

[Cite as *State v. Wood*, 2015-Ohio-2891.]

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 14CA0093-M

Appellee

v.

FRANK P. WOOD

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 05 CR 0365

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 20, 2015

WHITMORE, Judge.

{¶1} Defendant-Appellant, Frank Wood, appeals from the judgment of the Medina County Court of Common Pleas, denying his motion for leave to file a motion for new trial. This Court affirms.

I

{¶2} In May 2006, a jury found Wood guilty of rape, with respect to a child under the age of 10, and gross sexual imposition, with respect to a child under the age of 13. The trial court sentenced Wood to life in prison on the rape count and three years in prison on the gross sexual imposition count, with the terms to be served consecutively. This Court affirmed his convictions on direct appeal. *See State v. Wood*, 9th Dist. Medina No. 06CA0044-M, 2007-Ohio-2673.

{¶3} In August 2013, Wood filed a “Notice of Dismissal of Counsel of Record,” in which he sought “to apprise the Court and the State of [his] intentions and reasons.” His filing

included a letter terminating the services of his attorney and four exhibits. Two of the exhibits were typewritten accounts of Wood's "history" with the mothers of his two victims. The third related to the responses of an expert that the defense proffered at trial, but who was not permitted to testify after voir dire. The fourth was a typewritten document labeled "My uncontested 'Claim of Acutal [sic] Innocence,'" in which Wood essentially questioned the evidence upon which he was convicted. Wood's filing did not contain a statement of any request for relief.

{¶4} The State filed a response to Wood's "Notice of Dismissal," and Wood filed a reply. In his September 9, 2013 reply, Wood once again challenged the evidence upon which he was convicted. He also attached a photocopy of a purported "report" authored by three doctors and entitled "#2 Differences in Hymenal Morphology Between Adolescent Girls With and Without a History of Consensual Sexual Intercourse." Wood referenced the report in conjunction with his argument that the lack of any visible trauma to his younger victim during her sexual assault exam indicated that he had not, in fact, raped her. Wood wrote that "[t]he Trial Court, of the Court's own volition, may even go so far as to declare this report Newly Discovered Evidence and appoint Wood an Expert Witness concerning this matter." The trial court did not file a journal entry in response to Wood's "Notice of Dismissal."

{¶5} In June 2014, Wood filed an application for leave to file a motion for new trial as well as a delayed motion for new trial. Wood argued that he was unavoidably prevented from obtaining newly discovered evidence; to wit, the "report" entitled "#2 Differences in Hymenal Morphology Between Adolescent Girls With and Without a History of Consensual Sexual Intercourse." He argued that there was a delay in the filing of his motion because he had no knowledge of the legal system or medical field and it was "impossible" for him to discover any new evidence while "under constant lockdown" at the prison. The State filed a brief in

opposition to Wood's motion, and Wood filed a reply. Subsequently, the trial court denied Wood's motion for leave to file a motion for new trial.

{¶6} Wood now appeals from the trial court's judgment and raises one assignment of error for our review.

II

Assignment of Error

DEFENDANT-APPELLANT FRANK P. WOOD WAS DENIED HIS U.S. 1ST AMENDMENT RIGHTS TO REDRESS OF GRIEVANCES WHEN THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING WOOD'S APPLICATION/MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE; EVIDENCE THAT FULLY EXONERATES WOOD OF A FELONY-1 RAPE CHARGE. THE END RESULTS WERE THE DENIAL OF WOOD'S U.S. CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION, AND THE SUSTAINING OF A MANIFEST MISCARRIAGE OF JUSTICE.

{¶7} In his sole assignment of error, Wood argues that the trial court erred by denying his motion for leave to file a motion for new trial. We disagree.

{¶8} Initially, we note that Wood filed his motions in the court below pro se and also appears pro se on appeal. With respect to pro se litigants, this Court has observed that

pro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes. This Court, therefore, must hold [pro se appellants] to the same standard as any represented party.

(Internal citations omitted.) *Sherlock v. Myers*, 9th Dist. Summit No. 22071, 2004-Ohio-5178, ¶ 3; *Countrywide Home Loans Servicing, L.P. v. Murphy-Kesling*, 9th Dist. Summit No. 25297, 2010-Ohio-6000, ¶ 4.

