

IN THE SUPREME COURT OF OHIO

STATE OF OHIO.
Plaintiff-Appellee,
VS.
FLOYD J. HULL,
Defendant-Appellant.

CASE NO.: 20-0765
ON APPEAL FROM THE LAKE COUNTY
COURT OF APPEALS, ELEVENTH
APPELLATE DISTRICT OF OHIO.
CA. CASE NO.: 2019-L-00126

MEMORANDUM IN SUPPORT OF JURISDICTION FOR
DEFENDANT-APPELLANT, FLOYD J. HULL

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EXPLANATION OF WHY THIS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This present case involves several constitutional questions and due process rights violations which includes can a trial court and the reviewing court thereafter misinterpret the record; misstate the facts contained in the record in an effort to avoid granting the Appellant the record in an effort to avoid granting the Appellant the relief that the law states he is entitled to, should be upheld.

Unfortunately, due to the COVID-19 pandemic, Appellant waived his Oral Argument but a review of the record and the Court of Appeals' Opinion clearly shows that either Appellant's arguments, case laws and the record herein confused the appellate panel and/or the reviewing court only consider the Appellee's Brief in its determination of the issues therein. Therefore, clarification on the issues submitted by the Appellant that was supported by the record was needed by way of the Oral Argument to avoid a terrible miscarriage of justice so Appellant made an egregious error in waving his Oral Argument.

Example, in Appellant's first issue that was based on trial counsel's legal misadvisement thereby making Appellant's guilty plea be not knowingly, voluntarily and intelligently given. **NO** where in this argument does a motion to suppress come into play. The law states that if the accused gives a confession on the premise of leniency by the police then if for whatever reason that deal is broken then that confession can not be used against the accused at trial even if a motion to suppress is not filed therefore Appellant's trial attorney gave the Appellant incorrect legal information "that his confession could still be used against him at trial despite the promised deal being broken by the State."

Court of Appeals based its ruling on the premise that Appellant failed to show that the State promise were false or that the promises of leniency proceeded his confession. All through the record the Appellant's contention is supported. Officer Mino has never denied he initiate the conversation that lead to the promised deal. Therefore, the Appellate panel just duplicated the Appellee's brief of facts. This case is of public or great general interest due to the miscarriage of justice that has occurred herein that hopefully this Honorable Court will correct by accepting jurisdiction of this case.

STATEMENT OF THE CASE

On April 24, 2015, Defendant-Appellant, Floyd J. Hull (hereinafter referred to as Hull), had a bond hearing in Willoughby Municipal Court pursuant to a multi-count complaint filed by the Willoughby Hills Police Department. Hull's bond was set at fifty-thousand (\$50,000) cash or surety.

On April 29, 2015, Hull appeared in Willoughby Municipal Court for his scheduled preliminary hearing. Hull asserted his right to have his preliminary hearing and would not waive it; therefore, the prosecutor requested and received a continuance until May 4, 2015. Hull filed his subpoena and a Motion for Replevin.

On May 4, 2015, after meeting with his attorneys that met with the prosecutor beforehand, Hull was informed if he pursued his right for a preliminary hearing, he would void the agreement he had in place with the police for reduced charges and possible probation. Thereafter, Hull signed the waiver and withdrew his subpoena and motion for replevin so that he could keep the aforementioned agreement in place.

On July 27, 2015, Hull was indicted by the Lake County Grand Jury in a nine (9) count indictment for Trafficking in Heroin, in violation of R.C. §2925.03(C)(6)(e), (F-2); Possession of Heroin, in violation of R.C. §2925.11(C)(6)(d), (F-2); Trafficking in Ecstasy, in violation of R.C. §2925.11(A), (F-3); Trafficking in Cocaine, in violation of R.C. §2925.03(A)(2), (F-5); Possession of Cocaine, in violation of R.C. §2925.11(A), (F-5); Trafficking in Marijuana, in violation of R.C. §2925.03(C)(3)(a), (F-5); Possession of Marijuana, in violation of R.C. §2925.11(A), (M-4); and Possession of Criminal Tools, in violation of R.C. §2923.24(A), (F-5).

A plea hearing was held on October 13, 2015 where Hull withdrew his former plea of not guilty and entered a guilty plea to one (1) count of Trafficking in Heroin, in violation of R.C. §2925.03(C)(6)(e), a felony of the second degree and one count of Trafficking in Marijuana, in violation of R.C. §2925.03(C)(3)(a), a felony of the fifth degree. All other counts were dismissed pursuant to the plea agreement.

The plea agreement began with dialog concerning the State's withdrawal of the promised deal with Hull and the situation that the state's withdrawal of the aforementioned deal placed Hull in with respect to Hull's confession, failure to timely file his motion to suppress, waiver of his Municipal Preliminary Hearing and etc. Hull had no other choice but to plead guilty considering the situation.

On November 23, 2015, the trial court scheduled a sentencing hearing. Unfortunately, Hull was admitted into the hospital in Erie, Pennsylvania. Hull notified his attorney at about 6:15AM of the aforementioned fact. Attorney Ramsey notified the trial court before the scheduled sentencing hearing of Hull's whereabouts and requested a continuance, however the trial court denied counsel's requested continuance and issued a warrant for Hull's arrest.

After Hull finished with all his scheduled medical appointments to get his health stable, Hull turned himself in by going to the Lake County Jail. (No law enforcement agency arrested Hull in connection with the trial court's outstanding warrant). The trial court held a sentencing hearing on March 11, 2016. The court sentenced Hull to a term of incarceration of five (5) years for Trafficking in Heroin, (F-2), and one (1) year to be served concurrent with the aforementioned sentence for Trafficking in Marijuana, (F-5). Hull timely filed his appeal to this Honorable Court which affirmed the trial court's judgment on January 17, 2017.

