

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

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| STATE OF OHIO, | : | APPEAL NOS. C-170217 |
| | | C-170218 |
| Plaintiff-Appellee, | : | TRIAL NOS. C-15CRB-28085A |
| | | C-15CRB-28085B |
| vs. | : | |
| | | <i>JUDGMENT ENTRY.</i> |
| ELENA HAMMOCK, | : | |
| 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.

Following a bench trial, defendant-appellant Elena Hammock was convicted of disorderly conduct, a fourth-degree misdemeanor, and resisting arrest, a second-degree misdemeanor. She was sentenced to 24 days in jail. She now appeals, bringing forth three assignments of error for our review. Finding no merit in the assignments, we affirm the trial court's judgment.

In her first assignment of error, Hammock argues that the trial court erred by failing to dismiss the charges against her.

R.C. 2945.38(H)(4) mandates that a trial court dismiss charges against a defendant where the court has found that the defendant is incompetent to stand trial and the maximum time for treatment relative to those offenses has expired. R.C.

2945.38(C) provides that no defendant shall be required to undergo treatment, including any continuing evaluation and treatment, for longer than 60 days if the most serious offense with which the defendant is charged is a misdemeanor of the first or second degree.

Although defense counsel informed the municipal court that Hammock had been found incompetent to stand trial on a related felony charge in the common pleas court, defense counsel never filed a motion for a finding of incompetency in this case. Thus, the municipal court never made a determination that Hammock was incompetent to stand trial on the misdemeanor charges. Because that determination was never made, the municipal court had no basis to dismiss the charges against Hammock under R.C. 2945.38(H)(4). Accordingly, the first assignment of error is overruled.

In her second assignment of error, Hammock contends that she received ineffective assistance of counsel because defense counsel failed to raise the issue of Hammock's competency to stand trial. We overrule this assignment of error. Even if we presume that defense counsel's performance fell below a reasonable standard of representation, Hammock has not demonstrated how she was prejudiced. If Hammock had been found incompetent and circumstances arose where the trial court was required to dismiss the charges against her, the state could refile the charges against Hammock. R.C. 2945.38(H)(4); *see, e.g., State v. Stanley*, 121 Ohio App.3d 673, 700 N.E.2d 881 (1st Dist.1997) (the state may reindict on the same charges that had previously been dismissed because defendant was found incompetent to stand trial).

Because Hammock has not demonstrated prejudice from defense counsel's representation, we overrule the second assignment of error. *See Strickland v.*

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Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 143, 538 N.E.2d 373 (1989).

We also overrule her final assignment of error, in which she challenges the sufficiency and weight of the evidence underlying her convictions. Viewing the evidence in a light most favorable to the state, we hold it was sufficient to support her convictions for resisting arrest and disorderly conduct. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991). Further, the trial court did not lose its way and create a manifest miscarriage of justice by finding Hammock guilty of the charged offenses. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

Accordingly, the judgment of the trial court is affirmed.

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

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

To the clerk:

Enter upon the journal of the court on June 13, 2018

per order of the court _____.
Presiding Judge