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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO
Plaintiff

JEREMIAH MORTON
Defendant

Case No: CR-19-636658-A

Judge: CASSANDRA COLLIER-WILLIAMS

INDICT: 2907.02 RAPE
2907.02 RAPE
2907.02 RAPE
ADDITIONAL COUNTS...

JOURNAL ENTRY

**FINDINGS OF FACT AND CONCLUSIONS OF LAW. OSJ. **

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Judge Signature Date

HEAR
07/03/2025

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, Plaintiff/Respondent, v. JEREMIAH D. MORTON, Defendant/Petitioner.	)	CASE NO. CR-19-636658-A **JUDGE CASSANDRA COLLIER-WILLIAMS** **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

JUDGE C. COLLIER-WILLIAMS:

This matter is before the Court on Defendant's Petition for Postconviction Relief, filed December 23, 2020, and an Amended Petition for Post-Conviction Relief, filed on June 5, 2023. Pursuant to the Findings of Fact and Conclusions of Law set forth below, said petition is **DENIED**.

I. PROCEDURAL HISTORY

On February 5, 2019, a Cuyahoga County Grand Jury indicted Jeremiah Morton (hereinafter referred to as "Defendant" and/or "Petitioner") with two counts of Rape, in violation of R.C. 2907.02(A)(2), two counts of Rape, in violation of R.C. 2907.02(A)(1)(c), Kidnapping with a Sexual Motivation Specification in violation of R.C. 2905.01(A)(4) and R.C. 2941.147(A), and Aggravated Burglary, in violation of R.C. 2911.11(A)(1). The Defendant pled not guilty. On September 23, 2019, the matter went to a trial by jury, and the Defendant was convicted on all Counts including the sexual motivation specification.

On October 17, 2019, the parties appeared for sentencing. Count 2 merged into Count 1. Count 4 merged into Count 3. Counts 5 and 6 merged into Count 1. The State elected to sentence on Counts 1 and 3. The Court imposed a prison sentence of 20 years to include 10 years on Count 1 and 10 years on Count 3 to be served consecutively.

The Defendant filed a direct appeal and claimed that he received ineffective assistance of trial counsel and that the cumulative effect of trial counsel's errors deprived him of a fair trial. *State v. Morton*, 8th Dist. Cuyahoga No. 109200, 2021-Ohio-581, ¶ 1. His conviction and sentence were affirmed in an opinion journalized on March 4, 2021. *Id.* The Defendant then appealed to the Ohio Supreme Court, which declined to accept jurisdiction. *State v. Morton*, 164 Ohio St. 3d 1403, 2021-Ohio-2742, 172 N.E.3d 169.

The Defendant applied to reopen the judgement in *State v. Morton*, 8th Dist. Cuyahoga No. 109200, 2021-Ohio-581 claiming that Appellate counsel was ineffective for failing to argue that his convictions are against the manifest weight of the evidence. *State v. Morton*, 8th Dist. Cuyahoga No. 109200, 2021-Ohio-3468, ¶ 5. The application was denied in an opinion journalized on September 27, 2021. *Id.*

The Defendant once again appealed to the Ohio Supreme Court, which again declined to accept jurisdiction. *State v. Morton*, 164 Ohio St. 3d 1403, 2021-Ohio-2742, 172 N.E.3d 169.

While the direct appeal was pending, Jeremiah Morton filed a petition for post-conviction relief in Court of Appeals Case No. CA-19-109200 on December 23, 2020. He then filed a petition for post-conviction relief in the Trial Court under Case No. CR-19-636658 on December 26, 2020. In his Petition, he alleged that his trial counsel was ineffective for not using body camera footage at trial. Along with his Petition, the Defendant filed a "Request for Leave to File Petition For Post-Conviction Relief." The trial court granted leave to file the petition for post-conviction relief on

January 6, 2021. The State filed instanter a Motion to Dismiss arguing the petition was untimely and did not prove a substantive claim for relief. The Court denied the petition in an entry journalized on October 1, 2021.

The Defendant appealed and argued the trial court erred in dismissing his petition without issuing Findings of Fact and Conclusions of Law. The State responded by arguing that the Petition was untimely filed and that the trial court did not have jurisdiction to grant leave to file a second petition. In a 2-1 decision, the Court of Appeals determined the filing was timely and the trial court "erred in denying Morton's petition for postconviction relief without issuing findings of fact and conclusions of law." *State v. Morton*, 8th Dist. Cuyahoga No. No. 110946, 2022-Ohio-2358, ¶ 24 (S. Gallagher, J. dissenting). The State applied for reconsideration and en banc consideration, which was denied on July 19, 2022 and January 17, 2023, respectively. The State appealed to the Ohio Supreme Court, which declined to accept jurisdiction on May 23, 2023. *State v. Morton*, 170 Ohio St. 3d 1429, 2023-Ohio-1665, 209 N.E.3d 716.

