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IN THE
COURT OF APPEALS OF INDIANA

JOHN L. LULA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-0905-CR-243
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-0704-FC-117

July 30, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

John L. Lula ("Lula") was convicted in St. Joseph Superior Court of Class C felony operating a vehicle after a lifetime suspension. Lula appeals his conviction and argues that he was denied the effective assistance of trial counsel. Concluding that Lula's trial counsel was not ineffective, we affirm.

Facts and Procedural History

On April 23, 2007, Lula was charged with Class C felony operating a vehicle after a lifetime suspension. On August 28, 2008, during a hearing where the parties were present, Lula's case was set for a jury trial on October 30, 2008. Prior to his scheduled jury trial, Lula filed a pro se motion to dismiss the charge arguing a constitutional right to travel.

On October 30, 2008, Lula appeared for trial dressed in "prison clothes."[1] After the trial court determined that Lula's mother could possibly bring Lula some clothing, the court asked the bailiff to call Lula's mother to make those arrangements. The court then denied Lula's motion to dismiss. The trial court also granted the State's motion in limine, in which the State sought to exclude any reference to a publication entitled "Traveling by Right; Top Secret."

After the court made its rulings on the pending motions, Lula conferred with his trial counsel and agreed to waive his right to a jury trial. Lula's counsel also prepared a typewritten stipulation of facts, which was signed by Lula, defense counsel, and the prosecuting attorney. The stipulation was submitted to the court and provides:

[1] On the date of trial, Lula was serving a sentence on federal conviction.

> 1. On or about April 21, 2007, at approximately 3:10 p.m., the Defendant, John L. Lula, DOB 08/30/1960, did knowingly operating [sic] a motor vehicle, to wit; a 1992 black Ford Thunderbird, in the vicinity of the 4500 block of W. Western Ave. in St. Joseph County, Indiana, after having forfeited his privileges to operate a motor vehicle for life;
>
> 2. In Cause Number 71D08-9608-CF-00331, the Defendant, John L. Lula, was convicted on May 6, 1997, of Operating a Motor Vehicle While Suspended as a Habitual Traffic Violator, a Class C Felony (a certified copy of said Judgment of Conviction and Sentencing Order is attached hereto and incorporated herein by reference as State's Exhibit 1) and his privilege to operate a motor vehicle was suspended for life.

Appellant's App. p. 15. After reviewing the stipulation, the court found Lula guilty as charged.

On December 3, 2008, after considering the aggravating nature of Lula's criminal history, the court ordered Lula to serve seven years, with four years executed and three years suspended to probation. Lula now appeals.

Standard of Review

Lula claims that he was denied the effective assistance of trial counsel. To prevail upon a claim of ineffective assistance of trial counsel, a defendant must demonstrate both that his trial counsel's performance was deficient and that he was prejudiced by such deficient performance. Polk v. State, 822 N.E.2d 239, 244 (Ind. Ct. App. 2005), trans. denied; Strickland v. Washington, 466 U.S. 668, 687 (1984). Counsel's performance is deemed deficient if it falls below an objective standard of reasonableness based on prevailing professional norms. Polk, 822 N.E.2d at 245. To establish the resulting prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

Id. A "reasonable probability" is one sufficient to undermine confidence in the outcome. Strickland, 466 U.S. at 694. Failure to satisfy either prong will cause the ineffectiveness claim to fail, and most ineffectiveness claims can be resolved by a prejudice inquiry alone. Polk, 822 N.E.2d at 245.

We also note that Lula brings his claim of ineffective assistance of trial counsel on direct appeal. While this is not prohibited, post-conviction proceedings are generally the preferred forum for adjudicating claims of ineffective assistance of counsel because presenting such claims often requires the development of new facts not present in the trial record. See McIntire v. State, 717 N.E.2d 96, 101 (Ind. 1999); Woods v. State, 701 N.E.2d 1208, 1219 (Ind. 1998).

Although a defendant may choose to present a claim of ineffective assistance of counsel on direct appeal, if he so chooses, the issue will be foreclosed from collateral review. Id. at 102; Woods, 701 N.E.2d at 1220. In Woods, our supreme court observed that this rule would "likely deter all but the most confident appellants from asserting any claim of ineffectiveness on direct appeal." 701 N.E.2d at 1220. "'It is no surprise that such claims [based solely on the trial record] almost always fail.'" Id. at 1216 (quoting United States v. Taglia, 922 F.2d 413, 418 (7th Cir. 1991)).

Discussion and Decision

Lula argues that his trial counsel rendered ineffective assistance because 1) counsel had not secured street clothing for him on the date of his jury trial, 2) counsel "secured Lula's signature on a Stipulation of Facts . . . with no apparent benefit to Lula,"

and 3) counsel "did not request an opportunity to present a closing argument or any other defense to the charge." Appellant's Br. at 10.

With regard to Lula's first argument, Lula's trial counsel stated at trial that he thought "they found [Lula] something to wear[.]" Tr. p. 4. Moreover, Lula was aware that his jury trial was scheduled for October 30, 2008, and failed to arrange for someone to bring him clothing. Lula cannot establish prejudice on this issue in any case because the trial court obtained Lula's mother's phone number and told the court's bailiff to make arrangements for Lula's mother to bring clothing to the courthouse. The court indicated it would delay the start of trial until 1:00 p.m. to enable Lula's mother to do so. Tr. pp. 4-5. To the extent Lula appears to argue that his decision to waive his jury trial was caused by counsel's failure to secure clothing for him, we conclude that there is no evidence in the record to support this claim.

Next, Lula argues that counsel was ineffective for securing Lula's signature on the Stipulation of Facts which document provided no benefit to Lula. We certainly agree that Lula's decision to stipulate to the facts necessary to support his conviction provided no benefit for him. However, Lula agreed to sign the stipulation after conferring with his trial counsel. The record does not disclose any evidence from which an inference could be made that Lula was somehow coerced into signing the stipulation or that he did so involuntarily. Lula's claim of ineffectiveness therefore fails.

Finally, Lula argues that trial counsel was ineffective for failing to present a closing argument or defense to the charge. Lula admitted that he operated a motor

vehicle after forfeiting his driving privileges for life. Accordingly, Lula has not established that he was prejudiced by trial counsel's failure to present a closing argument.

In his brief, Lula has not argued that there was any evidence which would have supported a defense to the charge of operating a vehicle after forfeiting his driving privileges for life. Therefore, we cannot conclude that trial counsel was ineffective for failing to present a defense. Furthermore, we note that at the sentencing hearing, Lula admitted that he was driving the vehicle to the grocery store approximately two blocks from his home. Tr. p. 20. From Lula's statement to the trial court, we are unable to conceive of any defense trial counsel could have presented to the charged offense. In fact, Lula admits that the "outlook at trial may have appeared gloomy for" him.[2] Appellant's Br. at 10.

For all of these reasons, Lula has not demonstrated deficient performance, or that he was prejudiced by trial counsel's alleged errors, and therefore, Lula has not established that he was denied the effective assistance of trial counsel.

Affirmed.

RILEY, J., and KIRSCH, J., concur.

[2] Moreover, Lula's argument that he was prejudiced by counsel's alleged ineffectiveness because "sometimes good luck benefits the Defendant at trial" is nothing more than speculation and completely lacks merit. Appellant's Br. at 10.