Hull timely filed his appeal to the Ohio Supreme Court, which declined to accept jurisdiction on July 5, 2017. During Hull's direct appeal process, Hull timely filed a petition for post-conviction relief pursuant to R.C. §2953.21 on February 10, 2017. On March 28, 2018, the trial court denied Hull's post-conviction relief petition.

On March 28, 2018, the trial court denied Hull's post-conviction relief petition as being barred by the doctrine of res judicata. On April 23, 2018, Hull timely appealed. On January 7, 2019, this Honorable Court reversed the judgment of the trial court, stating res judicata does not prevent Hull from raising his claims, but the trial court should have assessed the credibility of the affidavits and determined whether the petition, the record, and the supporting evidentiary documents contain sufficient operative facts which, if true, would establish substantive grounds for relief that would mandate a hearing.

On September 24, 2019, once again, the trial court denied Hull's petition for post-conviction relief. Hull timely appeal that was denied by the 11th. Dist. Court of Appeals on may 11, 2020. Now Hull timely appeals to this Honorable Court.

LAW AND ARGUMENT

First Proposition of Law:

THE TRIAL COURT ABUSED ITS DISCRETION IN ITS ASSESSMENT OF THE CREDIBILITY OF HULL'S SUPPORTING AFFIDAVITS ATTACHED TO HIS PETITION FOR POST-CONVICTION RELIEF PURSUANT TO O.R.C. §2953.21, THUS VIOLATING HULL'S CONSTITUTIONAL RIGHTS UNDER THE FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 1 AND 14 OF THE OHIO CONSTITUTION.

An appellate court reviews the denial of a petition for post-conviction relief for an abuse of discretion. *State v. Carvilland*, 1st Dist. No. C-0606658, 2007-Ohio-5459. An abuse of

discretion means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). “Absent a clear abuse of discretion, a reviewing court will not reverse the judgment of the trial court. *Birath v. Birath*, 53 Ohio App.3d 31, 558 N.E.2d 63 (10th Dist. 1988). * * * ‘the term “abuse of discretion” is one of art, connoting judgment exercised by a court, which does not comport with reason or the record.’ *State v. Underwood*, 11th Dist. No. 2008-L-113, 2009-Ohio-2089, 1009 WL 1177050 citing *State v. Ferranto*, 112 Ohio St. 667, 148 N.E. 362 (1925). Stated differently, an abuse of discretion is “the trial court’s failure to exercise sound, reasonable, and legal decision making.” *State v. Crytzer*, 11th Dist. No. 2018-A-0077, 2019-Ohio-2285, 2019 Ohio App. LEXIS 2384.”

The trial court digresses in its opinion in assessing the credibility of the supporting affidavits attached to Hull’s petition for post-conviction relief to the point that the trial court revisited the issue of whether Hull’s guilty plea was coerced and/or knowingly, intelligently, and voluntarily given.

Further in support of the trial court’s aforementioned contention, the court cites Hull’s plea colloquy and the written plea of guilty as proof that Hull was not coerced or threatened into pleading guilty. In response and to clarify the trial court’s aforementioned contentions, Hull submits the following argument.

Most importantly it must be noted that this Honorable Court addressed and resolved this issue in *Hull II* when this court stated in pertinent part the following:

“{¶28} Moreover, we disagree with the dissent’s conclusion that Hull waived these issues via his guilty plea. A defendant who pleads guilty may attack the voluntary and knowing character of his guilty plea by showing that he was incompetently advised by his attorney to plead guilty. *McMann v. Richardson*, 397 U.S. 759, 772, 90 S. Ct. 1441 (1970) (holding an appellant may show that plea was not knowing or voluntary

based on counsel's error in advising client about admissibility of confession); *State v. Spates*, 64 Ohio St.3d 269, 272, 595 N.E.2d 351 (1992). In fact, the U.S. Supreme Court has expressly held that "the two-part *Strickland v. Washington* [466 U.S. 668, 104 S. Ct. 2052 (1984)] test applies to challenges to guilty pleas based on ineffective assistance of counsel." (Emphasis added.) *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985) (explaining that the "showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel will serve the fundamental interest in the finality of guilty pleas * * *")." *State v. Hull*, 2019-Ohio-23

To reiterate, Hull asserts he was improperly induced into entering his guilty plea with erroneous information (legal misadvisement) from his trial counsel regarding the ability of his incriminating confession to be used against him at trial. Attorney Ramsey informed Hull that the state could use his incriminating confession against him if the case went to trial, and with that information, Hull changed his plea from not guilty to guilty; therefore, in consideration of trial counsel's misinformation, Hull's plea was *not* knowingly, intelligently, and voluntarily given.

The United States Supreme Court has held in *Lee v. United States*, 137 S.Ct. 1958, 198 L.Ed. 476, 2017 U.S. LEXIS 4045 (June 23, 2017) there was a reasonable probability that, but for counsel's erroneous advice, defendant would have rejected a guilty plea where the circumstances showed deportation was the determinative issue in his decision to accept the plea, and it was not irrational to reject the plea deal when there was some chance of avoiding deportation, however remote.

"Lee's claim that he would not have accepted a plea had he known it would lead to deportation is backed by substantial and uncontroverted evidence. Accordingly, we conclude Lee has demonstrated a reasonable probability but for his counsel's errors (misinformation), he would not have pleaded guilty and would have insisted on going to trial." *Lee v. United States*, *supra*.

