by entering an admission.'" *In re Miller* (1997), 119 Ohio App.3d 52, 58, 694 N.E.2d 500, citing *State v. Ballard* (1981), 66 Ohio St.2d 473, 479, 423 N.E.2d 115.

{¶22} "The juvenile court's failure to substantially comply with the requirements of Juv.R. 29 constitutes prejudicial error that requires reversal of the adjudication in order to permit the party to plead anew." *In re Adams*, 2003 Ohio 4232, 7th Dist. Nos. 01 CA 237, 01 CA 238, 02 CA 120, citing *In re Beechler* (1996), 115 Ohio App.3d 567, 573, 685 N.E.2d 1257.

{¶23} The trial court's colloquy did not satisfy these requirements. Regarding Juv.R. 29(D)(1)'s requirement that the trial court make a determination that the child understands the nature of the allegations against him. The only question asked of John was as follows: "John, you have the right to have a trial on the new charge of rape…" The trial court did not discuss with John the nature of the charge, did not explain the elements or read the complaint.[1]

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[1] From the bits and pieces gleaned from the scanty record, it appears John was accused of raping an older boy who was also in detention. This boy had been

> "[T]he court is not required to give a detailed explanation of each element of the offense brought against the juvenile or to ask if the juvenile understands the charge, but instead it must ensure that the juvenile has some basic understanding of the charge. In re Flynn (1995), 101 Ohio App. 3d 778, 782, 656 N.E.2d 737.
>
> "The analysis employed in determining whether the juvenile has a basic understanding of the charge is similar to that used in Crim.R. 11 determinations of whether the criminal defendant has an understanding of the nature of the charges against him. In re Jordan, 11th Dist. No. 2001-T-0067, 2002 Ohio 2820, P10. Under Crim.R. 11 a familiarity with the facts alleged relating to each count of the crime charged is enough to provide the defendant with knowledge of the nature of the crime. State v. Philpott (Dec. 14, 2000), 8th Dist. No. 74392, 2000 Ohio App. LEXIS 5849, citing State v. Elofskey (May 6, 1994), 2d Dist. No. 13970, 1994 Ohio App. LEXIS 1922." *In Re Adams*, supra.

{¶24} Nothing was done by the trial court here, other than telling John he had a new charge of rape. The court should have explained the nature of the charges against John. See, *In re Orr* (April 3, 2000), 5th Dist. No. 1999AP040032. Telling John he has a new charge of rape does not explain the nature of the allegations of the charge.

{¶25} Moreover, the record does not adequately reflect whether John fully understood the consequences of his admission because the recitation of rights were not explained to him separately nor was he asked if he understood each right he was relinquishing. Instead, the court informed John of several rights together and then would inquire if he understood in total.

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charged with rape as well. Evidently, the incident occurred while both boys were in the restroom together. The record does not reveal why either boy was allowed in the restroom at the detention center unsupervised, let alone together.

> "The best method for the trial court to comply with Ohio R. Juv. P. 29(D) is to use the language of the rule itself, 'carefully tailored to the child's level of understanding, stopping after each right and asking whether the child understands the right and knows that he is waiving it by entering an admission.'" (Citations omitted.) *In Re Graham*, 2002 Ohio 2407, 147 Ohio App.3d 452, at ¶11.

{¶26} Explaining each right individually, stopping after each right and asking if the child understands it and knows he is waiving that right by entering an admission is especially critical in a case like the one instanter where a very young child with a low IQ and a mental illness is charged with a first degree felony.

{¶27} Also, the record does not reflect that the trial court adequately determined if John understood the consequences of his plea as the court did not obtain a response from John as to some of the rights he was relinquishing. At the plea hearing, the magistrate stated: "You understand, John, that by admitting to these two charges, you give up your right to have a trial. That means witnesses won't be coming in because you admit you did these things. Do you understand?" There was no response and the magistrate proceeded on without obtaining an answer to this question.

{¶28} Although substantial compliance with Juv.R. 29(D) is sufficient, the record does not demonstrate such compliance here. "A juvenile court's failure to substantially comply with Juv.R. 29 results in prejudicial error, thus requiring vacation of the admission and a remand for further proceedings." *In re Adams* at ¶27, citing *In re Royal* (1999), 132 Ohio App.3d 496, 725 N.E.2d 685.

{¶29} I am, also, troubled by the fact that John has consistently denied raping the other youth in the detention center with him. After he entered the admission, but prior to sentencing, John was interviewed for a court-ordered Offender Risk Assessment, a type of pre-sentence investigation. During this interview, John maintained his innocence, specifically indicating that he did not rape the other boy.

