

IN THE SUPREME COURT OF OHIO

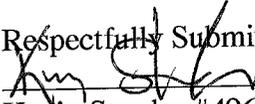
13-0073

STATE OF OHIO,	:	Case No.
Plaintiff-Appellee,	:	C.A. No 10-CA-0051
	:	
-v-	:	On Appeal from the Clark
	:	County Court of Appeals 2 nd
KEVIN STRODES,	:	Appellate District
Defendant-Appellant.	:	

MOTION FOR LEAVE TO FILE A DELAYED APPEAL

Appellant Kevin Strodes, Pro se and with co-assistance from other's pursuant to O.A.C. 5120-9-20 (B) (6), hereby move this Court for leave to file a delayed appeal pursuant to S.Ct. Prac. R. 2.2 (A) (4) (a). The reason(s) for this motion is fully explained in the supporting memorandum.

FILED
 JAN 14 2013
 CLERK OF COURT
 SUPREME COURT OF OHIO

Respectfully Submitted,

 Kevin Strodes #496-580
 P.O. Box 120
 Lebanon, Ohio 45036

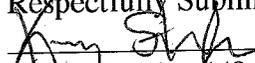
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 SUPREME COURT OF OHIO

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MEMORANDUM IN SUPPORT

The appellant recently found that the Court of Appeals made a decision April 15th 2011. Although a decision was made nearly two (2yrs) ago, the appellant shouldn't be at fault for the delay in this action; the clerk of court did not mail a copy of the entry to the appellant. The appellant is an inmate at Warren Corr. Inst. and do not have internet access to the courts docket or an email address. Further the clerks rarely respond to request for information from inmates. The appellant believe this Court should recommend to the Rule Advisory Committee that an amendment be made to App. R. 30 (A) to ensure that appellant(s) and counsel receive a copy of the entry so there will not be a need to rely on counsel for a copy. Otherwise, the clerk of court is derelict in duty causing the appellant to rely on counsel to mail a copy of the judgment entry promptly or at all. It is for these reasons the appellant asks this court to grant a delayed appeal pursuant to S.Ct. Prac. R. 2.2 (A) (4) (a).

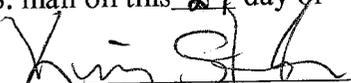
Respectfully Submitted,



Kevin Strodes #496-580
P.O. Box 120
Lebanon, Ohio 45036

Certificate of Service

The undersigned hereby certify that a copy of the foregoing has been sent to the Prosecuting Attorney, Andrew R. Picek, by ordinary U.S. mail on this 27 day of December, 2012.



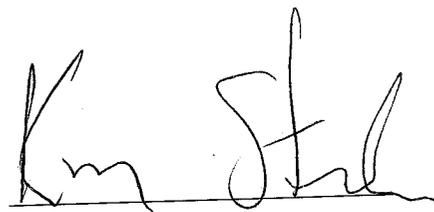
Kevin Strodes #496-580

AFFIDAVIT OF MOVANT

The Affiant, Kevin Strodes, being duly sworn, deposes and says as follows:

I am currently incarcerated at the Warren Correction Institution and pursuant to O.A.C. 5120-9-20 (B) (6), I have been assisted by other inmates in the foregoing and further states that the statements of facts contained within the memorandum for delayed appeal are true.

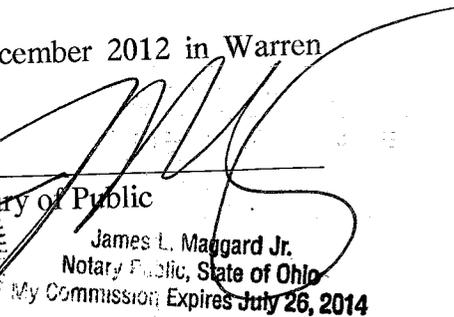
Further affiant sayeth naught.



Kevin Strodes #496-580

Sworn to and subscribed in my presence this 21 day of December 2012 in Warren County, Ohio.




James L. Maggard Jr.
Notary Public, State of Ohio
My Commission Expires July 26, 2014

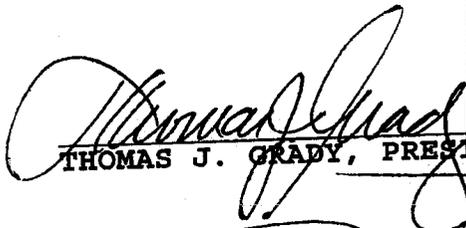
IN THE COURT OF APPEALS OF CLARK COUNTY, OHIO

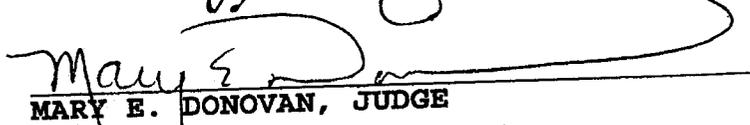
STATE OF OHIO :
Plaintiff-Appellee : C.A. CASE NO. 10CA0051
vs. : T.C. CASE NO. 94CR0713
KEVIN T. STRODES : FINAL ENTRY
Defendant-Appellant :

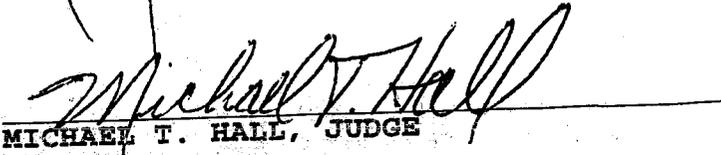
Pursuant to the opinion of this court rendered on the
15th day of April, 2011, the judgment of the trial
court is Affirmed. Costs are to be paid as provided in App.R.

