

TABLE OF CONTENTS

PAGE

Table of contents.....(i)

Statement of the case and facts.....(1-2)

Explanation of why this is a case of public or great general interest and why this court should grant leave to appeal.....(3-9)

Argument in support of proposition of law.....

Proposition of law no. 1: Is trial counsel to give " Gross Misadvice " to his client in order to gain a plea and fail to constitutionally investigate all factors, especially the parole authorities policy and procedures, when it comes to releasing prisoners who have Multiple Victims and Charges of sex crimes against children? In no contest plea entered, knowingly, intelligently and voluntarily?....
.....(9-10)

Proposition of Law no. 2: Whether appellate counsel is ineffective for failing to raise ineffective assistance of trial counsel and ineffective assistance of counsel during evidentiary hearing, for both counsel's(defense) failure to subpoena parole authority personnel from the Ohio Adult Parole Authorities as evidence that prisoners who have Multiple Child Victims of Sexual crimes and Multiple Charges do not receive a parole, thus proof appellant's plea was not voluntary, intelligent and knowingly entered?.....
.....(11-13)

Conclusion.....(14-15)

Certificate of Service.....(16)

APPENDIX:

FINAL ENTRY FROM SECOND COURT OF APPEALS
OPINION FROM SECOND COURT OF APPEALS

STATEMENT OF THE CASE AND FACTS

Appellant(herein Mayes) was indicted for forty-four(44) sexual crimes against children on May 27, 2011, including thirteen(13) counts of rape under age thirteen(13). On July 18, 2011, Mayes was charged with an additional six(6) counts of sexual offenses against children, including two rapes. Finally on March 7, 2012, Mayes was charged with six(6) more counts of sexual offenses against children, including two more rapes. The total amounts of charges Mayes was indicted on was ~~Fifty (50)~~ . Of the 50 charges 17 were of rape under 13 years of age. It is apparent all charges are " Serious Offenses." Please note that 6 charges were dismissed and re-indicted which totaled 50.

After " Nineteen(19) Months " in jail awaiting trial and with only a few short visits and discussions by his court appointed trial counsel, Richard Skelton, and repeated urgings by Skelton to plead guilty to the charges and many coercive and deceitful tricks by Skelton and,being assaulted feloniously by another prisoner and sustaining severe facial and skull injuries and broken bones and physically and psychologically beat down and drained, and after numerous and repeated assertions of Innocence, Mayes, only due to the urging of his ineffective coercive and incompetent appointed counsel, agreed to plead but only a " No Contest Plea." Please note Mayes trial counsel did not inform Mayes as to an " Alford Plea " or even mention one at plea and sentencing even though Mayes " Continuely " asserted his innocence and pleading to go to trial.

Counsel Skelton, while in collusion with the state and trial court, informed Mayes that he would plead to twenty-five(25) charges of the original fifty(50). Mayes plead no contest to counts 1 & 2 of the May 27,2011 indictment, count 3 of the July 18, 2011, and counts 1, 3 & 6 of the March 7, 2012 indictment for Gross Sexual Imposition, victim under age 13, violation of O.R.C. 2907.05(A)(3) or (A)(4), felonies of the 3rd degree; Count 4 of March 7. 2012 indictment for rape, under 13, violation of O.R.C. 2907.02(A)(1)(b), agg. felony 1st degree; Counts 12 & 13 of May 27, 2011, indictment for unlawful sexual conduct with a minor, 10 or more years old, violation of O.R.C. 2907.04 (A) and counts 16 & 21 of the May 27, 2011 indictment for Gross Sexual Imposition, under age of 13, violation of O.R.C. 2907.05(A)(4), felonies of 3rd degree;

counts 20, 25, 26, 27, 28, 29, 34 & 35 of the May 27, 2011 indictment and counts 1 & 2 of the July 18, 2011 indictment for rape, under age of 13, violation of O.R.C. 2907(A)(1)(B), felonies of the 1st degree; and counts 42 of the May 27, 2011 indictment of disseminating material harmful to juveniles, in violation of O.R.C. 2907(A)(1) and counts 17 & 43 of the May 27, 2011 indictment for importning, victim under age 13, violation of O.R.C. 2907.07(A), felonies of the 4th degree.

In exchange for defendant's/Appellant's " no contest " pleas, counts 3,4,5, 14, 15, 18, 19, 22, 23, 24, 30, 31, 32, 33, 36, 27, 28, 39, 40, 41, and 44 of the May 27, 2011 indictment; counts 4, 5, 6, of the July 18, 2011 indictment; and count 2 of the March 7, 2012 indictment were dismissed. Also note that at sentencing, the trial court stated on the record that there was " NO EVIDENCE " in this case against the appellant.

On december 28, 2012, Mayes was given a sentence of Ten(10) years to " Life " and all counts were ordered to be served concurrently to each other. No direct appeal was filed herein and no motion top vacate his plea/sentence was ever filed. However, on or about August 5, 2013, Mayes, per new counsel, Russell S. Bensing, filed a motion for post-conviction relief contending ineffective assistance of trial counsel. On November 26, 2013, an evidentiary hearing was held in the trial court . On January 28, 2014, trial court denied relief. A timely notice of appeal was filed into the 2nd appellate court district. On October 3rd, 2014, the 2nd appellate district court of appeals affirmed trialcourts decision. A timely appeal is filed into this High and Honorable Court, Ohio Supreme Court.