Several Ohio courts have also held that trial counsel's legal misadvisement (misinformation) would satisfy both prongs of the *Strickland* test and result in the defendant's guilty plea not being knowing, intelligent and voluntary. See *State v. Diol*, 1st Dist. Hamilton No. C-180249, 2019-Ohio-2197 (June 5, 2019); *State v. Khoshkenabi*, 8th Dist. Cuyahoga No. 106117, 111 N.E.3d 813, 2018-Ohio-1752 (2018); *State v. Williams*, 8th Dist. Cuyahoga Nos. 104078, 104849, 2017-Ohio-2650 (May 4, 2017); *State v. Norris*, 2019-Ohio-3768.

The Ohio courts set forth the law which must be considered in determining whether misinformation regarding a defendant's eligibility for judicial release requires a reviewing court to invalidate a guilty plea in *State v. Williams*, supra which opined as follows:

{¶15} However, it is well settled that a guilty plea may be invalidated where the defendant is given *misinformation* regarding judicial release. *State v. Ealom*, 8th Dist. Cuyahoga No. 91455, 2009-Ohio-1365, citing *State v. Bush*, 3rd Dist. Union No. 14-2000-44, 2002-Ohio-6146; *State v. Horch*, 154 Ohio App.3d 537, 2003-Ohio-5135, 797 N.E.2d 1051 (3rd Dist.); *State v. Florence*, 3rd Dist. Allen No. 1-03-60, 2004-Ohio-1956. The *Ealom* court held that "if a defendant is induced to enter a plea by erroneous representation as to the applicable law, the plea has not been entered knowingly and intelligently, but the defendant must demonstrate prejudice resulting from the erroneous representation, i.e., that but for erroneous information, the plea deal would not have been made.: *Id.* At ¶19; *State v. Mitchell*, 11th Dist. Trumbull No. 2004-T-0139, 2006-Ohio-618, ¶15, 18. Therefore, although the trial court is not required to inform defendant that he is ineligible for judicial release, the court's statement will be reviewed in order to determine whether the plea was knowing, voluntary, and intelligently made. *State v. Silvers*, 181 Ohio App.3d 26, 2009-Ohio-687, 907 N.E.2d 805 (2nd Dist.); *State v. Byrd*, 178 Ohio App.3d 646, 2008-Ohio-5515, 899 N.E.2d 1033 (2nd Dist.).

Although the aforementioned cases center around the misadvisement of the eligibility of judicial release, it is important to note the courts held that legal misinformation (misadvisement) from trial counsel, the court, and/or prosecutor to induce/coerce a

defendant to change his plea from not guilty to guilty is unacceptable, and therefore, that defendant's plea cannot be knowingly, intelligently, and voluntarily given.

The courts are in general agreement that a confession that has been induced by promises to the defendant of some benefit or reward in return for the confession is involuntary and hence, inadmissible. Pertinent to the issue now before this court is trial counsel's erroneous advice concerning Hull's confession. In order to determine whether a confession was voluntarily made, a court must evaluate the totality of the circumstances surrounding the interrogation to determine whether the police actions were coercive and thus the defendant's rights were violated. *Schneekloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 30 L.Ed.2d 854 (1973). "Coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' * * *." *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). "Coercion can be mental as well as physical." *Blackburn v. Alabama*, 361 U.S. 199, 206, 80 S.Ct. 274, 4 L.Ed.2d 242 (1960). In addition to "the crucial element of police coercion," courts consider "length of the interrogation, its location, its continuity, the defendant's maturity, physical condition, and mental health" and the failure of police to advise the defendant of his Miranda rights.

The federal Sixth Circuit Court of Appeals has recognized that, in certain circumstances, police promises of leniency and threats of possession can be objectively coercive. *Id.* At 261. Generally, however, promises of leniency are coercive only "if they are broken or illusory, *Id.* At 262, and promises to recommend leniency or speculation that cooperation will have a positive effect, do not make subsequent statements involuntary." *U.S. v. DeLaney*, 443 Fed. Appx. 122, 129, (6th Cir. 2011).

In *United States v. Brown*, 557 F.2d 541, 551 (6th Cir. 1977), the federal Sixth Circuit Court of Appeals observed that there is an “inherent coerciveness of the backseat of a patrol car as a setting for a confession ...” *Id.* Defendant contends that Brown renders his statements coerced. *Id.*

False promises of leniency by the police are improper and render an ensuing confession involuntary. *State v. Holtvogt*, 2nd Dist. Montgomery No. 24748, 2012-Ohio-2233; *State v. Jones*, 2015-Ohio-4116, 2nd Dist. Montgomery No. 26289, 2015 Ohio App. LEXIS 3941. If a confession was coerced or compelled, it cannot be used to convict the defendant. *State v. Strickland*, 2nd Dist. Montgomery No. 25545, 2013-Ohio-2768. When a confession is involuntary it violates both the United States and Ohio Constitutions because it is a product of coercive police activity. *State v. Carvilland*, 1st Dist. No. C-0606658, 2007-Ohio-5459.

Hull asserts that the statements he made were after he was promised that he could help himself by working with the police, had he some substantial information to provide. Hull confessed his involvement and gave details of the crime, thereby the police officer told Hull that he was satisfied with the confession and the promised deal would go forward.

The law is very clear on the aforementioned issue; Hull’s incriminating confession could not be used against Hull at trial. Therefore, Hull’s trial counsel gave him incorrect and false information to induce Hull’s guilty plea. Trial counsel rendered ineffective assistance of counsel when he gave legal misadvisement to Hull concerning Hull’s incriminating confession’s impact on Hull’s then upcoming trial.

Although the trial court states that Hull’s plea colloquy and written plea of guilty contradicts Hull’s claim that his attorney coerced him into pleading guilty, the trial court’s

contention in this matter is in direct conflict with the opinions rendered in *Lee v. United States*; *State v. Diol*, *Khoshkenabi*, *Williams*, *Ealom* and others.

