

IN THE SUPREME COURT OF OHIO

15-0614

STATE OF OHIO )  
 Plaintiff-Appellee, )  
 -Vs- )  
 AARON E YOUNG, )  
 Defendant-Appellant. )

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On Appeal From the First District  
 Court of Appeals, Hamilton County,  
 Ohio, App. No. C-1400236

MEMORANDUM IN SUPPORT OF JURISDICTION OF  
 DEFENDANT-APPELLANT AARON E YOUNG

Pro Se

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RECEIVED

APR 16 2015

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### JURISDICTION STATEMENT

This case is a case of public or great general interest and involves a substantial constitutional question.

This case present two critical issues involving Constitutional issues under The United States Constitution, and a question of Ohio law: (1) whether an attorney deprive his client of 6th Amendment effective counsel when he or she fails to object or withdraw a guilty plea once they are aware that it was not the plea they represented to their clien; (2) whether or not is a plea that is improperly induced by counsel, insuring that the defendant would receive a lesser sentence, is valid and does it violates the due process clause of the 14th Amendment; and (3) whether a self-serving affidavit that rebuts the record that a defendant plea was knowingly and intelligently entered, sufficient to warrant relief or an evidentiary hearing.

In this matter, the court of appeals affirmed the lower court's decision that Young did not submit sufficient evidence in his R.C. 5923.21 petition to sustain a substantial claim that he was denied effective counsel, and that his plea had been improperly induced by counsel.

Under Ohio law, "In a [R.C. 5923.21] petition for post-conviction relief, which asserts ineffective assistance of counsel, the petitioner bears the initial burden to submit evidentiary documents containing sufficient operative facts to demonstrate the lack of competent counsel and that the defense was prejudiced by counsel's ineffectiveness," State v Pankey, 28 Ohio St. 2d 58, 59.

This Court addressed issue of self-serving affidavits in post-conviction matters: "[W]e recognize that every affidavit submitted by a post-conviction relief petitioner is to some degree or another [']self-serving,['] such affidavits should not lightly be deemed false as they are by definition a statement that the affiant has sworn to be truthful and made under penalty of perjury," State v Calhoun, 86

Ohio St. 3d 279, 284, 714 N.E. 2d 905. This Court further explained, "[T]hat the defendant must bear the initial burden of submitting affidavits or other supporting materials to indicate that he is entitled to relief. Defendant's own self-serving declaration or affidavits alleging a coerced guilty plea are insufficient to rebut the record on review which shows that his plea was voluntary," State v Kapper, 5 Ohio St. 3d 36, 38 448 N.E. 2d 823.

"The petitioner's own affidavit may constitute sufficient corroborating evidence where the petitioner's knowledge. On the contrary, a petitioner's affidavit that contains merely conclusory statements which are not founded upon particularized facts which are within the petitioner's knowledge is insufficient to constitute evidence in support of the petitioner's allegations. In State v Snoot\*\*\*we determined that the defendant's own affidavit was sufficient to corroborate a claim of ineffective assistance of counsel where the defendant alleged that his counsel informed him on the second day of trial that the State had offered him a plea bargain and that he rejected it. We found that his affidavit was sufficient evidentiary material in support of his claim that his counsel failed to inform him of a plea bargain because he had specified facts demonstrating that his counsel's error was within his knowledge.

"Similarly, the Eight Appellate District in State v Workman\*\*\*, found the petitioner's own affidavit to be sufficient to constitute corroborating evidence where the petitioner supported his claim with facts within his knowledge. Rather than just alleging in an affidavit that his counsel had not informed of a plea bargain, the petitioner supported the allegation with corroborating facts. The petitioner stated that after his conviction, his counsel visited him in jail. Furthermore, the petitioner claimed that during their conversation, his counsel told him that it looked like they should have accepted the plea bargain that he

was offered. The petitioner alleged that his counsel had not informed him of the plea offer before that conversation. Again, this was found to be sufficient evidence in support of the petitioner's allegation that a plea offer had been made and that he was not informed of the plea offer because the facts were within the petitioner's knowledge. State v Hoskins, 1998 Ohio App. LEXIS 228, \*8-\*10. In Young's affidavit, he stated that

on December 7, 2009 defense counsel informed him that the State was still proffering a 12 to 20 year open plea proffer\*\*\*that on said day he agreed to accept the plea proffer from the State\*\*\*that on December 9, 2009, defense counsel represented to him the plea proffer from the State, and after reading and discussing the plea proffer with counsel he executed his signature on it. Said facts were within Young's knowledge and were not merely conclusory statements. To support the affidavit, Young submitted the record which corroborated Young's statements. In ¶9 of its opinion, the court of appeals wrote:

