

[Cite as *State v. Hobbs*, 2009-Ohio-7065.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
MEIGS COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 09CA1
 :
 vs. :
 :
 KENNETH HOBBS, : DECISION AND JUDGMENT ENTRY
 :
 :
 Defendant-Appellant. :

APPEARANCES:

COUNSEL FOR APPELLANT: Kenneth R. Hobbs, No. 567-153, Noble Correctional Institute, 15708 McConnellsville Road, Caldwell, Ohio 43724, Pro Se

COUNSEL FOR APPELLEE: Pat Story, Meigs County Prosecuting Attorney, and Matthew J. Donahue, Meigs County Assistant Prosecuting Attorney, 117 West Second Street, Pomeroy, Ohio 45769

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 12-28-09

ABELE, J.

{¶ 1} This is an appeal from a Meigs County Common Pleas Court judgment that overruled a petition for postconviction relief filed by Kenneth Hobbs, defendant below and appellant herein.

{¶ 2} Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

“CONSTITUTIONAL ERROR-ARTICLE I, SECTION 15 OF

THE OHIO CONSTITUTION PROVIDES THAT NO PERSON SHALL BE IMPRISONED FOR A DEBT. COUNSEL WAS INEFFECTIVE AND DID NOT PROVIDE PETITIONER WITH ADEQUATE DEFENSE OR REPRESENTATION, THUS, TRIAL COURT ERRED WHEN IT SENTENCED PETITIONER TO SERVE A PRISON TERM UPON GRAND THEFT INDICTMENT WHEN NO THEFT OCCURRED AND A CIVIL AGREEMENT HAD ALREADY BEEN AGREED TO. CASE WAS CIVIL, NOT CRIMINAL AS STATED IN THE TRANSCRIPTS ON THE RECORD.”

SECOND ASSIGNMENT OF ERROR:

“A NEW LAW AND RIGHT, S.B. 184 SIGNED BY THE GOVERNOR OF OHIO - 2008 CASTLE LAW APPLIES TO THIS CASE. BRADY VIOLATION IN THE ORIGINAL PRETRIAL TRANSCRIPTS WHEN PROSECUTOR FAILED TO PROVIDE THE REQUESTED 30 PLUS POLICE REPORTS FILED BY THE DEFENDANT ON THE ALLEGED VICTIM, AND ACTUAL EYE WITNESS STATEMENTS STATING THAT THE DEFENDANT’S HOME HAD BEEN BROKEN INTO AND HE WAS DEFENDING HIS HOME AND FAMILY. THE NEW CASTLE LAW, S.B. 184, PROVIDES ‘THAT A PERSON HAS A RIGHT TO PROTECT HIS/HER SELF AND RESIDENCE FROM AN INTRUDER WHO INTENDS TO COMMIT A MISDEMEANOR OR FELONY OFFENSE,’ THUS, THE DEFENDANT’S CONVICTION FOR DEFENDING HIS HOME AND FAMILY IS NOW UNLAWFUL.”

THIRD ASSIGNMENT OF ERROR:

“THE RIGHT OF ACCESS TO THE COURT IS ONE PROTECTED BY THE FIRST, FIFTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, THUS, A DEFENDANT HAS A RIGHT TO PETITION THE GOVERNMENT (BY WAY OF THE COURT) FOR REDRESS OF A CONSTITUTIONAL VIOLATION AND [sic] WHEN THAT RIGHT IS DENIED.”

FOURTH ASSIGNMENT OF ERROR:

“THE SIXTH AMENDMENT OF THE UNITED STATES

CONSTITUTION PROVIDES A CRIMINAL DEFENDANT COMPETENT REPRESENTATION THROUGHOUT A CRIMINAL PROSECUTION, THUS, IF COUNSEL IS NOT FUNCTIONING IN ACCORDANCE WITH THE SIXTH AMENDMENT, DEFENDANT IS DENIED COUNSEL AND DUE PROCESS OF LAW.”

{¶ 3} In 2007, appellant pled guilty to grand theft and aggravated assault. The trial court sentenced him to serve eighteen months in prison for each offense, with the sentences to be served consecutively. No appeal was taken from that judgment.

