

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

STATE OF OHIO,	:	APPEAL NO. C-200303
Respondent-Appellee,	:	TRIAL NO. B-1603911
vs.	:	<i>JUDGMENT ENTRY.</i>
ERNEST CEPHAS,	:	
Petitioner-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.

Petitioner-appellant Ernest Cephas appeals the Hamilton County Common Pleas Court’s judgment denying his petition under R.C. 2953.21 for postconviction relief. We affirm the court’s judgment.

In 2018, Cephas was convicted upon jury verdicts finding him guilty on two counts of felonious assault and a single count of having weapons while under a disability, in connection with the drive-by shooting of Timothy Reed and his two-year-old grandson. Cephas unsuccessfully challenged his convictions on direct appeal and in a timely filed postconviction petition. *See State v. Cephas*, 1st Dist. Hamilton No. C-180105, 2019-Ohio-52, *appeal not accepted*, 155 Ohio St.3d 1423, 2019-Ohio-1421, 120 N.E.3d 868.

In this appeal, Cephas presents five assignments of error that restate his postconviction claims and thus may fairly be read together to challenge the denial of his postconviction petition without an evidentiary hearing. We overrule the assignments of

error, because the common pleas court did not abuse its discretion in denying postconviction relief based on those claims.

In his petition, Cephas claimed that he had been denied the effective assistance of counsel at trial. Counsel, Cephas asserted, should have had his shirt and car tested for gunshot residue, should have secured testimony at trial by victim Timothy Reed, who did not identify Cephas as the shooter, should have challenged the lack of a warrant or probable cause for his arrest, and should have informed him of the state's plea offer.

Relief from a criminal conviction may be granted under the postconviction statutes upon proof of a constitutional violation during the proceedings resulting in that conviction. *See* R.C. 2953.21(A)(1); *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1st Dist.1993). The petitioner bears the initial burden of demonstrating "substantive grounds for relief" through the petition, with its supporting affidavits and other documentary evidence, and the trial record. R.C. 2953.21(D). A postconviction petition is subject to dismissal without a hearing if the petitioner fails to support the petition with evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief. *Id.*; *State v. Pankey*, 68 Ohio St.2d 58, 59, 428 N.E.2d 413 (1981); *State v. Jackson*, 64 Ohio St.2d 107, 413 N.E.2d 819 (1980), syllabus.

The decision to grant or deny postconviction relief is discretionary with the court and may be reversed on appeal only if the court abused its discretion. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 58. An abuse of discretion is more than an error of law or judgment; it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *See State v. Hill*, 12 Ohio St.2d 88, 232 N.E.2d 394 (1967), paragraph two of the syllabus. A court's decision is unreasonable if it is not supported by a sound reasoning process. *See AAAA Ents., Inc. v. River Place Community Urban Redev. Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

A claimed denial of the effective assistance of counsel requires proof of a prejudicial deficiency in counsel's performance. *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 13 (1989). Counsel's deficient performance was prejudicial if it "so undermined the proper functioning of the adversarial process that the trial could not have reliably produced a just result." *State v. Powell*, 90 Ohio App.3d 260, 266, 629 N.E.2d 13 (1st Dist.1993), citing *Lockhart v. Fretwell*, 506 U.S. 364, 113 S.Ct. 838, 112 L.Ed.2d 180 (1993), and *Strickland*.

Cephas's postconviction claims depended for their resolution on evidence outside the record of the proceedings resulting in his convictions. But the only outside evidence offered in support of those challenges was Cephas's own affidavit. In his affidavit, he merely restated each postconviction claim. And in his petition, he explained with respect to each claim, that he had not attached any supporting evidence, because he needed the assistance of an attorney, an investigator, and a gunshot-residue expert.

The outside evidence offered in support of a postconviction claim must "advance the * * claim beyond mere hypothesis and a desire for further discovery." *State v. Coleman*, 1st Dist. Hamilton No. C-900811, 1998 WL 74756 (Mar. 17, 1993). Cephas's affidavit did not. Thus, he failed to support his postconviction claims with evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief.

We, therefore, hold that the common pleas court did not abuse its discretion in denying Cephas's postconviction petition without an evidentiary hearing. Accordingly, we affirm the court's judgment.

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

ZAYAS, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on November 3, 2021,
per order of the court_____.

Presiding Judge