United States District Judge Jeffrey J. Helmick's well-reasoned opinion in *Moon v. Robinson*, N.D. Ohio No. 1:12CV1396, 2013 U.S. Dist. LEXIS 108799 (Aug. 2, 2013), footnote 2, page 5 in pertinent parts deals with the precise issue that is now before this Honorable Court and states as follows:

“Respondent argues the transcript of the plea proceedings demonstrate that Moon was advised of his rights and chose to plead guilty. Based on this record, Moon has failed to show that his trial counsel's performance was deficient. Respondent's conclusory arguments would nullify decades of Supreme Court precedent holding that a guilty plea does not result in a waiver of a defendant's constitutional right to the effective assistance of counsel and therefore is unpersuasive. *McMann*, 397 U.S. 759; *Hill*, 474 U.S. 52; *Frye*, 1132 S.Ct. 1399; *Lafler*, 132 S.Ct. 1376; see also *United States v. Wade*, 388 U.S. 218, 227. It is central to the principle of the right to counsel that in addition to counsel's presence at trial, the accused is guaranteed that he not stand alone against the state at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial.”

It is a bedrock principle of our system of justice that criminal defendants are entitled to the assistance of counsel. See, e.g., *Powell v. Alabama*, 287 U.S. 45 (1932). “The right to counsel is the right to effective assistance of counsel.” *Missouri v. Frye*, 132 S.Ct. 1399, 1404 (2012) (citing *Strickland v. Washington*, 466 U.S. at 686 (1984)). This right “extends to the plea-bargaining process.” *Lafler v. Cooper*, 132 S.Ct. 1376, 1384 (2012). **A defendant may attack the voluntary and intelligent character of a guilty plea only by showing counsel's advice “was not within the range of competence demanded of attorneys in cases.”** *McMann v. Richardson*, 397 U.S. 759, 771 (1970).

“Though we 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. Padgett*, 2d Dist. Montgomery No. 17658, 1999 Ohio App. LEXIS 5867 (Dec. 10, 1999) citing *State v. Calhoun*, *supra*. *State v. Short*, *supra*.

Here, the judge reviewing the petition presided at the change of plea hearing and the sentencing hearing, there is six (6) affidavits that detail at least three (3) different events where Hull’s constitutional right to effective assistance of counsel was violated due to erroneous information given to Hull by his trial counsel to induce Hull’s guilty plea. One being Hull’s affidavit – a person obviously interested in the success of the endeavor. Hull’s affidavit does not contain any hearsay and none of the evidence contradicts evidence offered by the defense during the change of plea hearing, sentencing hearing or evidence in the record, as the evidence Hull submits in his affidavit is *de hors* the record, nor is it internally inconsistent, and thus weakened in credibility. To hold that Hull is not entitled to a hearing based upon such a hyper-technicality, as stated before, would be a grave miscarriage of justice. The information that Hull seeks to present to the court has never before been seen, heard or cross-examined. Serious issues have been raised in Hull’s petition for post-conviction relief based upon the claim of ineffective assistance of counsel that need resolution by hearing. In fact, the ineffective assistance of counsel is so egregious as to deprive Hull of his right to a fair trial and/or legal proceeding.

The Sixth Amendment to the United States Constitution guarantees a defendant the effective assistance of counsel at all critical stages of a criminal proceeding, including when he enters a guilty plea. *State v. Romero*, 156 Ohio St. 3d 468, 2019-Ohio-1839, 129 N.E. 3d 404,

quoting *Lee v. United States*, supra; *Lafler v. Cooper*, supra; and *Hill v. Lockhart*, supra; A defendant may attack the voluntary and intelligent character of a guilty plea only by showing counsel's advice was not within the range of competence demanded of attorneys in cases. *McMann v. Richardson*, 397 U.S. at 771; and *Lee v. United States*, supra.

Hull asserts that he produced sufficient credible evidence to demonstrate that he was denied his constitutional right to the effective assistance of counsel. The information contained in the affidavits, when considered with the full record, establish a deficiency in Hull's trial counsel's performance that led to an unjust result during the plea process.

Hull strongly asserts that if he had known that his incriminating confession could not be used against him at trial, Hull would have never pled guilty but would have insisted on going to trial before a jury of his peers.

Regarding Hull's post-conviction petition Claim Two; Hull asserted the claim of ineffective assistance of counsel as defense counsel failed to timely file a *Motion to Suppress* in violation of the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

To establish ineffective assistance of counsel for failure to file a motion to suppress, the defendant must prove that there was a basis to suppress the evidence in question. *State v. Sanchez*, (8th Dist. Cuyahoga No. 103078), 2016-Ohio-3167; *State v. Adams*, 103 Ohio St. 3d 508, 2004-Ohio-5845, 817 N.E. 2d 29 and *State v. Burt*, (8th Dist. Cuyahoga No. 99097), 2013-Ohio-3525. Similarly, failure to file a motion to suppress does not necessarily constitute ineffective assistance of counsel. *State v. Madrigal*, 87 Ohio St. 3d 378, 2000-Ohio-448, 721 N.E. 2d 52 (2000), citing *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986). Instead, an appellant

claiming ineffective assistance due to failure to file a motion to suppress must demonstrate through evidence in the record that there was a reasonable probability the result of the proceeding would have been different if the motion had been filed. *State v. Walker*, 11th Dist. Lake No. 2009-L-155, 2010-Ohio-4695. “Where the record contains no evidence which would justify the filing of a motion to suppress, the appellant has not met his burden of proving that his attorney violated an essential duty by failing to file the motion.” *State v. Tibbets*, 92 Ohio St. 3d 146, 166 (2001), quoting *State v. Gibson*, 69 Ohio App. 2d 91, 95 (8th Dist. 1980). “Failure to file a motion to suppress constitutes ineffective assistance of counsel only if, based upon the record, the motion would have been granted.” *State v. Kirk*, (8th Dist. Cuyahoga Nos. 95260 and 95261), 2011-Ohio-1687; *State v. Moon*, (8th Dist. Cuyahoga No. 101972), 2015-Ohio-1550; and *State v. Sanchez*, supra; *State v. Brooks*, 11th Dist. Lake No. 2011-L-049, 2013-Ohio-58.

