ORIGINAL

IN THE SUPREME COURT OF OHIO

10-1044

DARRICK BANGS Appellant, v. STATE OF OHIO, Appellee.	; : : : : : : : :	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District Court of Appeals Case No. 09AP-1207 09AP-1208 09AP-1209 09AP-1210

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT DARRICK BANGS

DARRICK BANGS #608-948

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FILED

JUN 15 2010

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SUPREME COURT OF OHIO

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

The Appellant, Darrick Bangs, believes that this case involves a substantial Constitutional Question as this case is a violation of an Defendants Right to Effective Assistance of Counsel. There is also an issue as to whether the trial court violated the Appellant's rights when the Court would not allow the Appellant to withdraw his guilty plea based on counsel's ineffective performance.

The right to effective assistance of counsel is guaranteed by the Sixth Amendment of the United States Constitution. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052. A convicted defendant's claim for ineffective assistance is established when 1) the counsel's performance was deficient and 2) the deficient performance prejudiced the defense.

In this case, trial counsel did not prepare for trial, counsel had no interest in defending the Appellant because he stated that "he had to many other cases", counsel lied to the Appellant about the amount of time he would receive in a plea deal, counsel put fear into the Appellant by threatening a harsher sentence if the Appellant spoke up in court about counsel's deficient performance.

The trial court erred when it would not allow the Appellant to withdraw his guilty plea pursuant to Crim. Rule 32.1 when the court was made aware of the issues that the Appellant had with trial counsel.

It is clear that the Appellant's Sixth and Fourteenth Amendment Rights were violated. The Appellant asks the Court to accept Jurisdiction.

STATEMENT OF THE CASE AND FACTS

On October 22, 2007, The Appellant, Darrick Bangs, was indicted for 3 counts of Aggravated Robbery, 1 count of Aggravated Burglary, 6 counts of Robbery, 3 counts of kidnapping and 1 count of Weapons Under Disability.

On July 21, 2009, the Appellant, Darrick Bangs, pled guilty to 1 count of Receiving Stolen Property (R.C. 2913.51), 3 counts of Aggravated Robbery (2911.01), 1 count of Aggravated Assault (R.C. 2903.12), 1 count of Forgery (R.C. 2913.31, and 3 years for a gun specification, for a total of eighteen (18) years of incarceration.

Appellant filed a Motion to Withdraw his Guilty Plea, pursuant to Crim. R. 32.1 on November 17, 2009.

The Motion to Withdraw Guilty Plea was denied on December 4, 2009. The Appellant filed an Appeal.

Allegedly on September 20, 2007, the Appellant, Darrick bangs. Ronnie Marcum and Michael supposedly attempted to rob a home at 280 E. Stewart Avenue in Columbus, Ohio, for money and drugs.

The three men entered the home, then occupants of the home were escorted to the kitchen. The home was then searched for drugs and valuables.

The Appellant, Darrick Bangs, Ronnie Marcum and Michael Mason divided the valuables and then went their separate ways.

The Appellant filed a Motion for Post Conviction Relief on December 11th, 2009. That Petition was denied on February 25, 2010 by the Franklin County Court of Common Pleas.

The Appellant filed an appeal to the Tenth District Court of Appeals. That Appeal was denied. The Appellant now Appeals to this Court.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. I: Appellant was denied Due Process of Law when the trial court denied his Motion to Withdraw his Guilty Plea based on Ineffective Assistance of Counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

Now comes the Appellant, Darrick Bangs, acting in Pro se, asking this Honorable Court to reverse the erroneous and dangerous decision of the trial and Tenth District Appellate Courts and issue an order to allow him to withdraw his guilty plea that was entered into unwillingly, unintelligently and unknowingly. The abuse of discretion standard applies to a trial court's decision whether or not to grant a Motion to Withdraw Guilty Plea. See State v. Newland (Ohio App. 4th Dist. 08-22-1996. 113, Ohio App. 832, 682 N.E. 2d 678.

A motion to withdraw guilty plea should be granted only to correct manifest injustice. In this case there certainly was a clear manifest injustice on the part of the trial court and on behalf of trial counsel's ineffectiveness.