On June 5, 2023, Petitioner filed a motion for leave to amend his petition for post-conviction relief and contemporaneously filed an amended petition for post-conviction relief. The amended petition did not raise new claims, but instead "contains the same core substantial argument as initially raised, but is amended in form and includes additional narrative, argument, and evidence[.]" Petitioner's Motion for Leave, p. 2. The Court granted leave on June 29, 2023. The Court makes the following Findings of Fact:

II. FINDINGS OF FACT

In the early afternoon of December 11, 2018, G.R., Z.A. and A.S., walked to a Metro PCS cellular phone store to purchase a new phone for Z.A. (Tr. 511, 558, 636). G.R. and Z.A. have

developmental disabilities, while A.S. has significant psychiatric challenges. (Tr. 308, 509, 556, 633). It was at this Metro PCS store that, G.R., Z.A., and A.S. met Petitioner. (Tr. 513, 561, 636).

At the Metro PCS store, Petitioner introduced himself as "Tony," and told Z.A. that he could get a deal on Z.A.'s phone. (Tr. 314, 340, 400, 513, 561, 585, 635-636). That deal never occurred. (Tr. 514, 636). After tagging along with G.R., Z.A., and A.S., Petitioner, without G.R.'s permission, entered G.R.'s residence. (Tr. 339, 517-518, 642).

G.R.'s residence is in an assisted-living apartment complex, which the Cuyahoga County Board of Developmental Disabilities ("CCBDD") manages. (Tr. 337, 643, 659). At G.R.'s residence, the Petitioner began to clean G.R.'s residence, and offered to make dinner. (Tr. 518-519, 589, 640).

Later that day, M.D., a friend of G.R. and Z.A., and another CCBDD resident, came over to visit G.R. and Z.A. (Tr. 344). M.D. testified that she felt uncomfortable around Petitioner and asked the others if they knew Petitioner. (Tr. 344). The group answered that Petitioner had just come home with the group. (Tr. 640).

M.D. testified that Petitioner asked M.D., A.S., and Z.A. whether any of them had ever "f*cked a black guy before." (Tr. 345). A.S., also testified that upon meeting Petitioner, Petitioner asked A.S. whether she had ever had sex with a black man. (Tr. 561, 638). Thereafter, M.D. felt uncomfortable and left G.R.'s apartment. (Tr. 345).

Later in the evening, after Petitioner had purchased and served alcohol to the group, the victim, T.B., arrived at G.R.'s residence. (Tr. 406, 519, 520, 644). T.B. is a 27-year-old female with Asperger's Syndrome. (Tr. 308, 404). Her mother drove her to G.R.'s residence. When she arrived, the Petitioner began mixing drinks for T.B. (Tr. 412, 522, 570-571, 645). T.B. consumed

two vodka drinks. (Tr. 413). These drinks contained shots that were a little "bigger than an average shot." (Tr. 570-571).

T.B. testified that she gets drunk really easily, and she felt "really tired and drunk." (Tr. 406, 413, 418). T.B. testified that she believed that the alcohol combined with her Zoloft medication increased her level of intoxication. (Tr. 406). She further testified that she "couldn't really walk good" and "almost fell over." (Tr. 413). Petitioner asked T.B. if she wanted to talk to him in the bathroom. (Tr. 413-414). T.B. testified that Petitioner "helped me up and helped me walk to the bathroom." (Tr. 414). Witnesses testified that Petitioner had to help T.B. to the bathroom. (Tr. 414, 524, 573-574, 647). G.R., Z.A., and A.S. all testified that they tried to stop Petitioner from taking T.B. into the bathroom, but Petitioner told G.R. that Petitioner and T.B. were adults and were just going to talk. (Tr. 521, 572, 647-648).