Hull contends that if his trial attorney (Scott Ramsey) would have timely filed a motion to suppress Hull’s incriminating confession that Hull gave to his arresting police officer in lieu of the state’s (Lake County Prosecutor’s Office), withdrawal of the police officer’s promised deal, and the standard legal principles and case laws concerning this matter clearly shows that the trial court was bound to grant the *Motion to Suppress* and throw out Hull’s incriminating confession; therefore it could not be used against Hull at trial.

As stated previously, false promises of leniency by the police are improper and render an ensuing confession involuntary. *State v. Holtvogt*, supra; *State v. Jones*, supra. If a confession was coerced or compelled, it cannot be used to convict the defendant. *State v. Strickland*, supra. If a confession is involuntary it violates both the United States and Ohio Constitutions because it is a product of coercive police activity. *State v. Carvilland*, supra. The courts are in general

In Claim Three, Hull asserted trial counsel was ineffective when his attorney failed to object to the traffic stop for a minor misdemeanor made outside a police officer's territorial jurisdiction or authority.

Pursuant to claim three of Hull's post-conviction petition, this argument is centered around the territorial jurisdiction of the arresting officer. The **where** and **when** the alleged traffic infraction occurred. As there was no traffic citation and/or a court hearing on the aforementioned alleged traffic infraction, there is nothing within the record on direct appeal that would answer the where and when the two alleged mark lane traffic infractions occurred in the condensed area of Waite Hills, Willoughby, and Willoughby Hills traveling west-bound on I-90.

The Ohio Supreme Court has held that an arrest made outside an officer's territorial jurisdiction where no extenuating circumstances exist in violation of a police officer's authority to make the arrest, infringes on the people's right to be secure in their persons, house, papers, and possessions, against unreasonable searches and seizures as guaranteed by Article I, Section 14 of the Ohio Constitution.

Article I, Section 14 of the Ohio Constitution affords greater protection than the Fourth Amendment against searches and seizures conducted by members of law enforcement who lack authority to make an arrest. Therefore, a traffic stop for a minor misdemeanor offense made by a police officer outside his territorial jurisdiction lacks statutory authority to do so thereby violating Article I, Section 14 of the Ohio constitution. *State v. Brown*, 143 Ohio St. 3d 444, 2015-Ohio-2438; *State v. Isaac*, 2018-Ohio-5433, 2018 Ohio App. LEXIS 5732 (4th Dist. 2018).

Second Proposition of Law:

THE TRIAL COURT ERRED IN DENYING HULL'S POST-CONVICTION RELIEF PETITION WHEN HE PRESENTED SUFFICIENT EVIDENCE DEHORS THE RECORD TO MERIT AN EVIDENTIARY HEARING.

Hull asserts that the trial court should have held a hearing on his petition for postconviction relief before denying it pursuant to §2953.21(C). Interpreting that section, this Honorable Court explained that "an evidentiary hearing is not automatically guaranteed each time a defendant files a petition for postconviction relief." State v. Broom, 146 Ohio St.3d 60, 2016-Ohio-1028, ¶29. "A trial court has the discretion to deny a post-conviction petition without discovery or an evidentiary hearing if the petition, supporting affidavits, documentary evidence, and trial record do not demonstrate sufficient operative facts to establish substantive grounds for relief." *Id.*, quoting Calhoun, ¶2 of the syllabus. "To warrant an evidentiary hearing in a postconviction proceeding, a petitioner must submit evidence outside the record that sufficiently establishes that the petitioner is entitled to relief on one or more asserted constitutional grounds." *Id.* As stated previously, Hull asserts, attached to his petition for postconviction relief is sufficient evidence outside the record, and as previously noted, the trial court set a nearly unattainable bar in assessing the credibility of the affidavits within its finding of facts and conclusion of law. Hull in his postconviction petition challenges his trial counsel's ineffective assistance throughout his legal proceedings. Mainly counsel's legal misadvisement and counsel's failure to timely perform his duties owed to Hull.

Finally, it is important to note the concurring/dissenting opinion of Appellate Justice Colleen Mary O'Toole as stated in Hull, II as follows:

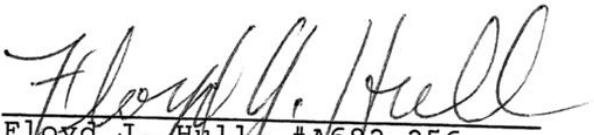
"I concur with the learned majority on assignment of error one. I dissent as to the reasoning regarding assignment of error two as there is a **plethora of evidence** in support of his motion. I would remand for the trial court to hold a hearing." Hull II, supra, ¶41. Therefore, Hull asserts that he is entitled to an evidentiary hearing to resolve the issues presented in Hull's petition for postconviction relief.

CONCLUSION

For all the reasons set forth above, Appellant, Floyd J. Hull, respectfully requests that this Honorable Court accept jurisdiction of this to address the issues brought forth by Hull herein, wherein, Hull prays that this Court will vacate his conviction and sentence

in the interest of law, justice, equity and good conscience as well as grant Hull any and all other relief that Hull may be entitled to by law and to avoid a miscarriage of justice.

