

ORIGINAL

IN THE SUPREME COURT OF OHIO

15-0905

STATE OF OHIO,  
Appellee,

On Appeal from the Delaware  
County Court of Appeals,  
Fifth Appellate District

vs.

Court of Appeals  
Case No. 14CAA-04-0021

ZACHARY THOMPSON,  
Appellant.

NOTICE OF APPEAL OF APPELLANT ZACHARY THOMPSON

ZACHARY THOMPSON#A625-149 (PRO SE)  
Noble Correctional Institution,  
15708 McConnellsville Road  
Caldwell, Ohio 43724

COUNSEL FOR APPELLANT

FILED  
JUN 01 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

DELAWARE COUNTY PROSECUTOR  
CAROL HAMILTON O'BRIEN  
140 North Sandusky Street  
Delaware, Ohio 43015

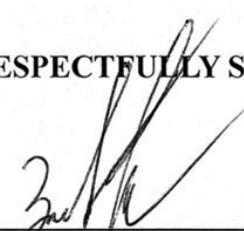
COUNSEL FOR APPELLEE

RECEIVED  
JUN 01 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF APPELLANT ZACHARY THOMPSON**

Appellant Zachary Thompson hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Delaware County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case No. 14CAA-04-0021 on May 4, 2015. This case involves a felony.

**RESPECTFULLY SUBMITTED,**

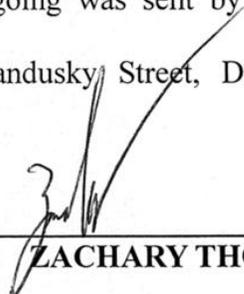


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**ZACHARY THOMPSON#A625-149  
Noble Correctional Institution,  
15708 McConnelsville Road  
Caldwell, Ohio 43724**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent by regular U.S. Mail to the Delaware County Prosecutor at 140 North Sandusky Street, Delaware, Ohio 43015 on this 27 day of May, 2015.



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**ZACHARY THOMPSON**

IN THE COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

CASE NO. 14CAA-04-0021

-vs-

ZACHARY THOMPSON

JUDGMENT ENTRY

Defendant-Appellant

This matter came before the Court on Appellant's Application for Re-Opening pursuant to App.R.26(B), filed March 11, 2015, and the State of Ohio's Memorandum Contra, filed April 10, 2015, and Appellant's Memorandum in Response, filed April 20, 2015.

Appellate Rule 26(B)(1) provides:

"A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time."

In his motion, Appellant argues that he was denied effective assistance of appellate counsel because appellate counsel in his second appeal failed to argue 1) the trial court erred when it denied his motion to withdraw his pleas based on res judicata; 2) the trial court erred in denying his motion to withdraw for lack of correlating evidence; 3) the trial

JAN ANTONOPLOS  
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COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
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Court of Appeals  
Delaware Co., Ohio

I hereby certify the within be a true copy of the original on file in this office.  
Jan Antonoplos, Clerk of Courts  
By Jan Antonoplos Deputy

court erred when it found no manifest injustice when it accepted his guilty pleas; 4) the trial court erred when it believed intoxication and driving left of center were the cause of the accident, not unintended acceleration.

The standard when reviewing an ineffective assistance of counsel claim is well-established. Pursuant to *Strickland v. Washington* (1984) 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, in order to prevail on such a claim, the appellant must demonstrate both (1) deficient performance, and (2) resulting prejudice, *i.e.*, errors on the part of counsel of a nature so serious that there exists a reasonable probability that, in the absence of those errors, the result of the trial court would have been different. *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373.

In determining whether counsel's representation fell below an objective standard of reasonableness, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 142, 538 N.E.2d 373. Because of the difficulties inherent in determining whether effective assistance of counsel was rendered in any given case, a strong presumption exists that counsel's conduct fell within the wide range of reasonable, professional assistance. *Id.*

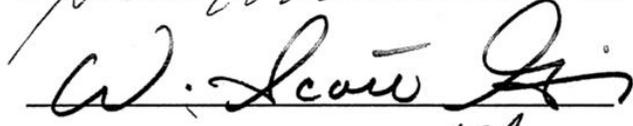
The Supreme Court of Ohio, in *State v. Smith*, 95 Ohio St.3d 127, 766 N.E.2d 588, 2002-Ohio-1753, has once again examined the standards that must be applied to an application for reopening as brought pursuant to App.R. 26(B). In *Smith*, the Supreme Court of Ohio specifically held:

"Moreover, to justify reopening his appeal, [Appellant] 'bears the burden of establishing that there was a "genuine issue" as to whether he has a "colorable claim" of ineffective assistance of counsel on appeal.' *State v. Spivey*, 84 Ohio St.3d at 25, 701, 706 N.E.2d 323, N.E.2d 696.

"*Strickland* charges us to 'appl[y] a heavy measure of deference to counsel's judgments,' 466 U.S. at 691, 104 S.Ct. 2052, 80 L.Ed.2d 674, and to 'indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance,' *Id.* at 689, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. Moreover, we must bear in mind that appellate counsel need not raise every possible issue in order to render constitutionally effective assistance. See *Jones v. Barnes* (1983), 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987; *State v. Sanders* (2002), 94 Ohio St.3d 150, 761 N.E.2d 18." *State v. Smith*, 95 Ohio St.3d 127, 766 N.E.2d 588, 2002-Ohio-1753, at 7.

Upon review, we find no error under *Pelfry*, *supra*, and further find no evidence that Appellant's counsel was ineffective or that his representation was deficient in failing to present such arguments:

We therefore find Appellant's Application for Reopening not well-taken and hereby deny same.

  
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JUDGES