

[Cite as *State v. Dunning*, 2017-Ohio-4451.]

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 17CA3
 :
 vs. :
 :
 REASHAWN A. DUNNING, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

Reashawn A. Dunning, Caldwell, Ohio, pro se appellant.

Judy C. Wolford, Pickaway County Prosecuting Attorney, and Jayme Hartley Fountain, Pickaway County Assistant Prosecuting Attorney, Circleville, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT

DATE JOURNALIZED: 6-13-17

ABELE, J.

{¶ 1} This is an appeal from a Pickaway County Common Pleas Court denial of a judgment motion for post-conviction relief filed by Reashawn A. Dunning, defendant below and appellant herein. Appellant raises the following assignments of error for review:

FIRST ASSIGNMENT OF ERROR:

“APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL DUE TO DEFENSE COUNSEL'S ERRONEOUS ADVICE THAT HE ENTER GUILTY PLEAS TO ENHANCED-DEGREE FELONIES FOR TRAFFICKING IN DRUGS (COCAINE) BASED ON GROSS WEIGHT THAT INCLUDED OTHER MATERIAL INSTEAD OF THE WEIGHT OF

ACTUAL COCAINE, IN VIOLATION OF HIS RIGHT TO DUE PROCESS.”

SECOND ASSIGNMENT OF ERROR:

“THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT'S POSTCONVICTION RELIEF PETITION WITHOUT A HEARING WHEN THE COURT FILES, THE RECORD AND DOCUMENTATION SUPPORTED SUCH A EVIDENTIARY HEARING.”

{¶ 2} On March 20, 2015 the Pickaway County Grand Jury returned an indictment that charged appellant with (1) engaging in corrupt activity in violation of R.C. 2923.32(A), with a specification, a first degree felony; (2) two counts of trafficking cocaine in violation of R.C. 2925.03(A), felonies of the second degree; (3) trafficking in heroin in violation of R.C. 2925.03(A), a second degree felony, and (4) trafficking in heroin in violation of R.C. 2925.03(A), a fifth degree felony.

{¶ 3} On June 7, 2016, appellant, represented by counsel and pursuant to plea negotiations, entered a guilty plea. The trial court accepted appellant's plea, found appellant guilty, and imposed an eleven year prison term.

{¶ 4} On January 18, 2017, appellant filed a Petition for Post-Conviction Relief and alleged that he received ineffective assistance of counsel that resulted in a manifest injustice. On February 8, 2017, the trial court denied appellant's petition without conducting a hearing. This appeal followed.

{¶ 5} Appellate asserts that his guilty pleas were not knowing, voluntary and intelligent pleas because trial counsel did not advise appellant of the "correct statutory weight thresholds of drug possession offenses in R.C. 2925.11(C)(4), thus advised him to enter guilty pleas to first

degree felony possession of cocaine when it was a fifth degree possession of cocaine offense [that] appellant committed." In support of his argument, appellant cites *State v. Gonzales*, 2016-Ohio-8319, in which the Ohio Supreme Court held that fillers, or adulterants, should not be included in the weight of the total amount of cocaine under the statute.

{¶ 6} A criminal defendant has the initial burden in a post-conviction relief proceeding to provide evidence that contains sufficient operative facts to demonstrate a cognizable claim of constitutional error. *State v. Kapper*, 5 Ohio St.3d 36, 448 N.E.2d 823 (1983). However, a criminal defendant seeking to challenge his conviction through a post-conviction relief petition is not automatically entitled to a hearing. See R.C. 2953.21(C) and (E); *State v. Calhoun*, 86 Ohio St.3d at 282, 714 N.E.2d 905. Before a court grants an evidentiary hearing, the court must determine whether there are substantive grounds for relief, i.e. whether there are grounds to believe that an infringement of a person's rights rendered the judgment void or voidable under the Ohio Constitution or the Constitution of the United States. *Calhoun*, R.C. 2953.21(7)(1).

{¶ 7} Appellee points out that, on March 6, 2017, the Ohio Supreme Court granted a motion for reconsideration and overruled its previous decision in *Gonzales* and held that the prosecution need not prove pure weight of cocaine for purposes of a conviction under the statute. See *State v. Gonzales*, 2017-Ohio-777. Thus, appellant's argument is now without merit and we conclude that the trial court properly dismissed appellant's Petition for Post-Conviction relief.

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 Pickaway 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.

McFarland, J. & Hoover, 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.