Within the post-conviction relief petition and at the evidentiary hearing, ineffective assistance of trial counsel was raised due to counsel's " Gross Misadvice " to Mayes concerning his " Parole Eligibility " after sefving 10 years, that Mayes ~~would~~ get paroled about 14 to 15 years. This " Gross Misadvice " coupled with the facts that trial counsel refused to effectively represent Mayes and set forth a defense and over one and half(1½) years in county jail, led Mayes to enter into the " Deceptive Plea." Mayes was misrepresented and lied to by his counsel and then tricked by the state and trial court with the " 10 " year initial term, leading Mayes to believe he would be released a few short years after 10 years.

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL
INTEREST AND WHY THIS COURT SHOULD GRANT LEAVE TO APPEAL

This case was and is founded and based on a no contest plea which was not voluntary, knowingly and intelligently due to the "Gross Misadvice" concerning parole release given to the appellant (known herein as Mayes) by his court appointed trial counsel, Richard Skelton, thus a product of Ineffective Assistance of Counsel, a violation of Mayes 6th and 14th U.S. Constitutional Amendments and Article I, section 10 of the Ohio Constitution. This case further balances on ineffective assistance of appellate counsel, for appellate counsel, J. Allen Wilmes, failure to raise and preserve the ineffectiveness of retained trial counsel, Russell S. Bensing, who was counsel at the evidentiary hearing of the post-conviction relief petition, failure to effectively represent Mayes in examining trial counsel, Richard Skelton concerning Skelton's ineffectiveness for failing to investigate the "Parole Authorities" policies pertaining to "Sex Offenders" who had "Multiple Victims and Multiple Charges" and the parole boards "Release Policies and Quota's" of such sex offenders prior to Skelton convincing Mayes to even accept any form of plea and not taking his case to trial. All the violations by Skelton, Bensing and Wilmes violated Mayes 5th, 6th and 14th U.S. Constitutional Amendments and Article I, Section 10 of the Ohio Constitution.

This case also is based upon Abuse of Discretion by the trial court and Abuse of Discretion and Standards by the Second Appellate district court of Ohio for both court's failure to allow Mayes no contest plea to be vacated due to the "Gross Misadvice" by Mayes trial counsel, Skelton.

When this Court reviews the transcripts of the evidentiary hearing this court will clearly see that Mayes did in fact receive "Gross Misadvice" by Skelton to enter into the no contest plea. This court will see that there were no other reason why Mayes even accepted a no contest plea other than for Skelton's "Gross Misadvice" due to Skelton "Not" investigating the factors of the chances for parole of such offender as Mayes is.

Through out Skeltons examination and cross examination, Skelton makes it appear that he was only performing his duty by relaying a plea offer to Mayes and that due to Mayes case and the charges that he did so only to give Mayes a "Hope " of parole instead of life in prison. If in fact Skelton would have performed his **duties** as the U.S. Constitution " Mandates " of him, Skelton would have contacted the parole authorities and inquired into the percentage rate of prisoners being granted parole at all with cases such as Mayes consisting of multiple victim's and dozens of serious charges. If Skelton would of done so he would have learned that **NOT ONE PRISONER who had similar case as Mayes " EVER RECEIVED A PAROLE."** Skelton would have seen first hand that such a plea would not benefit Mayes and that a trial was the only course of action in this matter. There were no other reason for Skelton to deceive and trick and enduce Mayes **into** accepting the no contest plea then to benefit the state, police and court and violate Mayes U.S.Constitutional Right to a trial, to confront his accusers and to put the states case through a " **MEANINGFUL ADVERSARIAL TESTING PROCESS & PUT THE DEFENDANT'S THEORY OF THE CASE TO A TEST."**

It must be noted in this case that Skelton was not the original appointed defense counsel. The initial defense counsel was a Frank Malocu, who withdrew as counsel on August 24, 2012. At this time not one time was any plea offered or even considered by Mayes. Mayes sole intentions were to proceed to trial. Please note that Mayes had been incarcerated in the county jail since May 27, 2011, some **15 months** when Skelton had been appointed, yet within the short four months as counsel, Skelton did nothing in Mayes defense and did everything to induce and trick Mayes into pleading no contest.

It must be noted that in this plea that the minimum was " 10 " years. This key factor is another deceiving trick used by Skelton to convince Mayes to take the " So-Called Plea Deal." Along with Skelton continually telling Mayes that there would be a " Realistic Release Date " of parole after **14 years and 10 years** led Mayes to believe Skelton. If this is not true , then why would Mayes be given a 10 year language coupled with " **Concurrent Sentences ?** "

The only investigation Skelton performed was to ensure the eligibility of 10 years was the lowest in order to trick Mayes into believing that at such low years until the first chance at parole and then told he would be " Flopped(denied parole) " one or two times, then be considered and a realistic chance at being paroled around the 15 years time line, played to main and only reasoning behind Mayes even accepting the plea. Beginning with Skelton's testimony on page 10 until the end of his testimony, the court will clearly see Skelton did in fact lead Mayes to believe he would be released within the 15 year timeline.