"[A]fter the court imposed consecutive sentence totaling 37 years, Mr. Young asked to address the court. He asserted that he had [']signed an open plea deal [for] 12 to 20 years.['] The court responded, [']Not with me you didn't,['] while defense counsel contributed only the enigmatic remark, ['] And that was the agreement.['] When Mr. Young again asserted his [']understanding [that he] was to sign a 12 to 20 open plea deal,['] the court ended the discussion with the statement, [T]his was not a plea deal that you plead to.[']

Defense counsel's statement was neither objective nor contradicts Young's affidavit and open-court statement that he signed a 12 to 20 year open plea. In fact, the record demonstrates that immediately following defense counsel statement the court addressed defense counsel stating, "No sir."

Young argued that trial counsel was ineffective for failing to move for a withdrawal of the plea pursuant to Crim. R. 32.1, and that his plea had been improperly induced. The court of appeals rejected the arguments. In doing so, it improperly determined

the record. It wrote in ¶8 of its opinion:

"At the sentencing hearing, the assistant prosecuting attorney requested [']the maximum sentence [the court] can impose on this plea."\*\*\*[and] [t]he\*\*\*prosecuting attorney, without a word from Mr. Young or his counsel, ultimately agreed with the court' statement that there had been [']no promises[, ]\*\*\*no commitments on sentencing at all."

However, the record affirmatively contradicts this finding; it shows that the State was not agreeing with the court but was repeating the court's statement. Furthermore, Young was informed by counsel on the day that counsel represented to him the 12 to 20 year open plea deal that it was the court's discretion on what he would sentence him to, in between the time range, and on the day of sentencing counsel informed him that the court had not informed him of what the sentence would be. Therefore, the court of appeals holding does nothing more but buttress Young claim that he was denied 6th Amendment effective counsel.

Young conclude that this Court must accept jurisdiction to hear this case and review the erroneous and dangerous decision of the court of appeals.

#### **STATEMENT OF THE CASE AND FACTS**

This case arises out of the Hamilton County Court of Common Pleas. In 2009 Young plead guilty to multiple counts of aggravated robbery and a count of intimidation. In 2010 Young was sentenced to 37 years. Young direct appeal was affirmed. See State v Young, 1st Dist. Hamilton No. C-100065 (Nov.17,2010), appeal not accepted, 134 Ohio St. 3d 1486.

Young sought timely relief under 2953.21. The court of appeals dismissed Young's appeal due to the court's entry did not include findings of facts and conclusion of law. See 2012-Ohio-1732.

The court then included finding of facts and conclusion of law and denied the petition. Young appealed and the court of appeals affirmed the common pleas court decision. This appeal ensued.

MEMORANDUM IN SUPPORT

PROPOSITION OF LAW NO. I: Improperly Induced  
Guilty Plea in Violation of the Due Process  
Clause of the 14th Amendment.

Legal Argument:

This Court has addressed that, "[a] guilty plea, if induced by promises or threat which deprive it of the character of a voluntarily act is void. A conviction based upon such a plea is open for collateral attack," State v Bowen, 52 Ohio St. 2d 27, 28; Machibroda v United States, 368 U.S. 487, 493. This Court further explained, "[A] guilty plea induced by unfulfilled or unfulfillable promises 'made by the court, the prosecution or defense counsel is not voluntary,'" State v Piacella, 27 Ohio St. 2d. 92, 95; Brady v United States, 387 U.S. 742.

"A plea induced by a mistaken belief that a binding plea agreement has been made is invalid even if its defendant's own attorney who is responsible for defendant's mistaken belief," State v Collins, 1998 Ohio App. LEXIS 476, \*14. In the case sub judice, Young's plea was an product an induced, off-the-record promise made by defense counsel that he would be sentenced to between the time frame of 12-20 years. Yet, Young was sentenced to 37 years.

PROPOSITION OF LAW NO. II: Denial of 6th Amendment  
Effective Counsel.

