

COURT OF APPEALS OF OHIO, NINTH JUDICIAL DISTRICT

State v. Atkinson

2020-Ohio-315 (Ohio Ct. App. 2020) · No. 19CA011466 · Decided February 3, 2020

SUMMARY

The Ninth District Court of Appeals of Ohio affirmed Steven Atkinson’s convictions and aggregate 11-year sentence following his no-contest plea. The court held that Atkinson was not entitled to an evidentiary hearing on his untimely motion to suppress and had not established ineffective assistance of trial counsel. The court also concluded that the record lacked sufficient support to show that a suppression motion would have succeeded.

CASE DETAILS

COURT	Court of Appeals of Ohio, Ninth Judicial District
WRITING FOR THE COURT	Carr, J.; Teodosio, P.J.; Callahan, J.
JURISDICTION	Ohio
DECIDED	February 3, 2020
DOCKET	19CA011466
DISPOSITION	affirmed
PROCEDURAL POSTURE	Atkinson appealed his Lorain County Court of Common Pleas conviction and aggregate eleven-year sentence after entering a no-contest plea. He challenged the denial of a hearing on his motion to suppress and alleged ineffective assistance of trial counsel.
STANDARD OF REVIEW	The court reviewed whether the trial court erred in denying a suppression hearing and whether counsel's performance was deficient and prejudicial under the Strickland standard. The court also applied App.R. 16(A)(7) to arguments inadequately developed on appeal.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals decision; precedential within the applicable Ohio appellate framework.
PARTIES	Steven Atkinson v. State of Ohio

TOPICS

- suppression of evidence
- fourth amendment
- warrant requirement
- ineffective assistance
- criminal procedure

PRACTICE AREAS

criminal procedure

constitutional criminal procedure

ineffective assistance of counsel

search and seizure

QUESTIONS PRESENTED

1. Whether the trial court erred by failing to hold an evidentiary hearing on Atkinson's untimely motion to suppress.
2. Whether Atkinson received ineffective assistance of trial counsel based on counsel's failure to timely move to suppress, seek leave to file an untimely suppression motion, compel discovery, and challenge the alleged trash pulls and residence location.

HOLDINGS

1. The trial court did not err in denying an evidentiary hearing. Atkinson's motion for reconsideration did not provide good cause for the untimely filing, and his Franks claim lacked the specific allegations and offer of proof required to overcome the warrant affidavit's presumption of validity.
2. Atkinson failed to establish ineffective assistance of counsel because he did not demonstrate either deficient performance resulting in a legally cognizable suppression claim or a reasonable probability that the outcome would have been different.

KEY QUOTATIONS

“To mandate an evidentiary hearing, the challenger’s attack must be more than conclusory and must be supported by more than a mere desire to cross-examine.” (§ 11)

“In order to prevail on a claim of ineffective assistance of counsel, Atkinson must show that trial “counsel’s performance fell below an objective standard of reasonableness and that prejudice arose from counsel’s performance.”” (§ 15)

FACTUAL BACKGROUND

The State charged Atkinson with multiple drug and weapons-related offenses supported by search warrants. Although defense counsel obtained an order requiring production of the search warrants and affidavits, counsel filed the suppression motion after the applicable deadline and did not seek leave to file it out of time or provide a reason for the delay. The motion alleged that the warrant affidavit was deficient under *Franks v. Delaware* but did not identify specific false statements, provide an offer of proof, or include supporting affidavits or reliable statements. The search warrants and affidavits were not included in the appellate record.

PROCEDURAL HISTORY

Atkinson was indicted on nine counts, including drug-trafficking, drug-possession, tampering with evidence, having weapons while under disability, possessing criminal tools, and obstructing official business, with major-drug-offender and forfeiture specifications. His motion to suppress was initially denied as untimely; the trial court later granted reconsideration, ruled on the merits, and denied suppression without an evidentiary hearing. After entering a no-contest plea, Atkinson was sentenced to an aggregate eleven years. The appellate court

previously remanded for clarification of whether the plea was guilty or no contest, then affirmed the judgment after the record was corrected.

DISPOSITION

affirmed

CASES CITED

- State v. Pelsozy, 9th Dist. Summit No. 23297, 2007-Ohio-148, ¶¶ 4-8
- State v. Hamilton, 9th Dist. Lorain No. 17CA011238, 2019-Ohio-1829, ¶¶ 29-33
- Franks v. Delaware, 438 U.S. 154 (1978)
- State v. Roberts, 62 Ohio St. 2d 170, 177-178 (1980)
- State v. Jackson, 9th Dist. Lorain No. 14CA010593, 2015-Ohio-3520, ¶ 10
- State v. Cubic, 9th Dist. Medina No. 09CA0005-M, 2009-Ohio-5051, ¶ 12
- State v. Reynolds, 80 Ohio St. 3d 670, 674 (1998)
- Strickland v. Washington, 466 U.S. 668, 687 (1984)
- State v. Keith, 79 Ohio St. 3d 514, 534 (1997)
- State v. Payne, 9th Dist. Lorain No. 18CA011383, 2019-Ohio-4218, ¶ 25
- State v. Anderson, 9th Dist. Summit No. 26600, 2013-Ohio-2786, ¶ 11