Skelton even admits his duty is to inform his client about a plea, about the situation, about the case so his client can make an informed decision about a plea. See page 12 & 13. Skelton goes on to state he had " Limited Experience " with the parole authorities(see page 15) yet Skelton allowed Mayes to plead no contest without the knowledge of parole release. Skelton admits he told Mayes he would be flopped a couple times for 2 or 3 years. If Skelton would have actually performed his constitutional duty to investigate Mayes case and the parole authorities procedures and policies on granting parole to prisoners such as Mayes he would learned first hand that there were " NO " 2 to 3 year flops, especially in the early possible considered release dates. Skelton would have learned the actual " Flops " would be a minimum of " **10 YEAR FLOPS.**" This court or any court can produce " ANY " case such as the one before them which holds multiple victims and dozens upon dozens of serious charges, which the parole board even considered a 2 or 3 year flop but instead flopped the prisoner a minimum of **10 years** and that is if the parole board even considered a **parole at all.**

Skelton continually admits to the couple of small year flops. See pages 16-20. Skelton even led Mayes into believing if he, Mayes , enrolled into programs at prison and stayed out of trouble that he, Mayes , would have a better chance at parole in the early years. See mentioned pages above. Skelton admits that he is not aware of a child rapist, which Mayes is accused of being, ever being paroled. See pages 21&22. Skelton admits he did not contact any attorney's who work with the parole authorities or the parole authorities. See above mentioned pages.

Skelton failed to give Mayes informative factors and information concerning the release dates of persons and their case such as Mayes's. Skelton simply tricked and induced Mayes into taking a plea which plea would never allow Mayes to see the light of the day and be released from prison. Skelton knew Mayes never even had a chance to being paroled early on, let alone being paroled at all. Skelton was lazy and incompetent and completely denied Mayes his rights to trial, confronting his accusers, etc.. This alleged concern Skelton is " PUTTING ON " that he wanted Mayes to have a chance at freedom and parole is simply a " Put On" and a lie. The only chance Mayes has in this case is to go to trial and prove his accusers are lying and that he is innocent. Even if Mayes would lose and receive consecutive sentences and life, it is no different then what he will receive if this case is allowed to continue with the involuntary, unintelligent and unknowledgable plea.

The other factor in this case is where Mayes continually asserted his innocence and that Skelton failed to allow Mayes to plead to an Alford Plea instead of a no contest plea. Skelton admits several times through out his testimony that Mayes never made any admissions of guilt. Mayes continually asserted his innocence.

Another trick by skelton was when he would testify that there was evidence against Mayes in this case, yet not a single shred of evidence was presented. Skelton did this to make it appear he was concerned for Mayes, thus support his actions of enducing Mayes to accept the plea. Even at sentencing, the trial court stated on the record that there " Was No Evidence " in this case.

There is another very damaging factor in this case which proves Skelton is ineffective and that is when he is asked by Bensing(defense counsel at evidentiary hearing) : " Okay. ... would it also be fair to say that a defendant charged with the multiple cases of child rape would be less likely to obtain parole than a person charged with a single count?" Skelton testifies: " I think as a general statement, yes." See page 22, yet Skelton testifies in various portions of his testimony that he thought Mayes would do many years and not get paroled, especially due to his age at sentencing, that he would took the case to trial. See pages 14, 65 & 66.

Evidentiary hearing defense counsel, Russell Bensing, presents an Adult Parole Authority document which depicts paroles being granted for the year of 2011 which is the year Mayes is indicted. This document is obtained from the " Internet " which is available to every one. This document clearly shows that of all prisoners who where up for parole in 2011, only 6.9% were paroled. See pages 24 & 25. This document utterly proves the ineffectiveness of Skelton and his failure to investigate for plea purposes.

This is proof of the ineffectiveness of Skelton but it further is proof of the ineffectiveness of Bensing and appellate counsel Wilmes due to the fact that neither Bensing or Wilmes exposed the fact that of the 6.9% of parolees within this document that not a single parolee was one of a child rapist who had multiple victims and charges as does Mayes(Alleged Victims). This document is further proof that Mayes would never be paroled.

To further prove Skelton was well aware of Mayes never being paroled is within Skelton's very own pre-trial motion(see states exhibit 10). Within Skelton's very own memorandum of a motion he filed, Skelton states that: " Defendant recognizes the chances for him being paroled are difficult based on the number of victims in this case." When cross-examined by the state concerning this issue and the state implying Mayes did in fact know he would never be paroled due to his case, Skelton admits numerous times that he can't remeber informing Mayes of this factor. Moreover, it proves Skelton did not even give Mayes a copy of said motion, thus failed to communicate with Mayes. See, pages 41, 42 & 43.

The second appellate court made contrary to law decisions, misapplied facts and evidence and misapplied federal law, not to mention, abused it's discretion and standards when overruling Mayes appeal and affirming the trial courts contrary to law ruling denying the relief of Mayes. The appellate court ruled that Skelton's testimony was credible and Mayes were not and that Skelton did not render ineffective assistance of counsel due to his advice concerning parole and Skelton did so with his experience or intinct. The appellate court went on to cite several federal cases in support of their contrary to law ruling.