{¶9} “A trial court’s decision to grant or deny a motion for leave to file a delayed motion for a new trial will not be reversed on appeal absent an abuse of discretion.” *State v. Davis*, 9th Dist. Lorain No. 12CA010256, 2013-Ohio-846, ¶ 6. “Likewise, the decision on whether the motion warrants a hearing also lies within the trial court’s discretion.” *State v. Holmes*, 9th Dist. Lorain No. 05CA008711, 2006-Ohio-1310, ¶ 8, quoting *State v. Starling*, 10th Dist. Franklin No. 01AP-1344, 2002-Ohio-3683, ¶ 10. An abuse of discretion indicates that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶10} “Crim.R. 33(A) allows a defendant to move for a new trial when his substantial rights have been materially affected.” *State v. Gilliam*, 9th Dist. Lorain No. 14CA010558, 2014-Ohio-5476, ¶ 9. One such basis exists when “new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial.” Crim.R. 33(A)(6). Generally, motions for new trial based on newly discovered evidence must be filed within 120 days after the verdict. Crim.R. 33(B). Defendants who fail to file their motions within the 120-day period “must seek leave from the trial court to file a ‘delayed motion’” for new trial. *State v. Cleveland*, 9th Dist. Lorain No. 08CA009406, 2009-Ohio-397, ¶ 49, quoting *State v. Berry*, 10th Dist. Franklin No. 06AP-803, 2007-Ohio-2244, ¶ 19. The motion for leave must demonstrate, “by clear and convincing proof that [the defendant] was unavoidably prevented from the discovery of the evidence upon which he must rely [within the 120-day period].” *State v. Cleottis*, 9th Dist. Summit No. 26311, 2013-Ohio-249, ¶ 4, quoting Crim.R. 33(B).

{¶11} “Although ‘Crim.R. 33(B) does not provide a specific time limit for the filing of a motion for leave to file a delayed motion for new trial[,] * * * Ohio courts have adopted a

reasonableness standard.” (Alterations sic.) *Gilliam* at ¶ 10, quoting *Cleveland* at ¶ 49. “If there has been an undue delay in filing the motion after the evidence was discovered, the trial court must determine if that delay was reasonable under the circumstances or that the defendant has adequately explained the reason for the delay.” (Internal quotation and citation omitted.) *Cleveland* at ¶ 49. “Unavoidable delay results when the party had no knowledge of the existence of the ground supporting the motion for a new trial and could not have learned of the existence of that ground within the required time in the exercise of reasonable diligence.” *State v. Covender*, 9th Dist. Lorain No. 11CA010093, 2012-Ohio-6105, ¶ 14, quoting *State v. Rodriguez-Baron*, 7th Dist. Mahoning No. 12-MA-44, 2012-Ohio-5360, ¶ 11. “[C]riminal defendants and their trial counsel have a duty to make a ‘serious effort’ of their own to discover potential favorable evidence.” (Internal quotations and citations omitted.) *Covender* at ¶ 14.

{¶12} Wood filed his motion for leave to file a motion for new trial more than eight years after the jury returned its verdict. In his motion for leave, the only item that Wood identified as newly discovered evidence was a purported “report” entitled “#2 Differences in Hymenal Morphology Between Adolescent Girls With and Without a History of Consensual Sexual Intercourse.” Wood acknowledged in his motion for leave that the report was generated in 2004, some two years before his trial. He further acknowledged that he received the report in the fall of 2011, but did not present it to the court as newly discovered evidence until June 2014. Wood argued that his delay in filing his motion was reasonable because he had no knowledge of the legal system or medical field and it was “impossible” for him to discover any new evidence while “under constant lockdown” at the prison.

{¶13} Having reviewed the record, we cannot conclude that the trial court abused its discretion in denying Wood’s motion for leave to file a motion for new trial. The trial court

denied Wood's motion for leave, in part, because it determined that the three-year delay between his obtaining a copy of the report and the filing of his motion for leave was unreasonable. Even assuming that Wood was unavoidably prevented from discovering the 2004 report during his trial or within 120 days of the jury's verdict, he received the report three years before he filed his motion for leave. That Wood did not have legal training was not a valid basis for the lengthy delay in his filing. *See Sherlock*, 2004-Ohio-5178, at ¶ 3 (“[A] pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound.”). The trial court acted within its discretion when it concluded that a three-year delay was unreasonable. As such, Wood's argument that the court erred by denying his motion for leave lacks merit. His sole assignment of error is overruled.

III

{¶14} Wood's sole assignment of error is overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the

period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
MOORE, J.
CONCUR.

APPEARANCES:

FRANK P. WOOD, pro so, Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MATTHEW A. KERN, Assistant Prosecuting Attorney, for Appellee.