

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
ROSS COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No: 09CA3107
	:	
v.	:	
	:	
JOHN O. BOOK,	:	<b><u>DECISION AND</u></b>
	:	<b><u>JUDGMENT ENTRY</u></b>
	:	
Defendant-Appellant.	:	File-stamped date: 11-19-09

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**APPEARANCES:**

Benjamin J. Partee, Chillicothe, Ohio, for appellant.

Michael M. Ater, Ross County Prosecuting Attorney, and Richard W. Clagg, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for appellee.

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Kline, P.J.:

{¶1} John O. Book appeals his conviction from the Ross County Common Pleas Court. The trial court convicted Book of possession of chemicals used to manufacture a controlled substance with the intent to manufacture that controlled substance under R.C. 2925.041. On appeal, Book contends that he received ineffective assistance of counsel in the trial court. However, Book raises matters outside the record that are not amenable to review on a direct appeal of his criminal conviction. Accordingly, we overrule his assignment of error and affirm the judgment of the trial court.

I.

{¶2} On January 26, 2009, Deputy Bradley E. Parrett was on patrol in southwestern Ross County. The weather was cold and snowy, and Parrett noticed a

truck stopped along the edge of the road at a stop sign. The deputy stopped his car to investigate. As he approached the vehicle, he noticed a female asleep in the passenger seat of the car. She told the deputy that the car had broken down, and the driver had gone for help.

{¶3} The deputy called for backup and then started looking for the driver. He saw the driver exit a private drive near the parked truck. He recognized Book. Book was wearing work clothes, and the deputy noticed a strong smell of anhydrous ammonia emanating from Book. The deputy immediately arrested Book. The deputy later followed Book's footprints to an anhydrous ammonia tank owned by Mike Corcoran. The deputy also found an aluminum cylinder, a valve top, a glass jar, and a wrench, apparently discarded near the footprint trail.

{¶4} Sergeant Kevin Pierce tested the objects for the presence of ammonia. Of those objects found, the glass jar tested positive for ammonia.

{¶5} At trial, Major Randy Sanders of the Ross County Sheriff's Department described the bourbon or bucket method of fabricating methamphetamine. In this particular method, many of the ingredients are put in a container in one location. Later, an additional process is used to separate out the methamphetamine. Among other ingredients, Sanders testified that this and other methods require anhydrous ammonia and lithium, and he testified that the lithium was commonly taken from batteries.

{¶6} Sanders also indicated that the police obtained a search warrant for Book's vehicle. In the vehicle, the police found casings of lithium batteries which had been tampered with to remove the lithium. They also found two empty blister packs of pseudoephedrine. The blister packs should have held 48 tablets. The police found a

drug store receipt that indicated someone had purchased pseudoephedrine on January 26, 2009, which was the same day as the arrest. Finally, the police found several glass jars as well as Teflon and duct tape.

{¶17} Sanders testified that he interrogated Book later at the jail. And he indicated that Book told him the following: “First he told me that he had just went acrossed [sic] the road there to use a phone at a house. After talking awhile he later told me that he had went to – went across there to steal anhydrous ammonia but that the – when he got there the tank was empty and then after a while longer he admitted to me that he had thrown the items out in the snow that we had collected.” Transcript at 85.

{¶18} The jury returned a verdict of guilty of the offense of assembly or possession of chemicals used to manufacture a controlled substance with the intent to manufacture a controlled substance in violation of R.C. 2925.041. The jury also found that Book had a prior conviction under the same section. The court sentenced Book to a mandatory five-year term of imprisonment.

{¶19} Book appeals and assigns the following assignment of error: I. “TRIAL COUNSEL WAS INEFFECTIVE DURING TRIAL, RESULTING IN A VIOLATION OF APPELLANT’S RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE STATE AND FEDERAL CONSTITUTIONS.”

II.

{¶10} Book contends in his sole assignment of error that his counsel was ineffective because “counsel failed to properly consult with his client, failed to properly prepare for the trial, and failed to employ any expert witnesses.” Book’s brief at 2.

{¶11} “In Ohio, a properly licensed attorney is presumed competent and the appellant bears the burden to establish counsel’s ineffectiveness.” *State v. Countryman*, Washington App. No. 08CA12, 2008-Ohio-6700, at ¶20, quoting *State v. Wright*, Washington App. No. 00CA39, 2001-Ohio-2473; *State v. Hamblin* (1988), 37 Ohio St.3d 153, 155-56. To secure reversal for the ineffective assistance of counsel, one must show two things: (1) “that counsel’s performance was deficient \* \* \* ” which “requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by [law;]” and (2) “that the deficient performance prejudiced the defense[,]” which “requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Strickland v. Washington* (1984), 466 U.S. 668, 687. See, also, *Countryman* at ¶20. “Failure to establish either element is fatal to the claim.” *In re B.C.S.*, Washington App. No. 07CA60, 2008-Ohio-5771, at ¶16, citing *Strickland* at 687; *State v. Bradley* (1989), 42 Ohio St.3d 136, paragraph two of the syllabus.

{¶12} “A defendant establishes prejudice if ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.’” *State v. Meddock*, Ross App. No. 08CA3020, 2008-Ohio-6051, at ¶13, quoting *Strickland* at 694.

{¶13} On direct appeal, a defendant cannot challenge his attorney’s performance based on facts outside of the record. *State v. Davis*, Highland App. No. 06CA21, 2007-Ohio-3944, at ¶19. “Where an appellant’s claim of ineffective assistance of counsel is based upon facts not in the record, the appropriate remedy is a petition for

postconviction relief, not direct appeal.” *State v. Russell*, Athens App. No. 08CA29, 2009-Ohio-5145, at ¶26, citing *State v. Brodbeck*, Franklin App. No. 08AP-134, 2008-Ohio-6961, at ¶64.

{¶14} First, Book argues that had counsel consulted with him, his counsel would have learned more about the manufacture of methamphetamines and the necessity of calling an expert witness in this particular case.

{¶15} This, however, is not a proper matter for us to consider on direct review. As the defendant himself notes in his brief, “the trial transcript shows no record of private conversations between client and counsel.” If Book wishes to raise this argument, he must do so in a collateral proceeding where he can supplement the record.

{¶16} Second, Book states, “in this case an expert on methamphetamine production would have testified to the necessity that a lithium battery contain [sic] a charge to be useful in the manufacture of methamphetamine.” Book further speculates that “[f]urther testing and expert testimony could have shown that the battery recovered from the defendant-appellant’s mouth had no charge.” Again, there is nothing in the record to support this particular supposition. And so we cannot address it on direct review. Book fails to support his assignment of error with reference to the record.

{¶17} Accordingly, we overrule Book’s sole assignment of error and affirm the judgment of the trial court.

**JUDGMENT AFFIRMED.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT BE AFFIRMED, and Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Harsha, J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: \_\_\_\_\_  
Roger L. Kline, Presiding Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**