{¶30} John claimed the other boy approached him first and asked "what would you do if I asked you to suck my thing?" Then both engaged in consensual oral sex. John claimed that each performed oral sex on the other.[2] Probation specifically reported to the court, prior to sentencing, that John denied raping the other boy.[3]

{¶31} Finally, I feel counsel did not render effective assistance in not requesting a competency evaluation prior to John entering a plea.

> "Consistent with the notion of fundamental fairness and due process, a criminal defendant who is not competent may not be tried and convicted. *Pate v. Robinson* (1966), 383 U.S. 375, 15 L. Ed. 2d 815,

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[2] Interestingly enough, although John was charged with forcible rape, there was a specific finding in the offender risk assessment that "there were no threats of or use of violence or weapons during sexual offense." Also, counsel at sentencing indicated that John was very small for his age and pre-pubescent. There was no indication in the record how John forced the other boy to comply.

[3] Despite the fact that John indicated that he had not raped the other minor prior to sentencing and, thus, prior to his transfer to the Department of Youth Services, the trial court, nonetheless, at the hearing on his motion to withdraw his admission and in its journal entry, indicated John had only professed his innocence upon arriving at D.Y.S. The record completely belies this finding.

86 S. Ct. 836; *State v. Braden*, 98 Ohio St.3d 354, 374, 2003 Ohio 1325, 785 N.E.2d 439, citing *State v. Berry*, 72 Ohio St.3d 354, 1995 Ohio 310, 650 N.E.2d 433; *Williams*, 116 Ohio App.3d 237, 687 N.E.2d 507. Likewise, in juvenile proceedings, a juvenile who is not competent may not be adjudicated. *In re Bailey*, 150 Ohio App.3d 664, 667, 2002 Ohio 6792, 782 N.E.2d 1177.

"The Fourteenth Amendment's test for competency to stand trial is 'whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as a factual understanding of the proceedings against him.' *Williams*, 116 Ohio App.3d at 241-242, quoting *Dusky v. United States* (1960), 362 U.S. 402, 4 L. Ed. 2d 824, 80 S. Ct. 788. Under Ohio's codification of this standard, 'a defendant is presumed to be competent unless it is demonstrated by a preponderance of the evidence that he is incapable of understanding the nature and objective of the proceedings against him or of presently assisting in his defense.' *Williams*, 116 Ohio App.3d at 41-242; R.C. 2945.37(G). While Juv.R. 32(A)(4) provides that the court may order a mental examination where the issue of competency has been raised, it provides no standard to guide competency determinations in juvenile proceedings. However, the standard enunciated in R.C. 2945.37(G) has been held to govern the competency evaluations of juveniles so long as it is applied in light of juvenile rather than adult norms. *Bailey*, 150 Ohio App.3d 15 667.

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"*** Having a mental illness or being mentally retarded is not, in itself, enough to support a claim of incompetence. Id.; *State v. Lewis* (July 19, 1999), 12th Dist. No. CA98-10-207, 1999 Ohio App. LEXIS 3349; *State v. Settles* (Sept. 30, 1998), 3rd Dist. No. 13-97-50, 1998 Ohio App. LEXIS 4973, citing *Penry v. Lynaugh* (1989), 492 U.S. 302, 106 L. Ed. 2d 256, 109 S. Ct. 2934. See *Atkins v. Virginia* (200), 536 U.S. 304, 153 L. Ed. 2d 335, 122 S. Ct. 2242." *In re Adams* at ¶¶30,31, and 33.

{¶32} Here, we are not dealing with mental retardation or mental illness alone though. John not only has an IQ of 63 (mildly mentally

retarded) he, also, is bipolar and suffers from ADHA.[4] A history of mental illness, including depression and schizophrenia, was reported in the family. According to the Offender Risk Assessment conducted, even though John is only twelve years old, he has been in trouble with the law since around age eight. John's history includes at least three emergency psychiatric hospitalizations and an attempted suicide.

{¶33} The therapist who conducted the assessment on behalf of the court indicated that during the interview John was cooperative and "did not appear to deliberately lie or falsify his reporting." The therapist further reported that John "had difficulty at times understanding questions." Considering all of this information that counsel and the court had in the assessment coupled with John's youth, low IQ and mental problems, there were "sufficient indicia of incompetence." A competency evaluation should have been requested by counsel and ordered by the court.

{¶34} Based on the preceding, there was more than sufficient evidence of "manifest injustice" to mandate the withdrawal of John's admission of guilt.

APPEARANCES:

RICHARD P. KUTUCHIEF, Attorney at Law, 807 Key Bldg., Akron, Ohio 44308, for Appellant.

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[4] John takes several medications, Risperdal, Clonidine, and Depahene.

SHERRI BEVAN WALSH, Prosecuting Attorney and RICHARD S. KASAY Assistant Prosecuting Attorney, Summit County Safety Building, 53 University Avenue, 6th Floor, Akron, Ohio 44308, for Appellee.