Legal Argument:

This Court held, "The Strickland test\*\*\*applied to guilty pleas\*\*\*must show that counsel's performance was deficient\*\*\*[and] that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty," State v Xie, 62 Ohio St. 3d 521, 524. (Citation Omitted.) "[A] defendant [who] is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntaries of the plea depends on whether counsel's advice ['] was within the range of competence demanded of attorneys in criminal cases," Hill v Lockhart, 474 U.S. 52, 56. In this matter, counsel performance was

deficient due to him failing to move for withdrawal of the plea once he was aware that it was not the agreement that he represented to Young. Furthermore, Young submitted evidence revealing that he declined plea proffers that were for less time he was sentenced to; and he submitted documents showing that he was ready to move for trial.

**PROPOSITION OF LAW NO. III: The Court Abused It Discretion  
By Denying an Evidentiary Hearing.**

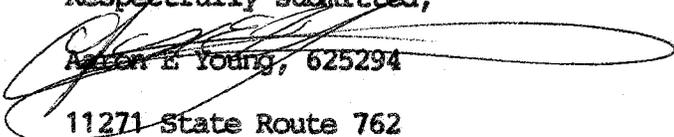
**Legal Argument:**

This Court held, "We hold that a trial courts decision granting or denying a\*\*\*petition filed pursuant to R.C. 2953.21 should be upheld absent abuse of discretion," State v Gondor, 112 Ohio St. 3d 337, ¶58. Young asserts that the court abused its discretion when it denied him an evidentiary hearing. As demonstrated in his "Jurisdiction Statement", Young submitted creditable evidence to warrant an evidentiary hearing.

**CONCLUSION**

Young respectfully submits that this Court must accept jurisdiction to disrupt the lower courts ruling.

Respectfully submitted,

  
Aaron E. Young, 625294

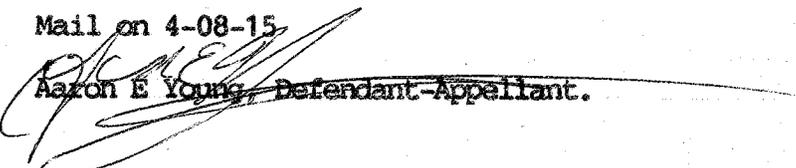
11271 State Route 762

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**PROOF OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing was mailed to Paula Adam, 230 East Ninth Street, Cincinnati, Ohio 45202, by regular U.S.

Mail on 4-08-15

  
Aaron E. Young, Defendant-Appellant.

ENTERED  
JUN 21 2012

THE STATE OF OHIO, HAMILTON COUNTY  
COURT OF COMMON PLEAS  
CRIMINAL DIVISION

STATE OF OHIO : Case No. B-0701436  
Plaintiff-Respondent : (Judge West)  
vs. : FINDINGS OF FACT AND  
AARON E. YOUNG : CONCLUSIONS OF LAW,  
Defendant-Petitioner : ENTRY DENYING PETITION  
: FOR POST-CONVICTION  
: RELIEF

After a review of the Post-Conviction Petition, the State of Ohio's Memorandum in Opposition, and review of the entire record in this case, the Court determines that no evidentiary hearing is required. The court makes the following **Findings of Fact**:

1. After entering a guilty plea, the defendant-petitioner was found guilty of nine counts of Aggravated Robbery with firearm specifications and one count of Intimidation of a Crime Victim/Witness.
2. The defendant-petitioner was sentenced to a total of thirty-seven years incarceration.
3. The defendant-petitioner filed a petition for post-conviction relief pursuant to R.C.2953.21 on November 2, 2010 and an amended petition on May 25, 2012.
4. The defendant-petitioner submitted his post-conviction petition without sufficient evidentiary attachments.

Applying the foregoing facts to the law of the State of Ohio, the court does hereby issue the following **Conclusions of Law**:

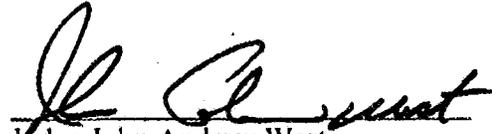
1. The doctrine of *res judicata* bars a court from conducting a hearing on a post-conviction petition where the claims raised in the petition either were raised or could have been raised, at trial or on direct appeal.

