

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

STATE OF OHIO,	:	APPEAL NO. C-170036
Plaintiff-Appellee,	:	TRIAL NO. B-1500828-A
vs.	:	<i>JUDGMENT ENTRY.</i>
SHAWN ALLEN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Shawn Allen presents on appeal two assignments of error challenging the Hamilton County Common Pleas Court’s judgment overruling, without a hearing, his “Petition to Vacate Judgment and Sentence (R.C. 2953.21) In the Alternative Motion to Withdraw Plea.” We overrule the assignments of error and affirm the court’s judgment.

In 2015, Allen was convicted upon guilty pleas to aggravated robbery and to involuntary manslaughter, reduced from the charged offense of murder, along with a firearm specification. The trial court imposed consecutive prison sentences totaling 18 years. We affirmed his convictions on direct appeal. *State v. Allen*, 1st Dist. Hamilton No. C-150769, 2016-Ohio-5258, *appeals not accepted*, 148 Ohio St.3d 1426, 2017-Ohio-905, 71 N.E.3d 298.

In the postconviction motion from which this appeal derives, Allen sought relief from his convictions under R.C. 2953.21 or, alternatively, to withdraw his guilty pleas under Crim.R. 32.1, on grounds that his trial counsel had been constitutionally ineffective in investigating his case, in persuading Allen to accept the state’s plea offer by

misrepresenting that his murder charge would be reduced to drug trafficking and that he would receive a six-year prison sentence, in simultaneously representing the conflicting interests of Allen and a state's witness, in presenting mitigation during sentencing, in agreeing that the offenses were not subject to merger under R.C. 2941.25, and in refusing to move to withdraw the pleas after sentencing.

The record of the proceedings at Allen's plea and sentencing hearings contradict his self-serving statements in his affidavit that his guilty pleas had been the unknowing, unintelligent, and involuntary product of his trial counsel's ineffectiveness in counseling those pleas. *See State v. Calhoun*, 86 Ohio St.3d 279, 284-285, 714 N.E.2d 905 (1999). And the common pleas court cannot be said to have abused its discretion in discounting the credibility of Allen's mother's affidavit concerning trial counsel's alleged deficiencies in advising Allen to plead, when, as his mother, she was presumably interested in the success of his postconviction motion, and when the common pleas court judge reviewing the motion had also presided at his plea and sentencing hearings. *See id.* *See also State v. Mynatt*, 1st Dist. Hamilton Nos. C-100298 and C-100319, 2011-Ohio-1358, ¶ 18-20 (holding that the *Calhoun* factors may be applied to assess the credibility of affidavits submitted in support of, and thus to determine the need for an evidentiary hearing on, a Crim.R. 32.1 motion to withdraw a guilty plea).

Allen also failed to substantiate his claim that he had been denied his right to conflict-free assistance of counsel by his trial counsel's simultaneous representation of an individual named Gary Young on unrelated charges. The record before us does not, as Allen insisted, show that Young was listed as a witness in the state's discovery response. Nor did Allen otherwise demonstrate that his trial counsel had represented conflicting interests. *See State v. Manross*, 40 Ohio St.3d 180, 182, 532 N.E.2d 735 (1988) (holding that "[a] lawyer represents conflicting interests when, on behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose").

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Finally, Allen failed to demonstrate outcome-determinative deficiencies in trial counsel's performance during and after sentencing. *See 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). The record contradicts Allen's claim that his trial counsel had been deficient in presenting the case in mitigation of sentence. The record supports the trial court's express determination that Allen's offenses were not subject to merger under R.C. 2941.25 because they had been committed with a separate animus. And the evidence offered in support of Allen's motion cannot be said to demonstrate a reasonable likelihood of success on a postsentence motion to withdraw his guilty pleas.

Because Allen failed to sustain his burden of submitting evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief, we hold that the common pleas court properly denied, without a hearing, postconviction relief under R.C. 2953.21. *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). In the absence of credible evidence demonstrating that the withdrawal of Allen's guilty pleas was necessary to correct a manifest injustice, we cannot say that the common pleas court abused its discretion in denying relief under Crim.R. 32.1. *See Crim.R. 32.1; State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraphs one and two of the syllabus. Accordingly, we affirm the court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on January 26, 2018

per order of the court _____.

Presiding Judge