Upon entering the bathroom, T.B. testified that the Petitioner shut the bathroom door, but she was unsure if he locked it. (Tr. 416-417). T.B., who was 122 pounds in weight and five foot six inches in height sat down on the toilet. (Tr. 417-418). Petitioner, who was 240 pounds in weight and six foot two inches in height, stood in front of the bathroom door, unzipped his pants, and pulled out his penis. (Tr. 417, 691-692). T.B. testified that the Petitioner pulled his pants down and told her to kiss his penis. She further testified that that she told him she did not want to do that, and that she submitted only after he repeatedly told her to do it. (Tr. 416-419). T.B. testified that the Petitioner "did not force [his penis] into my mouth" but that she performed oral sex because she wanted to leave the bathroom. (Tr. 443). T.B. testified that she stood up after oral sex and told the Petitioner that she did not want to have sex with him, but that he pulled down her pants and said "oh, just a taste and then he started trying to have sex with me." (Tr. 420). T.B. testified that the sex hurt, that she told him it hurt, and that he stopped after she told him it hurt. (Tr. 421). T.B

testified that the Petitioner did not physically threaten her with violence during this interaction but that he physically moved her around the bathroom. (Tr. 451).

T.B. also testified that she felt uncomfortable and scared. (Tr. 418). She "didn't want to be in that room anymore" and "really wanted to leave." She testified that she was afraid to leave and, in fact, felt as if she could not leave (Tr. 425-426).

Upon leaving the bathroom, both Petitioner and T.B. learned that M.D. had called the police. (Tr. 347, 423, 525, 649). Two Cleveland patrol officers entered G.R.'s apartment and questioned all occupants together in the room, including Petitioner and T.B. (Tr. 424, 649). The Petitioner gave the police a false name and false identification information. (Tr. 314, 690). The police escorted Petitioner out of G.R.'s residence. (Tr. 314, 425, 526-527, 577-578, 650, 690).

After the patrol officers left, M.D. and T.B discussed what occurred between T.B. and Petitioner in the bathroom. (Tr. 426-427). G.R. testified that T.B. was crying and shaking. (Tr. 651). Thereafter, M.D. again called the police. (Tr. 298, 348, 427, 651). A second set of Cleveland patrol officers arrived at G.R.'s residence. (Tr. 295, 349, 427, 579, 651). There, the patrol officers spoke with T.B. privately. (Tr. 441-442). T.B.'s conversation with these officers was recorded on body camera. (Tr. 442; 316-317). T.B. testified that she told the officers that she "wasn't sure if it was actually rape or it if was just rapey" and that she was "scared of … like getting in trouble with my parents and stuff … and making them worry." (Tr. 442).

After speaking with T.B., the patrol officers requested an ambulance to transport T.B. to Fairview Hospital for a sexual assault examination. (Tr. 309, 349, 427, 528, 580, 652).

Trial counsel extensively cross-examined T.B. regarding her statements to police during the second encounter. T.B. testified that she did not recall if she had told the officers on scene that the Petitioner did not restrain, grab, or hold her in any way (Tr. 443), and testified that she did not

tell the police that the Petitioner physically moved her around with his hands. (Tr. 461). T.B. testified that she never told the police that the Petitioner had stopped her from leaving, held her down, or threatened her with violence. (Tr. 450-451). While Trial counsel referenced body camera videos, he did not play them.

Having reviewed the record, file, and the arguments made by both the Defendant/Petitioner and the State of Ohio, this Court reaches the following **Conclusions of Law.**

III. CONCLUSIONS OF LAW

Pursuant to R.C. 2953.21, any person who has been convicted of a criminal offense and who claims that there was such a denial or infringement of that person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States, may file a petition in the court that imposed a sentence asking the court to vacate or set aside the judgment or sentence. Where a petition for post-conviction relief fails to allege facts which, if proved, would entitle the petitioner to relief, the trial court may so find and summarily dismiss the petition. *State v. Rakoczy*, 8th Dist. Cuyahoga 2002-Ohio-6646 (8th Dist.). Before granting a hearing, the court shall determine whether there are substantive grounds for relief pursuant to R.C. 2953.21(D).

The Petitioner presents one ground for relief: Ineffective Assistance of Counsel.

A. Ineffective Assistance of Counsel

The sole issue raised by the Defendant in his Amended Petition for Post-Conviction Relief is that the Defendant was denied his 6th and 14th Amendment right to due process and effective assistance of counsel when trial counsel failed to present exculpatory body camera footage to the

jury in the absence of any tactical or strategic justification for doing so. Before going any further, this Court must first determine if the Petitioner's petition is barred under the doctrine of res judicata.