Here, the Appellant, Darrick Bangs, had a trial attorney named Mr. Schumaker. Mr. Schumaker was very concerned about the welfare and legal isues of the Appellant, Darrick Bangs. Mr. Schumaker met with the Appellant and his family and answered any and all questions that were asked of him and he was very involved in preparing for the Appellant's Defense.

The Appellant requested that counsel turn over statements made by his co-defendants. Counsel claimed that he would get those statements, but he never did turn those statements over to the Appellant.

The Appellant asserts that when he saw and signed the plea agreement the plea agreement had an eight year sentence on it. At sentencing the Appellant was given 18 (eighteen) years to his shock and surprise. Attorney Riggs told the Appellant to keep quiet and he would look into it and that he had things under control. Counsel misled the Appellant and did nothing to correct the injustice.

Mr. Riggs made the Appellant feel as if he was acting in Pro se throughout this entire legal process.

Counsel in this case failed the Appellant in every possible aspect. This case is a miscarriage of justice in every regard.

In violation of the Fifth, Sixth, and Fourteenth Amendments, the Defendant is required to show; (1) that his counsel's performance fell below an objective standard of reasonableness, and (2) unreliable or fundamentally unfair outcome of the proceedings. Strickland v. Washingto, 466 U.S. at 687-88, 691-92, 104 S.Ct. at 2064-65., 2066-67; Carpenter v. Mohr, 163 F. 3d 938 (6th Cir. 1998); West v. Seabold, 73 F. 3d 81 (5th Cir 1996); Bowens v. Foltz, 763 F. 2d 191, 194 (6th Cir. 1935). The first performance prong is satisfied by identifying specific "acts or oomissions" That were outside the range of professionally competent assistance. Strickland, Supra 466 U.S. at 690. 104 S.Ct. at 2066. The second or prejudice prong, requires there to be "reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." Id at 694, 104 S.Ct. at 2068. The Supreme Court defined reasonable probability in this context as a probability sufficient to undermine confidence in the outcome. Id. This

Court is also to examine each of these prongs, in turn, keeping in mind that the ultimate aim of the inquiry is to determine "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id at 686, 104 S.Ct. at 2064.

From the very beginning counsel told the Appellant that he had better take a plea deal or else he would do life in prison. The Appellant felt pressured into a plea deal by his own counsel, who did not prepare for trial and basically neglected his professional duties.

The few conversations that the Appellant did have with counsel were had outside of the court room, therefore, those conversations were not part of the record.

it is clear that the Appellant was not satisfied with trial counsel's insufficient performance. Counsel did not even respond to letters that were sent to him from the Appellant or Appellant's family.

The Appellant was told that he would get a plea deal of 8 to 10 years. That turned out to be false, the Appellant was sentenced to 18 years. The Appellant was misled by counsel. The Appellant only pled guilty out of fear of the fact that Attorney Riggs had not prepared for trial and only seemed to want the Appellant to plead guilty to get this case off of his caseload.

A criminal defendant's right to a fair trial by jury is a fundamental right, as is the right to an impartial tribunal. Effective assistance of counsel, is a right that applies to all defendants, as guaranteed under Article 1: Section 2, 10 and 16 of the Ohio Constitution, and the Fourth, Sixth and Fourteenth Amendment to the United States Constitutions.

By invoking Criminal Rule 32.1 post sentence plea withdrawal will be allowed "To Correct Manifest Injustice", in Kaldwell v. United States, 315 F. 2d 667 (6th Cir. 1963) the courts examined the near identical Fed. Crim. Procedures 32 (d) and essentially distinguished between pro sentence and presentence plea withdrawal, thus creating free leave to withdraw in either situation.

The Appellant asserts that his claim of ineffective assistance of counsel is founded upon counsel's failure to interview witnesses, and the fact that counsel told the Appellant that if he did not take the deal that he would be sentenced to a maximum term even though this was a first offense for this Appellant.

Collins v. Harker Heights (1992), 112 S.Ct. 1061, discuses the process of sentencing a first time offender, and the federal Constitution's Fourteenth Amendment is to prevent government from abusing its power or imposing that power in judgment matters or as a tool of oppression.

Under Haug v. Cuyahoga County, (D.C. Ohio 1985) 610 F. Supp. 262, 275, the purpose of the Fifth and Fourteenth Amendment is to restrict or limit the arbitration of unreasonable actions. The sentence was severe compared to others [who were first time offenders].