Skelton's very own testimony and his contradictive testimony and memorandum in support of a motion(state's exhibit 10); coupled with Mayes testimony simply disproves the trial and appellate courts wrongful rulings in denying Mayes the proper and lawful relief. Mayes testifies that Skelton did in fact inform him, Mayes, that he would be paroled at approx. 15 years, give or take. See Mayes entire testimony on pages 44 to 60.

Mayes informs the court that Skelton did in fact lead him to believe he would be released approx. 15 years. Skelton informs the court that he did tell Mayes he had a " Realistic Parole Release " at approx. 15 years. Mayes continually asserted his innocence which Skelton admits. Mayes even at sentencing stated he would be paroled at 14 years and not one time did Skelton at sentencing or the evidentiary hearing deny this or correct Mayes. Mayes explained the reason for pleading no contest because of his innocence. Mayes testified he relied on his attorneys advice and representation.

Both Mayes and Skelton testified to " going to trial " if never to be paroled. It is clear from the record that Mayes sat in the county jail for over 18 months and it wasn't until the last four months when Skelton was appointed that any type of plea hearing was even considered. It further is proof that Skelton did not file any substantial or meaningful defense motions or litigate at all for Mayes. The only act Skelton performed was " Induced and Tricked " Mayes into a plea.

It is apparent from the record that Skelton did in fact lead Mayes to entering into a plea and gave Mayes " Gross Misadvice " concerning parole. The 10 year eligibility is not the point in this case. The only bearing the 10 year eligibility had in this case; coupled with the promise the trial court would run all charges " Concurrent " is the fact that these two factors is what was used to convince Mayes that he would in fact be paroled at approx. 14 to 15 years. Another point being is that since Mayes was led to believe by the trial court that his case did not seem to be so " HEINIOUS OR SEVERE " due to the fact the trial court sentenced him to a minimum of 10 years and ran all other charges concurrent and coupled with the fact his attorney kept " BOMBARDING " him with information that he would in fact be released approx. 14 to 15 years, Mayes simply believed the entire scam and shame of his counsel and the trial court and accepted the

plea believing he would be released. Moreover, there never was any testimony of going to trial except by Skelton stating he was ready to go to trial and brought his entire file with him on the day of sentencing and plea . Not one time was Mayes asked of this and he was not because Mayes would have alerted the court that Skelton never indicated to him that Skelton wanted to or was prepared to go to trial.

Proposition of Law no. 1: Is trial counsel to give " Gross Misadvice " to his client in order to gain a plea and fail to constitutionally investigate all factors, especially the parole authorities policy and procedures, when it comes to releasing prisoners on parole who have " MULTIPLE VICTIMS AND CHARGES " of sex crimes against children? Is no contest plea entered knowingly, intelligently and voluntarily?

To prevail in a claim of ineffective assistance of counsel pertaining to " Mis-information and Erroneous Advice " concerning parole eligibility, a defendant must meet the test of ineffective assistance of counsel in Strickland v. Washington(1984), 466 U.S. 668, 104 S.Ct. 2052. See, also, State v. Holloway(1988), 38 Ohio St.3d 239, 244, 527 N.E.2d 831; State v. Xie, 62 Ohio St.3d 521.

The Strickland test was applied to guilty pleas in Hill v. Lockhart(1985), 474 U.S. 52, 106 S.Ct. 366. " First, the defendant must show counsel's performance was deficient. " Strickland, 466 at 687, 104 S.Ct. at 2064. Second, " the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have entered into the plea. Hill, 474 U.S. at 59, 106 S.Ct. at 370 88 L.Ed.2d at 210; Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693."

It is apparent from the record that Skelton not one time investigated the parole eligibilty of being paroled with defendant's with multiple victims and dozens of serious and heinous charges such as Mayes. It is apparent that Skelton did in fact give Mayes " Erroneous and Gross Misadvice " concerning his time he would be released from prison. Skelton admitted he did not contact the parole authorities or even review the parole authorities web site so to inquire into parole releases concerning cases such as Mayes's. There was no possible way that Skelton could even advise Mayes of a plea without doing so. It is even public record of the parole boards releases and Skelton even failed to perform the most minimum investigation. As for Skeltons alleged experience or instinct concerning the parole authorities releases concerning child sex cases, Skelton had

NONE! The only alleged experience Skelton had was a case over " 20 YEARS AGO " which was not a child sex case. This is further proof Skelton had no experience. With these facts presented, the first test of Strickland and Hill is met.

It is apparent from Skelton's testimony and Mayes's testimony that is either of them believed Mayes not to be released and especially at Mayes's age within the expected release years Mayes was led to believe or the " Realistic Release " date(years) Skelton admitted he informed Mayes of, that both Skelton and Mayes would have gone to trial. It is utterly perposterous for any rational minded, intelligent and fair human being or court to believe that Mayes would not have gone to trial instead of accepting a plea. As it stands now, Mayes will " NEVER BE RELEASED ON PAROLE ", thus Mayes will die in prison. With that said, Mayes simply had nothing to lose by going to trial and for the 15 months leading up to Skelton even being appointed, Mayes was expecting to go to trial. With these facts presented, the second test of Strickland and Hill is met, thus relief is MANDATED in this case.