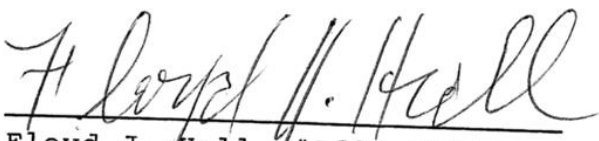
Respectfully submitted,


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Conneaut, Ohio 44030

CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing Memorandum in Support of Jurisdiction has been sent by regular U.S. mail with proper postage on this 12th day of June, 2020, to the LAKE County Prosecutor, Charles E. Coulson at 105 Main Street, Painesville, Ohio 44077.

Respectfully submitted,


Floyd J. Hull, #A682-256
Petitioner-Appellant, pro se
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APPENDIX

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2019-L-126
FLOYD J. HULL, SR.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 2015 CR 000387.
Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Jennifer A. McGee*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, Ohio 44077 (For Plaintiff-Appellee).

G. Michael Goins, 13609 Shaker Boulevard, Suite 3-A, Cleveland, Ohio 44120 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Floyd J. Hull, Sr., appeals the trial court's decision denying his postconviction petition seeking to vacate his drug trafficking convictions after pleading guilty. We affirm.

{¶2} This is the second time this postconviction proceeding has been before us. In Hull's first appeal, we reversed and remanded finding res judicata did not bar Hull's postconviction claims. *State v. Hull*, 11th Dist. Lake No. 2018-L-050, 2019-Ohio-23. On

remand, the trial court's September 24, 2019 decision again finds that Hull is not entitled to a hearing and overrules his postconviction claims.

{¶3} Hull raises two assigned errors, which we address collectively:

{¶4} "The trial court abused its discretion in its assessment of the credibility of Hull's supporting affidavits attached to his petition for postconviction relief pursuant to O.R.C. 2953.21, thus violating Hull's constitutional rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1, Section 1 and 14 of the Ohio Constitution.

{¶5} "The trial court erred in denying Hull's postconviction relief petition where he presented sufficient evidence de hors the record to merit an evidentiary hearing."

{¶6} We review the denial of a postconviction petition for an abuse of discretion. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 49. "[T]he trial court's gatekeeping function in the postconviction relief process is entitled to deference, including the court's decision regarding the sufficiency of the facts set forth by the petitioner and the credibility of the affidavits submitted." *Id.* at ¶ 52.

{¶7} "[A]n abuse of discretion is the trial court's 'failure to exercise sound, reasonable, and legal decision-making.' *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, 2010 WL 1731784, ¶ 62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11. When an appellate court is reviewing a pure issue of law, 'the mere fact that the reviewing court would decide the issue differently is enough to find error (of course, not all errors are reversible. Some are harmless; others are not preserved for appellate review). By contrast, where the issue on review has been confined to the discretion of the trial court, the mere fact that the reviewing court would have reached a different result is not enough,

without more, to find error.’ *Id.* at ¶ 67.” *Ivancic v. Enos*, 11th Dist. Lake No. 2011-L-050, 2012-Ohio-3639, 978 N.E.2d 927, ¶ 70.

{¶8} As stated, we reversed and remanded the trial court’s determination that Hull’s postconviction arguments are barred by *res judicata*. Thus, we directed the trial court on remand to:

{¶9} “determine whether the petition, the record, and the supporting evidentiary documents contain sufficient operative facts which, if true, would establish substantive grounds for relief consistent with the direction set forth in [*State v. Calhoun*, 86 Ohio St.3d 279, 714 N.E.2d 905]. And if it so finds, then a hearing is required under R.C. 2953.21(D). If, however, it does not find a hearing is warranted and dismisses the petition, then it must issue findings of fact and conclusion of law sufficient to enable meaningful appellate review. R.C. 2953.21(D); *Calhoun, supra*, at 291-292.” *Hull* at ¶ 38.

{¶10} On remand, the trial court’s September 24, 2019 judgment again overrules Hull’s postconviction petition without an evidentiary hearing. The court finds that the supporting affidavits lack credibility and that none of the affidavits, even if true, establishes that Hull is entitled to postconviction relief.

{¶11} The petitioner bears the burden to show via affidavits, the record, and other supporting materials that sufficient operative facts exist which, if true, would establish substantive grounds for postconviction relief. R.C. 2953.21(D); *State v. Clark*, 11th Dist. Portage No. 96-P-0257, 1998 WL 386186, *4, citing *State v. Jackson*, 64 Ohio St.2d 107, 111, 413 N.E.2d 819 (1980).

Ineffective assistance of counsel claims

{¶12} In urging the trial court to vacate his convictions, Hull presents three ineffective assistance of trial counsel arguments in his February 10, 2017 postconviction petition. First, Hull contends he was coerced by his attorney into pleading guilty based on his attorney's poor advice that Hull's confession was not subject to suppression. Hull urges his confession was subject to suppression since Hull was induced into confessing based on the state's false promises of receiving a lighter sentence.

{¶13} Second, Hull asserts his trial counsel was deficient for failing to timely move to suppress Hull's confession and argues that had it been timely filed, suppression was warranted. This second argument is also based on Hull's claim that he was coerced into confessing based on false promises of leniency made by police.

{¶14} Finally, Hull claims his trial counsel was deficient because counsel failed to challenge the jurisdiction of the officer who stopped Hull. And had a challenge to the officer's jurisdiction been raised, Hull claims the stop and subsequent convictions would be void or voidable since they occurred outside the officer's jurisdiction.

{¶15} "In evaluating claims of ineffective assistance of counsel, a two-step process is used. 'First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial * * *.' *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph two

of the syllabus.” *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 61.