EXHIBIT  
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2. Defendant-petitioner has failed to supply sufficient evidentiary documentation, outside of what is provided in the existing record, to support his claims.
3. The petition is subject to dismissal for failure to support the claim raised therein.

For all the foregoing Findings of Fact and Conclusions of Law, the Court hereby denies Defendant's petition and denies his request for an evidentiary hearing.

  
Judge John Andrew West.

**COUNSEL:**

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**FILED**  
COURT OF APPEALS

MAR 06 2015

TRACY WINKLER  
CLERK OF COURTS  
HAMILTON COUNTY

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

|                       |   |                        |
|-----------------------|---|------------------------|
| STATE OF OHIO,        | : | APPEAL NO. C-140236    |
| Respondent-Appellee,  | : | TRIAL NO. B-0701436    |
| vs.                   | : | <i>OPINION.</i>        |
| AARON E. YOUNG,       | : | PRESENTED TO THE CLERK |
| Petitioner-Appellant. | : | OF COURTS FOR FILING   |
|                       |   | MAR 06 2015            |

**COURT OF APPEALS**

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: March 6, 2015

*Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *Paula E. Adams*,  
Assistant Prosecuting Attorney, for Respondent-Appellee,

*Aaron E. Young*, pro se.

Please note: we have removed this case from the accelerated calendar.

**DEWINE, Judge.**

{¶1} Aaron E. Young appeals from the Hamilton County Common Pleas Court's judgment denying his petition for postconviction relief. We affirm the court's judgment.

{¶2} Mr. Young was convicted in 2010 upon guilty pleas to multiple counts of aggravated robbery and victim intimidation. We affirmed his convictions in his direct appeal. *See State v. Young*, 1st Dist. Hamilton No. C-100065 (Nov. 17, 2010), *appeal not accepted*, 134 Ohio St.3d 1486, 2013-Ohio-902, 984 N.E.2d 29.

{¶3} Mr. Young also sought relief from his convictions in a timely filed petition under R.C. 2953.21 for postconviction relief. We dismissed his initial appeal from the denial of his postconviction petition, because the common pleas court's entry denying relief did not include findings of fact and conclusions of law. *See State v. Young*, 1st Dist. Hamilton No. C-110274, 2012-Ohio-1732. Mr. Young then amended his petition, and the common pleas court entered findings of fact and conclusions of law and denied the petition as amended. This appeal followed.

***The Appeal Was Timely***

{¶4} We reject at the outset the state's suggestion in its brief that this appeal should be dismissed for lack of jurisdiction because Mr. Young filed his notice of appeal almost two years after the common pleas court had denied his amended postconviction petition. The proceedings upon an R.C. 2953.21 petition for postconviction relief are civil in nature and thus governed by the Ohio Rules of Appellate Procedure as they apply to a civil action. *State v. Nichols*, 11 Ohio St.3d 40, 463 N.E.2d 375 (1984), paragraph two of the syllabus. App.R. 4(A)(1) requires that a final order be appealed within 30 days of its entry. But "[i]n a civil case, if the clerk has not completed service

of the order within the three-day period prescribed in Civ.R. 58(B), the 30-day period[] \* \* \* begin[s] to run on the date when the clerk actually completes service.” App.R. 4(A)(3). Thus, regardless of whether an appellant actually knows that a judgment has been entered, the time for appealing that judgment begins to run only “upon service of notice of the judgment and notation of service on the docket by the clerk of courts.” *Clermont Cty. Transp. Improvement Dist. v. Gator Milford, L.L.C.*, Slip Opinion No. 2015-Ohio-241, syllabus, overruling *State ex rel. Hughes v. Celeste*, 67 Ohio St.3d 429, 619 N.E.2d 412 (1993).

{¶5} The common pleas court entered judgment denying Mr. Young’s amended postconviction petition on June 21, 2012. But the common pleas court did not direct service of notice of the judgment, as required by Civ.R. 58(B), and thus the clerk of courts did not “actually complete[] service” of notice of the judgment, as required by App.R. 4(A)(3). Therefore, the 30-day period for appealing that judgment has yet to begin to run, and this appeal must be said to have been timely filed.

***Postconviction Relief Was Properly Denied***

{¶6} Mr. Young advances three assignments of error challenging the denial of his postconviction petition. We find that each is without merit.