In Sparks v. Sowders, 1988 U.S .App. LEXIS 10577, the Sixth(6th) circuit federal court of appeals ruled that: " Gross misadvice concerning parole eligibility can amount to ineffective assistance of counsel." The court went on to rule that: " The standard for a proper guilty plea was and remains whether the plea represents a voluntary and intelligent choice among the alternative course open to the defendant." By Skelton even giving Mayes a " Realistic Release Year(s) " without even contacting the parole authorities or their web site concerning Sex Rape Cases consisting of multiple victims and charges such as Mayes's , is in itself " Erroneous and Gross Misadvice." Furthermore, there were " Alternative Courses of Action " open to Mayes and that was simply going to trial. The " ONLY EVIDENCE " against Mayes were " ACCUSATIONS." There were no physical, material or DNA evidence in this case, merely " He said She said." Ambiguities in a plea agreement must be construed AGAINST THE GOVERNMENT. See, U.S. v. Finch, 282 F.3d 364(6th Cir. 2002). For reasons set forth, this High and Honorable Court should GRANT leave to Mayes to appeal this case due to a Manifest Miscarriage of Justice.

Proposition of Law no. 2: Whether appellate counsel is ineffective for failing to raise ineffective assistance of trial counsel and ineffective counsel during evidentiary hearing for both counsel's (defense) failure to subpoena parole authority personnel from the Ohio Adult Parole Authorities as evidence that prisoners who have Multiple CHILD Victims of Sexual crimes and Multiple Charges do not receive a parole, thus proof appellant's plea was not voluntary, intelligent and knowingly entered?

In the case at bar, appellate counsel, J. Allen Wilmes, rendered ineffective assistance of counsel for failing to raise and preserve several vital issues pertaining to appellant's appeal from the denial of relief his post-conviction relief petition and evidentiary hearing .

Wilmes first ineffectiveness is when he failed to raise that both Skelton (trial counsel) and Russell S. Bensing (counsel who filed post-conviction relief petition and counsel at evidentiary hearing) failed to contact, interview and subpoena personnel from the Ohio Adult Parole Authority as pertinent witness(es) concerning prisoners who are imprisoned for sex crimes against children, especially prisoners who have " Multiple Victims & Charges."

For instance, Richard Skelton, who was the second appointed defense counsel and the counsel who tricked and induced Mayes to enter a no contest plea under the impression he, Mayes, would be paroled approx. 14 to 15 years, never once investigated or contacted the parole authority office or its web site to ensure what, if any, parole releases were given concerning cases such as Mayes. Skelton never once contacted, interviewed or subpoena any personnel in order to give correct information concerning parole releases. Skelton, instead, claims he informed Mayes he would have a " Realistic Release " at approx. 15 years from his So-Called " experience of a " One Time " interaction with the parole board " 20 Years prior." Skelton utterly failed to perform his constitutional duty by failing to investigate and interview parole authority personnel prior to discussing any type of plea. If Skelton would have performed his const. duty of doing so he would have learned Mayes would never receive a parole release or if so Mayes would be near death of old age.

Appellate counsel was ineffective for failing to raise that Skelton was ineffective , thus appellate counsel, Wilmes, rendered ineffective assistance of counsel and Wilmes action prejudiced Mayes and his appeal by allowing the appellate court to deny

Mayes appeal. Appellate counsel further rendered ineffective by failing to present and raise ineffective assistance of counsel against Russell Bensing.

Bensing rendered ineffective assistance of counsel by failing to (A) Subpeona personel from the Ohio Adault Authority, which appropriate personel would have present- ed the trial court with factual evidence that prisoners with sex crimes against child- ren, especially ones who have cases with " Multiple Victims & Charges ", such as Mayes, would never receive a parole release, at least not for many years and decades, if any. Even though Bensing did present a 2011 Ohio Adault Parole Authority document which de- picted releases on parole, this document did not break down the releases pertaining to what crimes were committed by the offenders. Even though the document only presented a 6.9% release of (Ohio) Offenders for 2011 , this document was in no way effective enough to present proof that Skelton was ineffective. Granted, it surely proved that Skelton failed to even perform his most minimal investigative demands, yet, with actual personel from Ohio Adault Authority and their documented evidence of actual child sex crimes and offenders, Russell Bensing would have clearly shown that Skelton failed to perform his duties to his client and failed to give Mayes actual information pertain- ing to a parole release and not a " Realistic Release." Furthermore, if Skelton would have performed his duty, as did Bensing, Both counsel's would have known that " Trial " was the only recourse in this case. To even enter into a plea in this matter was completely in contradictive to the U.S. Constitutional Rights Mayes is afforded to go to trial, confront his accusers, put the states case through a Meaningful Adver- sarial Testing Process and put Mayes theory of the case to test, and many other issues.

Appellate counsel rendered ineffective assistance of counsel for failing to raise that by Bensing subpeona mere attorney's to give testimony as to possible parole re- leases was not the effective counsel that Bensing was to render. Furthermore, sub- peona of other attorney's instead of parole authority personel and presenting an in- sufficient document from the parole web site which clearly did not depict and define parole releases pertaining to child sex crime offenders, clearly are ineffective acts, and for Appellate counsel failing to raise and present these issues are ineffectiveness.