{¶16} “In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's performance was reasonable considering all the circumstances. * * * Judicial scrutiny of counsel's performance must be highly deferential.” *Strickland*, supra, at 688-689. “[D]ebatable strategic and tactical decisions will not form the basis of a claim for ineffective assistance of counsel, even if there had been a better strategy available. * * * In other words, errors of judgment regarding tactical matters do not substantiate a defendant's claim of ineffective assistance of counsel.” *State v. Swick*, 11th Dist. Lake No. 97-L-254, 2001-Ohio-8831, 2001 Ohio App. LEXIS 5857, at *2, 5-6 (citations omitted).

{¶17} Thus, Hull must have first established that his trial attorney's performance was deficient, i.e., unreasonable considering all the circumstances, and second, that the deficiency was prejudicial, i.e., deprived him of a fair trial.

{¶18} Consistent with its remand directive, the trial court assesses each of Hull's six supporting affidavits, weighs the credibility, and explains why it finds each lacks credibility. The trial court likewise finds that none of the affidavits, even if true, establishes that Hull is entitled to the requested relief. Because we agree with the trial court's finding that even if true, Hull's supporting affidavits do not present sufficient facts establishing he is entitled to relief, we do not address its credibility determinations.

Hull's first and second ineffective assistance of counsel claims

{¶19} Again, Hull's first claim of ineffective assistance alleges that his attorney's advice was deficient based on the poor assessment of a motion to suppress his coerced

confession based on false promises of leniency made by police and second that counsel's untimely filing of this motion was also deficient.

{¶20} Hull, however, fails to show the state's promises were false or that the promises of leniency preceded his confession. Hull likewise fails to establish that his attorney's advice was unreasonable under the circumstances.

{¶21} As for the affidavit of Attorney Goins, Hull's postconviction attorney and one of his attorneys during the underlying proceedings, the trial court finds that even if true, Goins does not state in his affidavit that Hull was coerced or threatened to plead guilty by his attorneys. We agree. In fact, Goins' affidavit states that Hull's best option was to plead guilty in light of his confession, which was "too damaging to any type of defense * * *"

{¶22} Hull's affidavit likewise does not establish he was coerced to plead guilty but that his attorneys recommended the plea based on their assessment of the law and facts. Hull makes a conclusory statement that he was induced into making a full confession "in exchange for promises of leniency * * *." Further, Hull does not identify when or at what point during the trial court proceedings the prosecutor withdrew the promises of leniency.

{¶23} The change of plea hearing transcript further reflects the facts surrounding the state's alleged promise of leniency. The motion to suppress was filed after the trial court was notified that Hull was pleading guilty and a few days before trial was scheduled. And upon being asked about the motion, Hull's trial counsel, Ramsey, explains why the suppression motion was untimely stating it was because there was a mix up regarding

Hull's possible deal. Ramsey does not indicate that the state revoked the deal after it made false claims of leniency that prompted Hull's confession.

{¶24} "MR. RAMSEY: We knew the motion was late being filed. There [were] some other issues, negotiations and misunderstandings and miscommunications that went on with this case from the very outset. When my client was arrested, he did speak with the officer, * * * who arrested him. And some type of a, I don't want to say deal, but an arrangement was made where my client might offer some information to the officer, to the drug task force, where my client might be able to help himself. That information was relayed at a * * * preliminary hearing * * * to another counsel. Counsel who is present in court today, Mr. Goins. And Mr. Goins neglected to give that * * * contact information of the drug task force and my client, he neglected to hook them up.

{¶25} "So while this case was pending * * * my client was supposed to have been contacting someone from the drug [task] force. He never received that information due to a mistake that was not his fault.

{¶26} "So we all, throughout this process, we thought that my client would be able to help himself with some information. * * *

{¶27} "So while this was going on, we knew we had a possible suppression issue * * * but we did not file that motion because we thought my client would be able to help himself with some valuable information about some pretty serious drug traffickers * * *

{¶28} "The window was very narrow. The state was not interested in my client. Once we found out the mistake had been made, * * * the window was closed and we found ourselves in a time crunch * * *.

{¶29} " * * *

{¶30} "THE COURT: That [failure to relay the information to Hull] had nothing to do with the prosecutor; right?

{¶31} "MR. RAMSEY: No. That my client did not receive that information. No, Your Honor."

{¶32} Thereafter, and at the same change of plea hearing, the court addresses Hull and asks him if he is satisfied with the advice of counsel, and Hull responds "Yes, very much." The trial court also asks Hull whether he had been "threatened or coerced in any way to plead guilty" to which Hull responds no.

{¶33} After the court accepted Hull's guilty plea and dismissed the remaining charges, Attorney Ramsey asked the court if it would consider at sentencing any help that Hull offered authorities and restated that Hull's leniency deal fell through based on miscommunications:

{¶34} "like I told you, there [were] miscommunications that I talked about earlier. My client has set certain things in motion to help himself with what I was talking about earlier, * * * [w]ould that be something the Court might consider if [Hull] was able to lead law enforcement to some people who may be involved in drug trafficking?

{¶35} " * * *

{¶36} "THE COURT: Certainly. I mean I'm not promising anything."

{¶37} For the first time at the sentencing hearing, Ramsey also states that Hull's prior conviction for rape was the reason that the police and the prosecutors were not interested in using Hull as an informant.

{¶38} Attorney Goins also spoke on Hull's behalf at sentencing and explained that the police wanted Hull's help, which would have helped Hull, but the state later indicated

that they could not use Hull as an informant because of his "past rape issues." Finally, Hull, speaking at sentencing, also concedes that he was unable to work as a confidential informant based on his past crimes. None of Hull's postconviction petition affidavits mentions Hull's history of rape.