{¶7} Mr. Young was indicted on nine counts of aggravated robbery, nine counts of robbery, and three counts of intimidating a victim or witness. Before trial, he withdrew his not-guilty pleas and entered guilty pleas to the nine counts of aggravated robbery and a single count of victim intimidation, in exchange for the dismissal of the remaining counts. At the plea hearing, the trial court thoroughly reviewed with Mr. Young and his counsel the plea entry that Mr. Young had signed. The entry indicated the potential sentence that he faced for each offense and reflected no agreement

concerning the sentences to be imposed. The trial court accepted the pleas, found Mr. Young guilty, ordered a presentence-investigation report, and set the matter for sentencing, with no mention by Mr. Young, his counsel, or the assistant prosecuting attorney of an agreement concerning sentencing.

{¶8} At the sentencing hearing, the assistant prosecuting attorney requested “the maximum sentence [the court] can impose on this plea.” This request prompted an exchange between the trial court and the assistant prosecuting attorney about whether, in the course of plea negotiations, Mr. Young had “been given some leeway” concerning sentencing. The assistant prosecuting attorney, without a word from Mr. Young or his counsel, ultimately agreed with the court’s statement that there had been “[n]o promises[,] \* \* \* [n]o commitment on sentencing at all.”

{¶9} But after the court imposed consecutive sentences totaling 37 years, Mr. Young asked to address the court. He asserted that he had “signed an open plea deal [for] 12 to 20 years.” The court responded, “Not with me you didn’t,” while defense counsel contributed only the enigmatic remark, “And that was the agreement.” When Mr. Young again asserted his “understanding [that he] was to sign a 12 to 20 open plea deal,” the court ended the discussion with the statement, “[T]his was not a plea deal that you plead to.”

{¶10} In his postconviction petition, Mr. Young sought relief from his convictions on the ground that his guilty pleas had been the unknowing and unintelligent product of his trial counsel’s ineffectiveness. A postconviction claim may be denied without a hearing when the petitioner fails to submit with his petition evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief. *See* R.C. 2953.21(C); *State v. Pankey*, 68 Ohio St.2d 58, 428 N.E.2d

413 (1981); *State v. Jackson*, 64 Ohio St.2d 107, 413 N.E.2d 819 (1980). To prevail on a postconviction claim of ineffective assistance of counsel, the petitioner must demonstrate (1) that counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989).

{¶11} In support of his postconviction challenge to his trial counsel's effectiveness, Mr. Young offered only his own affidavit. He asserted that, at the plea hearing, he had been "oblivious to the fact" that the plea entry that the trial court had "read \* \* \* into the record \* \* \* WASN'T the plea [entry] that he had just read over, discussed and signed with his attorney," and that he had been, until sentencing, "under the impression that the Court had accepted his guilty plea[s] in return for an open 12 to 20 year plea [agreement] that the state had offered." Counsel, he insisted, was ineffective in neglecting to correct this mistaken "impression" and in failing to bring this matter to the trial court's attention.

{¶12} But the record shows that the trial court devoted considerable attention to the matter. And before imposing sentence, the assistant prosecuting attorney agreed with the trial court, without objection by Mr. Young or his counsel, that there had been "[n]o promises[,] \* \* \* [n]o commitment on sentencing at all." Mr. Young asserted, after he was sentenced and in his affidavit in support of his postconviction petition, that there had been an agreed sentence, and that defense counsel had misled him concerning the terms of his plea agreement. But these assertions are not otherwise demonstrated. And the self-serving statements contained in his affidavit were

**OHIO FIRST DISTRICT COURT OF APPEALS**

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insufficient as a matter of law to rebut evidence of record to the contrary. *See State v. Kapper*, 5 Ohio St.3d 36, 448 N.E.2d 823 (1983).

{¶13} A postconviction petition is subject to “summary” denial when, as here, the record “negative[s] the existence of facts sufficient to entitle the prisoner to relief.” *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph three of the syllabus. We, therefore, hold that the trial court properly denied Mr. Young’s petition. *See Pankey*, 68 Ohio St. 2d at 59, 428 N.E.2d 413; *Jackson*, 64 Ohio St.2d 107, 413 N.E.2d 819, syllabus.

{¶14} Accordingly, we overrule the assignments of error and affirm the court’s judgment.

Judgment affirmed.

**HENDON, P.J.**, and **CUNNINGHAM, J.**, concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.