"Postconviction review is a narrow remedy, since res judicata bars any claim that was or could have been raised at trial or on direct appeal." *State v. Steffen*, 70 Ohio St.3d 399, 410 (1994). "Res judicata is applicable in all postconviction proceedings." *State v. Szefcyk*, 77 Ohio St.3d 93, 95 (1996). "Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment." *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus. "[A]ny issue that could have been raised on direct appeal and was not is res judicata and not subject to review in subsequent proceedings." *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, ¶ 16.

"The usual formulation of res judicata in postconviction proceedings is that it bars the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal. Res judicata does not, however, apply only to direct appeals, but to all postconviction proceedings in which an issue was or could have been raised." *State v. Montgomery*, 2013-Ohio-4193, 997 N.E.2d 579, ¶ 42 (8th Dist.) (citation omitted). Accordingly, "[r]es judicata applies to bar raising piecemeal claims in successive motions filed after the defendant is convicted." *State v. Battin*, 10th Dist. No. 18AP-888, 2019-Ohio-2195, ¶ 13. A defendant is barred from filing an initial motion/petition and then filing a subsequent motion/petition raising a claim that could have been raised in the earlier filing. *Montgomery*, ¶¶ 42-43.

The petition in this case includes a single claim that trial counsel was ineffective for not presenting the jury body camera video. This claim was raised and rejected on direct appeal as described below:

> The final instance of alleged ineffectiveness of his counsel Morton cites is counsel's failure to introduce exculpatory and mitigating evidence. Specifically, Morton challenges counsel's decision to not admit the police body-camera footage despite referring to it on cross-examination of T.B. and during closing argument. The record reflects that counsel questioned T.B. on cross-examination about how her trial testimony differed from what she initially told the police during her second encounter with them that day. Counsel got her to admit the most relevant inconsistency: that she told the police on the scene that she did not believe Morton had raped her.
>
> Thus, in light of the above, we do not find that any of Morton's contentions of instances of his counsel performing ineffectively to be with merit. The first assignment of error is overruled.

State v. Morton, 2021-Ohio-581, ¶ 12, 28, 43-44.

Consequently, the Court finds res judicata precludes relief since the petitioner raised, or could have raised, the argument in his direct appeal and the trial transcript sufficed for raising the claim.

Furthermore, even if res judicata did not preclude relief, the Petitioner has failed to demonstrate that his ineffective-assistance-of-counsel claim solely depends on the body camera video. The following was noted by the dissent in his second appeal.

> Further, even if I were inclined to tread new ground by creating an exception contrary to the unambiguous jurisdictional requirement under R.C. 2953.21(A) given the combined nature of the clerk of courts as between the common pleas court and the appellate court, this would not be the case. Morton's petition for postconviction relief asserts a single claim of ineffective assistance of counsel based on defense counsel's failure to show the jury a video that was repeatedly referenced at trial. Morton has not explained in his untimely petition how review of the actual video was necessary to prosecuting that ineffective-assistance-of-counsel claim in the direct appeal. *See State v. Cole*, 2 Ohio St.3d 112, 114, 2 Ohio B. 661, 443 N.E.2d 169 (1982) (res judicata precludes relief under a petition for postconviction relief unless the defendant can demonstrate that the

> ineffective-assistance-of-counsel claim solely depends on evidence outside of the record). In *State v. Morton*, 8th Dist. Cuyahoga No. 109200, 2021-Ohio-581, ¶ 12, the assigned errors included a claim of ineffective assistance of counsel relating to the handling of the trial, which could have included his latest claim. *State v. Lentz*, 70 Ohio St.3d 527, 529, 1994- Ohio 532, 639 N.E.2d 784 (1994). He is precluded from raising this claim anew in the petition for postconviction relief since he could have included that argument within his direct appeal. *See, e.g., State v. Grate*, 164 Ohio St. 3d 9, 2020-Ohio-5584, 172 N.E.3d 8, ¶ 147 (overruling defendant's claim that counsel failed to present evidence in the direct appeal of defendant's conviction); *State v. Jones*, 8th Dist. Cuyahoga No. 102260, 2016-Ohio-688, ¶ 25 (overruling ineffective-assistance-of-counsel claim challenging the failure to introduce mitigating evidence in a direct appeal from the conviction).

State v. Morton, 2022-Ohio-2358, ¶ 34 (S. Gallagher dissenting).

The standard of review for ineffective assistance of counsel requires a two-part test and is set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). First, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Strickland* at 687-688. The defendant must then show that "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." *Id.* at 694. Trial counsel is strongly presumed to have rendered adequate assistance. *Strickland* at 699.