{¶ 4} On September 15, 2008, appellant filed for postconviction relief pursuant to R.C. 2953.21. The grounds he asserted in support of that petition included a narrative of many alleged “civil rights violation[s]” and included such claims as improper sentencing, ineffective assistance of trial counsel and unconstitutional imprisonment for a civil debt. The trial court denied his petition and, further, prohibited him from filing any other motions except those “allowed by law.” This appeal followed.

I

{¶ 5} At the outset, we note that three of the four assignments of error raise issues that could have been raised on the direct appeal of appellant’s conviction, but were not. Generally, a petitioner cannot raise, for purposes of postconviction relief, an error that could have been raised on direct appeal. See e.g. State v. Reynolds (1997), 79 Ohio St.3d 158, 161, 679 N.E.2d 1131; State v. Lentz (1990), 70 Ohio St.3d 527, 529, 639 N.E.2d 784; State v. Juliano (1970), 24 Ohio St.2d 117, 119, 265 N.E.2d 290. In other words, if a petitioner fails to bring an appeal as of right, he cannot raise in a petition for postconviction relief those issues that should have been raised in a direct appeal. See State v. Franklin, Meigs App. No. 05CA9, 2006-Ohio-1198, at ¶ 10; State

v. Houser, Washington App. No. 03CA7, 2003-Ohio-6461, at ¶ 7; State v. Evans (Mar. 26, 2002), Adams App. No. 01CA715. Accordingly, we overrule appellant's first, second and fourth assignments of error because they could have been raised on direct appeal.

{¶ 6} Moreover, even if these alleged errors had been raised on direct appeal, they are meritless. Appellant asserts in his first assignment of error that he is unconstitutionally imprisoned on a civil debt. In reality, however, he is imprisoned on a grand theft charge. Appellant also cites some agreement with West Virginia law enforcement authorities concerning the payment of restitution to avoid criminal prosecution. That agreement, if any, has no bearing on the Ohio charges or the conduct of Ohio authorities.

{¶ 7} Appellant argues in his second assignment of error that he should be released due to what he calls the "Castle Law," enacted as part of "S.B. 184" in 2008. Although it is unclear how this legislation would help appellant, Ohio law provides that statutes apply prospectively, unless the Ohio General Assembly expressly states otherwise. R.C. 1.48. Appellant cites nothing in Sub.S.B. No. 184, 2008 Ohio Laws 92 to give this "law" retrospective application, and we have found nothing to that effect in our own review.

{¶ 8} Finally, in his fourth assignment of error, appellant claims that he received ineffective assistance from trial counsel who, allegedly, failed to obtain any exculpatory evidence and advised him to enter a guilty plea despite his repeated assertions that he was innocent. We find nothing in the record, however, to substantiate that appellant made such claims to trial counsel, or that any such exculpatory evidence exists.

{¶ 9} Thus, for all of these reasons, although the merits of his claims are nevertheless barred by res judicata, these claims have no merit even if they were properly before the court. Again, we overrule appellant's first, second and fourth assignments of error.

III

{¶ 10} Appellant's third assignment of error is directed to that part of the trial court's order that prohibited him from filing any further motions, with the exceptions of motions allowed by law." Appellant argues that this action deprives him of his constitutional right of access to the courts.

{¶ 11} Our analysis begins with an emphasis on the narrowness of the trial court's ruling in this matter. At this point, appellant has not been barred from filing any new proceedings in the trial court. Rather, he has been barred from filing additional motions in this particular case. We also note that the court has not barred appellant from filing additional motions in this case and has exempted from its order all motions "allowed by law."

{¶ 12} That aside, we note that we have rarely encountered a case with an appellate record in such disarray. Virtually all of that disarray can be laid at the feet of appellant whom, as the trial court aptly noted, has filed numerous and lengthy motions and other pleadings that are, to a large degree, incomprehensible. Courts have inherent powers to curb frivolous litigation practices to protect the integrity of their own processes. Mayer v. Bristow (2000), 91 Ohio St.3d 3, 17, 740 N.E.2d 656; State ex rel. Pfeifer v. Common Pleas Court of Lorain County (1968), 13 Ohio St.2d 133, 136-137,

235 N.E.2d 232. Here, we find no abuse of that power by prohibiting appellant from filing frivolous motions in the case sub judice. Consequently, we hereby overrule appellant's third assignment of error.

{¶ 13} Having considered all errors appellant assigned and argued in his brief, we hereby affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Meigs County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.