24.

CLARK COUNTY
COURT OF APPEALS
APR 15 2011
FILED
RONALD E. VINCENT, CLERK


THOMAS J. GRADY, PRESIDING JUDGE


MARY E. DONOVAN, JUDGE


MICHAEL T. HALL, JUDGE

IN THE COURT OF APPEALS OF CLARK COUNTY, OHIO

STATE OF OHIO :
Plaintiff-Appellee : C.A. CASE NO. 10CA0051
vs. : T.C. CASE NO. 94CR0713
KEVIN T. STRODES : (Criminal Appeal from
Defendant-Appellant : Common Pleas Court)

CLARK COUNTY
COURT OF APPEALS
APR 15 2011
FILED
RONALD E. VINCENT, CLERK

O P I N I O N

Rendered on the 15th day of April, 2011.

Andrew D. Wilson, Pros. Attorney; Atty, Reg. No. 0073767; Andrew R. Picek, Asst. Pros. Attorney, Atty. Reg. No.0082121, P.O. Box 1608, 50 E. Columbia Street, Springfield, OH 45501
Attorneys for Plaintiff-Appellee

George A. Katchmer, Atty. Reg. No.0005031, 115 Brookside Drive, Yellow Springs, OH 45387
Attorney for Defendant-Appellant

GRADY, P.J.:

Defendant, Kevin Strodes, appeals from the trial court's denial of his Crim.R. 32.1 motion to withdraw his guilty plea to the offense of murder, R.C. 2903.02(B).

Following his indictment on multiple charges, Strodes entered a negotiated guilty plea to the offense of murder on May 2, 2005. The State dismissed the other charges. Sentencing was scheduled for May 13, 2005.

At the sentencing hearing, before his sentence was imposed,

Strodes moved pursuant to Crim.R. 32.1 to withdraw his guilty plea. The trial court heard evidence on the motion, which included evidence that Strodes is afflicted with Attention Deficit and Hyperactivity Disorder ("ADHD") and as a result didn't understand the plea proceedings. The trial court denied Strodes' motion to withdraw. The court entered its judgment of conviction on May 16, 2005, sentencing Strodes to serve a term of incarceration of from fifteen years to life.

Strodes filed a notice of appeal from his conviction. He argued that the trial court erred when it denied his motion to withdraw, because his ADHD condition prevented him from entering a knowing, intelligent, and voluntary guilty plea. After reviewing the record, we found that the record of the hearing on his motion to withdraw refutes Strodes' contention that he didn't understand what was going on when he entered his guilty plea. *State v. Strodes*, Clark App. No. 05CA0070, 2006-Ohio-2335, ¶11. We therefore overruled the error Strodes assigned and affirmed his conviction. *Id.*

On March 18, 2010, Strodes filed a second Crim.R. 32.1 motion to withdraw his guilty plea. The motion was predicated on a claim of ineffective assistance of counsel. Strodes argued that his trial counsel was ineffective for failing to review his medical records, which would have informed counsel that Strodes had not used medications necessary to manage his ADHD condition before he entered his guilty plea. Had counsel done that, according to Strodes, his counsel would have better been able to

explain the plea proceedings to Strodes and better able to inform the court about Strodes' ADHD condition and its effect.

The trial court denied Strodes' Crim.R. 32.1 condition, without a hearing on April 14, 2010. Strodes filed a notice of appeal from that order.

ASSIGNMENT OF ERROR

"THE COURT ERRED IN DENYING THE APPELLANT A HEARING IN THIS MATTER."

Counsel's performance will not be deemed ineffective unless and until counsel's performance is proved to have fallen below an objective standard of reasonable representation and, in addition, prejudice arose from counsel's performance. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. To show that a defendant has been prejudiced by counsel's deficient performance, the defendant must affirmatively demonstrate to a reasonable probability that were it not for counsel's errors, the result of the trial would have been different. *Id.*, *State v. Bradley* (1989), 42 Ohio St.3d 136.

Under the doctrine of res judicata, "[a] point or a fact which was actually and directly in issue in a former action and was there passed upon and determined by a court of competent jurisdiction may not be drawn in question in any future action between the same parties or their privies, whether the cause of action in the two actions be identical or different." *Norwood v. McDonald* (1943), 142 Ohio St.299, paragraph three of the Syllabus by the Court.

In the prior appeal, we found that Strodes' ADHD condition did not prevent him from entering a knowing, intelligent, and voluntary guilty plea. Our finding concerning that fact precludes a showing that Strodes was prejudiced by his counsel's alleged failure to obtain and review Strodes' medical records concerning his ADHD condition. Absent a showing that the outcome of the proceeding in which the defective performance by counsel took place would have been different, but for the defect alleged, a claim of ineffective assistance of counsel is not shown. *Strickland; Bradley.*

The assignment of error is overruled. The judgment of the trial court will be affirmed.

DONOVAN, J. And HALL, J., concur.

Copies mailed to:

- Andrew R. Picek, Esq.
- George A. Katchmer, Esq.
- Hon. Douglas M. Rastatter