"Trial strategy or tactical decisions cannot form the basis for a claim of ineffective counsel." *State v. Foster*, 8th Dist. Cuyahoga No. 93391, 2010-Ohio-3186, ¶ 23, citing *State v. Clayton*, 62 Ohio St.2d 45, 402 N.E.2d 1189 (1980). Additionally, the failure to do a futile act cannot be the basis for claims of ineffective assistance of counsel, nor could such a failure be prejudicial. *State v. Kilbane*, 8th Dist. Cuyahoga No. 99485, 2014-Ohio-1228, ¶ 37; *see also State v. Henderson*, 8th Dist. Cuyahoga No. 88185, 2007-Ohio-2372.

The test for ineffectiveness is an objective one, i.e., whether the trial counsel acted outside the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 688-90. The

defendant "must establish that no competent counsel would have taken the action that his counsel did take." *Chandler v. United States*, 218 F.3d 1305, 1314 (11th Cir. 2000); see also *Bullock v. Carver*, 297 F.3d 1036, 1048-49 (10th Cir. 2002). "Such decisions only become deficient – that is, incompetent – when no reasonable counsel would have made the same choice at the time." *Moody v. United States*, 958 F.3d 485, 492 (6th Cir.2020).

"[E]ven if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that no competent lawyer would have chosen." *Dunn v. Reeves*, 141 S.Ct. 2405, 2410 (2021); *Premo v. Moore*, 562 U.S. 115, 124 (2011) (must show that "no competent attorney would think a motion to suppress would have failed, which is the relevant question under *Strickland*").

"Surmounting *Strickland*'s high bar is never an easy task." *Harrington v. Richter*, 562 U.S. 86, 105 (2011) (quoting another case). "[T]he standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge." Id. "The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom." Id. "Rare are the situations in which the 'wide latitude counsel must have in making tactical decisions' will be limited to any one technique or approach." Id. at 106. "[T]here is no expectation that competent counsel will be a flawless strategist or tactician." Id. at 110.

In the instant case, the Petitioner criticizes his trial counsel's decision not to show body camera footage of T.B.'s first interaction with the police during cross-examination of T.B. Regardless of why trial counsel did not show the body cam video, it is very clear that he cross

examined T.B. and the police regarding the bodycam and the alleged inconsistent statements made by T.B. "The extent and scope of cross-examination clearly fall within the ambit of trial strategy, and debatable trial tactics do not establish ineffective assistance of counsel." *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 146. The Court of Appeals determined trial counsel effectively cross-examined T.B. regarding alleged inconsistent statements and argued those inconsistencies to the jury. *State v. Morton*, 2021-Ohio-581, ¶ 43. Furthermore, in his Closing Argument trial counsel argued about the existence of the bodycam and what the bodycam showed. The Court of Appeals found that the Petitioner failed to demonstrate that his counsel's representation fell below an objective standard of reasonableness. Id.

This Court agrees that Petitioner failed to demonstrate that his counsel's representation fell below an objective standard of reasonableness. Counsel thoroughly and effectively cross-examined T.B. regarding the subject matter of this petition. Therefore, trial counsel was not incompetent.

But even if a defendant shows that his counsel was incompetent, the defendant must then satisfy the second, "actual prejudice" prong of the *Strickland* test, showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "*Strickland* asks whether it is 'reasonably likely' the result would have been different." *Harrington v. Richter*, 562 U.S. 86, 111 (2011). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more probable-than-not standard is slight and matters 'only in the rarest case.'" Id. at 111-12. "The likelihood of a different result must be substantial, not just conceivable." Id. at 112.

The Court finds the Petitioner failed to demonstrate actual prejudice.

The Court of Appeals has already determined that the Petitioner was not prejudiced by the failure of trial counsel to introduce a police officer's body camera video at trial. *State v. Morton*, 2021-Ohio-581, ¶ 12, 28, 43-44. As noted in the direct appeal, trial counsel "got [T.B.] to admit the most relevant inconsistency: that she told the police on the scene that she did not believe the Petitioner had raped her." *State v. Morton*, 2021-Ohio-581, ¶ 43. The jury saw and heard T.B. testify. The content of the bodycam was in fact before the jury via the testimony of T.B. and the police.