Counsel failed to object to sentence structure when conditions of the contract was breached. Ineffective claims may be raised in a motion to withdraw a plea of guilty or no contest before of after sentencing when the defendant enumerates fundamental duties that the trial counsel failed to perform, a defendant is prejudicially denied effective assistance of counsel when his attorney fails to act on his request to withdraw his guilty plea, prior to sentencing, when the possibility that he would be allowed to withdraw the plea is not insubstantial.

The right to effective assistance of counsel is guaranteed by the Sixth Amendment of the United States Constitution. Stickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052. A convicted defendant's claim for ineffective assistance is established when 1) the counsel's performance was deficient and 2) the performance prejudiced the defense.

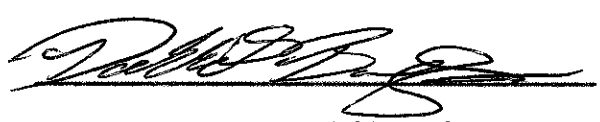
Here the Appellant believes that he has demonstrated to this court that his counsel did not prepare for trial, counsel had no interest in this case and did not want to defend the Appellant "because he had to many other cases", counsel lied to Appellant about the amount of time he would receive, counsel put fear into the Appellant by threatening a harsher sentence if the Appellant spoke up in court about counsel's insufficient performance and counsel did not prepare for trial because he was to busy pushing the Appellant into accepting a plea deal.

Should the Court accept jurisdiction to hear this case, the Appellant will provide letters, notarized statements and documents to support his claims.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. Mail to Counsel for Appellee's, Ron O' Brien, Franklin County Prosecutor, 373 South High Street, Columbus, Ohio 43215 on 6-1, 2010.

Darrick Bangs #608-948

Appellant, Pro se

APPENDIX

Judgment Entry and Opinion of the Franklin County Court of Appeals, Tenth District

Pgs. 1-4

20687 - P27

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CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	Nos. 09AP-1207 (C P C No 07CR-7636) 09AP-1208 (C P C No 08CR-6853) 09AP-1209 (C P C No 08CR-8856) and 09AP-1210 (C P C No 09CR-2209)
Darrick G. Bangs,	:	
Defendant-Appellant.	:	
	:	(REGULAR CALENDAR)
	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on May 18, 2010, appellant's assignments of error are overruled. Therefore, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

TYACK, P.J., SADLER & McGRATH, JJ.

By G. Gary Tyack
Judge G. Gary Tyack, P.J.

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO

2010 MAY 18 PM 2:01
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	Nos. 09AP-1207 (C.P.C. No. 07CR-7636)
Darrick G. Bangs,	:	09AP-1208 (C.P.C. No. 08CR-6853)
Defendant-Appellant.	:	09AP-1209 (C.P.C. No. 08CR-8856)
	:	and 09AP-1210 (C.P.C. No. 09CR-2209)
	:	(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on May 18, 2010

Ron O'Brien, Prosecuting Attorney, and *Sarah W. Creedon*, for appellee.

Darrick G. Bangs, pro se.

APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶1} Darrick G. Bangs is appealing from the order of the trial court refusing to grant his post-sentence motion to withdraw his guilty pleas. His sole assignment of error is:

> APPELLANT WAS DENIED DUE PROCESS OF LAW WHEN THE TRIAL COURT DENIED HIS MOTION TO WITHDRAW HIS GUILTY PLEA BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

{¶2} Bangs was indicted on four different sets of felonies. He and his defense counsel worked out a plea bargain under the terms of which he pled guilty to three charges of aggravated robbery with a three-year firearm specification, one charge of receiving stolen property, one charge of aggravated assault, and one charge of forgery. He received a sentence of 18 years of incarceration, the term jointly recommended by the defense and the prosecution.

{¶3} Almost four months later, Bangs filed a motion seeking to withdraw his guilty pleas. He alleged that his defense counsel had rendered ineffective assistance of counsel.

{¶4} Crim.R. 32.1 governs motions to withdraw guilty pleas. The rule reads:

> A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.

{¶5} Nothing in the record before us indicates that a manifest injustice has occurred in this case. Bangs made an agreement, acknowledged the agreement in open court, engaged in an extended dialogue with the trial court indicating his pleas were voluntary and only indicated dissatisfaction months later.

{¶6} The sole assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and McGRATH, JJ., concur.