{¶39} Contrary to Hull's argument, he has not demonstrated he was coerced into pleading guilty based on his attorney's poor advice regarding the admissibility of his confession or via the state's false promises. Instead, the record and the affidavits show that Hull's promised leniency was a mere possibility that never came to fruition, evidently through no fault of the state.

{¶40} Moreover, nothing in the record or in Hull's supporting affidavits shows that the state's alleged promises of leniency preceded his confession or if Hull first confessed in an effort to secure some leniency. Hull's affidavit is conclusory in this regard and thus is of no consequence. Broad assertions and general conclusory allegations that a defendant was denied his rights are inadequate to require a postconviction evidentiary hearing. *State v. Jackson*, 64 Ohio St.2d 107, 111, 413 N.E.2d 819 (1980).

{¶41} As for the four remaining affidavits attached to Hull's motion, the trial court finds that none of these four aver that Hull was coerced to plead guilty, and none establishes that had a timely motion to suppress been filed, it would have been granted. We agree. Thus, even if deemed credible and true, the four remaining affidavits are inconsequential.

{¶42} Contrary to Hull's claims, he fails to establish the factual predicate for his first and second claims of ineffective assistance of counsel, i.e. that his attorney's advice was deficient or unreasonable given the circumstances. Even assuming counsel was

deficient in their advice and by failing to timely move to suppress Hull's confession, Hull fails to establish any resulting prejudice. And as stated, there is nothing showing the state's promises of leniency preceded Hull's confession. Thus, the trial court was not required to conduct a hearing on these claims.

Hull's third ineffective assistance of counsel claim

{¶43} Hull's third ineffective assistance of counsel claim contends his trial counsel was deficient for failing to challenge the arresting officer's jurisdiction and had the issue been raised, the evidence would have shown that the officer exceeded his jurisdiction, that the stop was illegal, and thus his convictions were void or voidable.

{¶44} Hull makes a conclusory statement that the officer lacked authority to stop him in his affidavit since the officer was beyond his jurisdiction. Hull asserts that the Willoughby Hills police "lacked statutory authority to stop the defendant on (I-90 West), an interstate highway outside his territorial jurisdiction for a marked lane violation * * *."

{¶45} In the case he cites in support, *State v. Brown*, 143 Ohio St.3d 444, 2015-Ohio-2438, 39 N.E.3d 496, the Ohio Supreme Court affirms an appellate court's decision "that the township police officer lacked authority to enforce a marked lane violation on an interstate highway and that the traffic stop and ensuing search of the vehicle were unreasonable." Thus, suppression of the evidence obtained from that search was warranted. *Id. Brown* held in part:

{¶46} "This statute [R.C. 4513.39] thus precludes township police officers who are not commissioned peace officers from enforcing these traffic laws on any state highway, and commissioned peace officers serving a township with a population of 50,000 or less may not enforce these traffic laws on state highways included in the interstate highway

system. And * * * because the statute precludes township officers from enforcing the listed traffic laws, those officers cannot stop a motorist or make an arrest alleging such a violation." *Id.* at ¶ 17. And "an arrest made in violation of a statute limiting the police officer's authority to make the arrest infringes on '[t]he right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures' as guaranteed by Article I, Section 14 of the Ohio Constitution" and is therefore subject to suppression. *Id.* at ¶ 18.

{¶47} In *Brown*, however, the state admitted that the officer violated the statute by stopping him for a marked lane violation on the interstate. Thus, the Supreme Court agreed that the stop was a violation of the Ohio Constitution and should have been suppressed as a violation of the guarantee against unreasonable searches and seizures. *Id.* at ¶ 26. Hull does not address or acknowledge the exceptions to the exclusionary rule in *Brown*.

{¶48} The factual allegations in Hull's brief are not included in his supporting affidavits. None of the affidavits provide details surrounding his stop sufficient to establish his argument, and none establishes that the arresting officer stopped Hull outside of the officer's jurisdiction, beyond his authority, or in violation of a statute. Thus, even if deemed credible and true, the supporting affidavits are inconsequential.

{¶49} Moreover, Hull leaves this court guessing how *Brown* applies here. His conclusory reliance on this case raises more questions than answers as he was not stopped by a township police officer; he was stopped by a city of Willoughby Hills officer. Hull's reliance on *Brown* fails to detail with argument or analysis how this case applies, and thus this aspect of Hull's appeal fails to comply with App.R. 16(A)(7). *Byers DiPaola*

Castle v. Ravenna City Planning Comm., 11th Dist. Portage No. 2010-P-0063, 2011-Ohio-6095, ¶ 35. It is not this court's function to flesh out an appellant's argument on appeal. *State v. Hall*, 8th Dist. Cuyahoga No. 90365, 2009-Ohio-461, ¶ 40; *TJX Cos., Inc. v. Hall*, 183 Ohio App.3d 236, 2009-Ohio-3372, 916 N.E.2d 862, ¶ 6 (8th Dist.).

{¶50} Finally, Hull agreed that the state's recitation of the facts that it would have presented at trial was accurate during the plea hearing, which included the statement that Hull knowingly transported a controlled substance in Lake County, Ohio, that was intended for sale.

{¶51} Based on the foregoing, Hull fails to show that his counsel was deficient for failing to file a motion to suppress challenging the jurisdiction of the officer who pulled him over or that Hull suffered prejudice as a result.

{¶52} Because Hull fails to establish the factual predicate for any of his three ineffective assistance of counsel claims, the trial court did not abuse its discretion in overruling Hull's postconviction petition without a hearing. R.C. 2953.21(D); *State v. Jackson*, 64 Ohio St.2d 107, 413 N.E.2d 819 (1980).

{¶53} Hull's first and second assigned errors lack merit, and the trial court's decision is affirmed.

MATT LYNCH, J.,

MARY JANE TRAPP, J.,

concur.