T.B. also testified that she did not want to engage in sex with the Petitioner; none of the sexual acts were consensual; and she repeatedly told Petitioner no. T.B. testified that she acquiesced to Petitioner's pressure for oral sex because she said "didn't know if he would have gotten violent if I did keep telling him no and refusing." She acquiesced because she "just wanted him to leave me alone." *See State v. Rosa*, 8th Dist. Cuyahoga No. No. 108051, 2019-Ohio-4888, ¶22 ("the victim submitted to the sexual conduct because she believed that was her only means to escape him and any additional acts of violence").

The Petitioner's arguments do not take into consideration the statutory elements of R.C. 2907.02(A)(1)(c). Unlike subsection (A)(2), which criminalizes sex "when the offender purposely compels the other person to submit by force or threat of force," subsection (A)(1)(c) prohibits sex with a person who's "ability to resist or consent is substantially impaired because of a mental or physical condition[.]" In other words, R.C. 2907.02(A)(1)(c) did not require proof of T.B.'s lack of consent because she was unable to resist or consent.

Despite any alleged inconsistencies and impeachment, there was substantial evidence from which the jury could reasonably conclude that the State of Ohio had proven all the elements beyond a reasonable doubt, and therefore find Defendant guilty of the offenses charged. *See*, e.g., *State v. J.A.*, 8th Dist. Cuyahoga No. 107182, 2020-Ohio-484, ¶ 11.

Consequently, this Court finds that res judicata prevents the relief sought in this postconviction Petition. But even if res judicata did not bar relief, this Court finds that the Petitioner has not satisfied the *Strickland* tests, and therefore the petition is denied.

B. Petitioner Is Not Entitled to a Hearing

The Petitioner has requested a hearing on his Post Conviction Petition. While the Petitioner could be given a hearing on his petition, "a criminal defendant seeking to challenge his conviction through a petition for postconviction relief is not automatically entitled to a hearing." *State v. Calhoun*, 86 Ohio St.3d 279, 282-83 (1999). "[T]he trial court has a statutorily imposed duty to ensure that the petitioner adduces sufficient evidence to warrant a hearing." *State v. Cole*, 2 Ohio St.3d 112, 113 (1982). Before a defendant can obtain a hearing, the defendant must provide evidentiary documentation setting forth specific operative facts to support his claims. *See State v. Kapper*, 5 Ohio St.3d 36 (1983); *State v. Pankey*, 68 Ohio St.2d 58 (1981); *State v. Jackson*, 64 Ohio St.2d 107 (1980).

"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." *State v. Broom*, 146 Ohio St.3d 60, 2016-Ohio-1028, ¶ 29. The evidentiary materials must support each element of the asserted constitutional claim. *See Jackson*, 64 Ohio St.2d at 111. "A defendant advancing a post-conviction petition is required to present evidence which meets a minimum level of cogency to support his or

her claims. A petitioner's self-serving affidavit generally does not meet his or her minimum level of cogency." *State v. McGee*, 5th Dist. No. CT2019-0063, 2019-Ohio-4569, ¶ 24 (citation omitted). A defendant's "own self-serving affidavit alleging a constitutional deprivation will not compel a hearing." *State v. Combs*, 100 Ohio App.3d 90, 98 (1st Dist. 1994).

The standard for determining whether a hearing is warranted is not the standard set forth under Civ.R. 12(B)(6). "[A] dismissal of a petition for postconviction relief pursuant to R.C. 2953.21 is distinguishable from a dismissal under Civ.R. 12(B)." *State v. Zerla*, 10th Dist. No. 96AP-1583 (1997); *State v. Conway*, 10th Dist. No. 05AP-76, 2005-Ohio-6377, ¶ 11 (citing *Zerla*); *State v. Lawson*, 103 Ohio App.3d 307, 313 (12th Dist. 1995); *State v. Reuschling*, 11th Dist. No. 2008-A-0004, 2008-Ohio-4970, ¶ 22. The evidentiary documentation must support each element of the constitutional claim; mere notice pleading is not enough. The trial court can assess the credibility of the defendant's evidentiary documentation, determine that such documentation lacks credibility, and thereby dismiss the petition without an evidentiary hearing. *Calhoun*, supra.

WHEREFORE, after review of all relevant documents, the Court finds that there was no ineffective assistance of counsel, due process violation, or substantive grounds for relief to entitle Mr. Morton to a hearing.

Consequently, for all the above reasons, Defendant Jeremiah Morton's Amended Petition for Post-Conviction Relief filed June 5, 2023, is hereby **DENIED**.

IT IS SO ORDERED.

7/3/2025
DATE

Cassandra Collier Williams
JUDGE CASSANDRA COLLIER-WILLIAMS