The 6th and 14th U.S. Constitutional Amendments and Article I, Section 10 of the Ohio Constitution " Guarantees " a defendant the right to effective assistance of appellate Counsel. The right to appellate counsel encompasses the right to " Effective Assistance of Counsel." *Evitts v. Lucey*, 496 U.S. 387, 397, 105 S.Ct. 8301(1985). The two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052(1984), which is applied to claims of ineffective assistance of counsel asserted under the 6th amendment, is also the test used to determine whether appellate counsel was constitutionally effective. See, *Smith v. Murry*, 477 U.S. 527, 535-36, 106 S.Ct. 2661 (1986)(applying Strickland claim to attorney error on appeal).

There were no trial strategies or tactics by any of the appointed attorney's for MAYES Defense in this case. Skelton was ineffective for even allowing Mayes to believe he would receive a parole. Skelton was ineffective for failing to contact the parole authorities and investigate. Bensing was ineffective for failing to subpoena parole personnel to inform the court of the parole procedures concerning prisoners with sex crimes against children, especially one's who have multiple victims and charges. Wilmes was ineffective for failing to raise all issues in appeal. There simply were no " Strategic or Tactical " acts or reasons for all court appointed defense counsel's in this case. A " strategic or Tactical " decision is not automatically insulated from review if it does not appear that the decision was supported by sufficient investigation. See, *White v. McAnich*, 235 F.3d at 995-96(citing *Strickland*, 466 U.S. at 690-91).

For reasons, arguments and supporting laws set forth within, the appellant has clearly presented far than enough evidence that his plea is not voluntary, intelligent of knowingly entered and that he received ineffective assistance of counsel all the way through appeal, thus violating his 6th, and 14th U.S. Constitutional Amendments and Article I, Section 10 of the Ohio Constitution, which this court should grant leave to appeal and accept jurisdiction in this case.

CONCLUSION

In the case sub judice, it is apparent that Mayes no contest plea was the result of ineffective assistance of trial counsel, for counsel's failure to investigate and research the parole authorities policies pertaining to child sex offenders, especially those who have multiple victims and charges such as Mayes in this case. Mayes no contest plea was not voluntary, intelligent and knowing and was a product of " Gross Misadvice " by trial counsel.

When this court reviews the entire record they will clearly see that Skelton, Mayes attorney, did nothing in his defense and assisted the state and court in gaining a plea and conviction. Skelton owed Mayes a duty of loyalty, unhindered by his or the states constitutionally deficient performance. A defendant has a right to expect his attorney will use every skill, expand every energy, and tap every legitimate resource in exercise of independent professional judgment on behalf of defendant and in undertaking representation. See, Frazer v. U.S., 18 F.3d 778, 779(9th cir. 1994); U.S.C.A. Constitutional Amendment Six(6).

In any case presenting a claim(s) counsel's assistance was constitutionally ineffective, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances and prevailing norms of practice as reflected in American Bar Association standards. Strickland , at 677. Counsel has a " CONSTITUTIONAL DUTY " to make reasonable " INVESTIGATIONS " or to make reasonable decisions that make particular investigation unnecessary. Strickland v. Washington, 466 U.S. 688, 691, 80 L.Ed.2d 674, 104 S.Ct. 2052(1984). The Sixth(6th) Amendment " REQUIRES " investigation(s) and preparation, not only to exonerate, but also to secure and protect the rights of the accused. Such CONstitutional rights are granted to the innocent and guilty alike, and failure to

" INVESTIGATE " and file appropriate motions is ineffectiveness. Kimmelman v. Morrison, 477 U.S. 365, 91 L.Ed.2d 305, 106 S.Ct. 2574(1986).

Skelton failed to perform his constitutional duty to investigate the most minimal act of contacting the Ohio Adult Parole Authorities or it's web site so to inquire into the parole releases concerning child sex offenders who have multiple victims and charges. Skelton was well aware by him being a licensed attorney in Ohio and presumed to be competent and ethical in his performance, that any person, such as Mayes and his case, would be frowned upon by the parole board in any release whatsoever. Any rational, fair and intelligent minded person surely would not parole such person. Skelton only served the state and courts in this matter, not his client and an attorney can " NOT " serve " TWO Masters."

Russell Bensing, also was ineffective for failing to subpoena persons from the parole board in this case. By bringing other attorney's into the hearing to give their " OPINION " as to when or if a parole would be granted was simply perposterous and ineffective. Said attorneys do not sit on a parole board. Appellate counsel, Wilmes, was ineffective for failing to raise these and other issues, which are apparent and meritorious.

The " Cumulative Error Effect " in this case too is devastating and cause for reversal . It is simple: Mayes plea was not a product of effective assistance of counsel or knowing, intelligent or voluntary, thus reversal is " MANDATED " in this case. Mayes had no reason to plea knowing he would spend the rest of his life in prison and the record of Mayes sitting in jail for over " 18 MONTHS " awaiting trial and never indicating guilt or wanting to plea, is more proof that Skelton tricked and induced Mayes into the unlawful and unconstitutional plea, thus violating Mayes 5th, 6th and 14th U.S. Constitutional Amendments and Article I, Section 10 of the Ohio Constitution. For reasons set forth within, this Court should accept Jurisdiction and grant leave for appeal.

Respectfully Submitted

Derrick Mayes
Derrick Mayes.

Platt

Review decision
(2) letter client 1 1/2 hr
(3) bill on case 1/2 hr

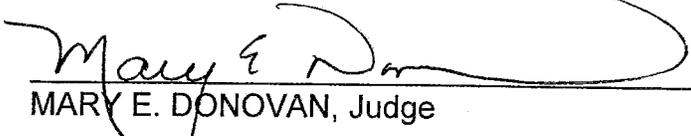
IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 26095
	:	
v.	:	Trial Court Case No. 10-CR-851/1
	:	
DERRICK E. MAYES	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	FINAL ENTRY

Pursuant to the opinion of this court rendered on the 3rd day
of October, 2014, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the Montgomery
County Court of Appeals shall immediately serve notice of this judgment upon all parties and
make a note in the docket of the mailing.



MARY E. DONOVAN, Judge



MICHAEL T. HALL, Judge



JEFFREY M. WELBAUM, Judge

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

DERRICK E. MAYES

Defendant-Appellant

Appellate Case No. 26095

Trial Court Case No. 10-CR-851/1

(Criminal Appeal from
Common Pleas Court)

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OPINION

Rendered on the 3rd day of October, 2014.
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MATHIAS H. HECK, JR., by MICHELE D. PHIPPS, Atty. Reg. #0069829, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45402
Attorney for Plaintiff-Appellee

J. ALLEN WILMES, Atty. Reg. #0012093, 7821 North Dixie Drive, Dayton, Ohio 45414
Attorney for Defendant-Appellant
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HALL, J.

{¶ 1} Derrick Mayes appeals from the trial court's denial of his R.C. 2953.21 petition for post-conviction relief. In his sole assignment of error, he contends the trial court erred in denying the petition.

{¶ 2} The record reflects that Mayes was charged with more than fifty sex offenses against children, including rape, gross sexual imposition, unlawful sexual conduct with a minor, disseminating materials harmful to juveniles, and importuning. He ultimately entered a no-contest plea to some counts in exchange for the dismissal of others. The trial court imposed concurrent sentences that resulted in an aggregate prison term of ten years to life. Mayes did not appeal.

{¶ 3} Approximately seven months after sentencing, Mayes filed a petition for post-conviction relief alleging ineffective assistance of counsel. In support, he claimed he entered his no-contest plea based on his attorney's assurance that he would be parole-eligible after ten years and would be paroled after no more than fourteen years. Accompanying the petition were his own affidavit and the affidavit from a practicing attorney regarding the projected term that Mayes may serve. In response to the State's Motion for Summary Judgment, Mayes filed affidavits from two additional attorneys. One of the attorneys opined that Mayes will serve a prison sentence significantly longer than twelve to fourteen years and that it would constitute ineffective assistance of counsel to tell Mayes he probably would be paroled in twelve to fourteen years. Another attorney averred that Mayes, who was forty-three years old at the time of his plea, can expect to serve twenty-five years before being paroled. The third attorney averred that Mayes is likely to serve at least twenty years before being paroled and that failure to advise him of that fact would constitute ineffective assistance of counsel. (Doc. #278).

{¶ 4} The trial court held a November 26, 2013 evidentiary hearing on Mayes' petition. For purposes of the hearing, the parties agreed that the three attorneys mentioned above would testify consistent with their affidavits if called as witnesses. The trial court then

heard testimony from attorney Richard Skelton (Mayes' trial counsel) and from Mayes himself. Skelton admitted telling Mayes that he would be parole-eligible after ten years, which the parties agree was accurate. As for when Mayes actually would be paroled, Skelton denied telling him that he would be paroled after fourteen years or even that he likely would be paroled at that time. Although Skelton could not remember his exact words, he recalled expressing his opinion to Mayes that he would be "flopped" a couple of times and that he might have "a chance" for parole after fifteen or sixteen years, depending on his prison record. (Tr. at 16-17). Later in his testimony, Skelton acknowledged conveying his belief that Mayes' first "realistic chance" for parole would come in fifteen or sixteen years. (*Id.* at 62, 64). For his part, Mayes testified and claimed Skelton told him he would be paroled in no more than fourteen years. (*Id.* at 49, 53, 55).

{¶ 5} After hearing the evidence, the trial court found Skelton's testimony credible and Mayes' testimony not credible. It denied the petition, reasoning:

Simply put, and as a matter of fact, Defendant's Petition and MSJ and the evidence adduced at the Hearing fail to present credible evidence establishing that Mr. Skelton ineffectively assisted Defendant thereby resulting in his "no contest" pleas to the several charges at issue. As a matter of fact, Defendant's pleas were conditioned upon his belief that he would be eligible for parole after serving 10 years—and indeed he will be. As a matter of fact, Mr. Skelton gave Defendant no assurances that he would or was likely to serve no more than 14 years. For that matter, Mr. Skelton gave Defendant no assurances that his prison term would be of any particular length except that he would be flopped for parole on at least the first 2

occasions when Defendant was considered for the same.

The Court finds, as a matter of fact, that Defendant's affidavit and testimony, in so far as the same conflict with Mr. Skelton's testimony, are incredible. And the Court finds that Defendant's Experts' opinions regarding Mr. Skelton's performance as Defendant's counsel are of no moment because those opinions are based in significant part upon accepting as credible Defendant's version of the salient facts. In short, the Court finds, as a matter of fact, that at no time did Mr. Skelton "paint a rosy picture" of Defendant's chances for parole. Rather, and through his efforts, Mr. Skelton in fact secured for Defendant a chance for parole.

Even if Mr. Skelton's estimate of 14-16 years before Defendant could expect any chance of parole constituted ineffective assistance of counsel, there is no showing of prejudice. All of the estimates rise to nothing more than mere speculation as to how many years Defendant will ultimately serve. There is in fact a chance that Defendant could be released from prison anytime after serving 10 years.

(Doc. #290 at 8-9).

{¶ 6} On appeal, Mayes recognizes the trial court's discretion, as trier of fact, to credit Skelton's testimony. Even accepting that testimony as true, however, he claims Skelton provided ineffective assistance by inducing him to plead no contest based on "erroneous" advice that he would have a realistic chance for parole after fifteen or sixteen years. (Appellant's brief at 10). He argues that this faulty, misleading advice constituted ineffective assistance of counsel and resulted in a defective plea. (*Id.* at 11). Therefore, he

contends the trial court should have granted him post-conviction relief and allowed him to withdraw his no-contest plea. (*Id.* at 12).

{¶ 7} We find Mayes' argument to be without merit. "A defendant who bases a plea decision on parole * * * will often be relying on a factor beyond the prediction of defense counsel[.]" *State v. Xie*, 62 Ohio St.3d 521, 524-525, 584 N.E.2d 715, 718 (1992). Notably, one of Mayes' own experts, attorney Ian Friedman, opined that it would not be unusual for a person in Mayes' position to serve at least twenty years before having a realistic chance of release. (Doc. #278, Friedman affidavit at ¶ 5-6). By comparison, Skelton essentially told Mayes his first "realistic chance" for parole would come after fifteen or sixteen years and that he would be "flopped" at least twice. We do not believe these two opinions are so different as to establish that Skelton's opinion was demonstrably false or misleading. Attorney David Grant, who opined that Mayes would serve "a prison sentence significantly greater than twelve to fourteen years" before being paroled also acknowledged that "it is not possible to predict exactly when a defendant [will] be released on parole, if ever." (Doc. #278, Grant affidavit at ¶ 8). Even if Skelton's opinion about parole release was more optimistic than the opinion rendered by Friedman or Grant or the third attorney upon whose affidavits Mayes relied, Skelton's opinion remained just that—an opinion that was not demonstrably erroneous or misleading, particularly when compared to the similar opinion expressed by Friedman.

{¶ 8} Assuming that Skelton's estimate about parole might turn out in hindsight to be too optimistic, that fact would not establish deficient representation or justify withdrawing the plea. We have not discovered definitive Ohio case law on the subject, but effective assistance of counsel is also a federal constitutional right most specifically defined by

federal caselaw. "Waiving trial entails the inherent risk that the good-faith evaluations of a reasonably competent attorney will turn out to be mistaken[.]" *McMann v. Richardson*, 397 U.S. 759, 770, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970). "That a * * * plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *Id.* We recognize that "gross misadvice" about parole eligibility may constitute ineffective assistance and warrant a plea withdrawal. *Starcher v. Wingard*, 6th Cir. No. 99-3262, 2001 WL 873736 (July 25, 2001). But "an attorney may offer his client a prediction, based upon his experience or instinct, of the sentence possibilities the accused should weigh in determining upon a plea." *Wellnitz v. Page*, 420 F.2d 935, 936 (10th Cir. 1970); see also *Carey v. Myers*, 6th Cir. No. 02-5275, 2003 WL 21750758 (July 24, 2003) (concluding that counsel's "qualified estimate" about parole did not constitute ineffective assistance where counsel never guaranteed release by a certain date); *Thomas v. Dugger*, 846 F.2d 669, 672 (11th Cir. 1988) (finding no coerced plea where counsel may have told defendant facing a life sentence that counsel had known inmates sentenced to life to have been released in as little as seven years); *Hooks v. Roberts*, D.Kansas No. 09-3090-JWL, 2009 WL 3855682 (Nov. 17, 2009) (noting that case law suggests "a tolerance for miscalculations made by counsel in good faith," particularly where a sentencing estimate rather than "material misinformation" is involved). Given these interpretations, we agree that Mayes has not established that Skelton's performance fell below an objective standard of reasonable representation when he assessed the prospects of parole. That being so, the trial court did not err in finding no ineffective assistance of counsel and no basis for withdrawing the no-contest plea.

{¶ 9} Mayes' assignment of error is overruled, and the trial court's judgment is affirmed.

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DONOVAN and WELBAUM, JJ., concur.

Copies mailed to:

- Mathias H. Heck
- Michele D. Phipps
- J. Allen Wilmes
- Steven K. Dankof

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on the Montgomery co. prosecution, on this 10-15-14 day of October, 2014, via U.S. regular mail.

Derrick Mayes
Derrick Mayes