

[Cite as *State v. Elliott*, 2003-Ohio-3078.]

STATE OF OHIO, COLUMBIANA COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

| | | |
|----------------------|---|--------------------|
| STATE OF OHIO, |) | |
| |) | CASE NOS. 02-CO-19 |
| PLAINTIFF-APPELLEE, |) | 02-CO-28 |
| |) | |
| VS. |) | OPINION |
| |) | and |
| STEVENBO T. ELLIOTT, |) | JOURNAL ENTRY |
| |) | |
| DEFENDANT-APPELLANT. |) | |

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court Case No. 00CR153; Petition for Post-Conviction Relief

JUDGMENT: Petition moot; appeal dismissed

APPEARANCES:

For Plaintiff-Appellee: Robert L. Herron
Prosecuting Attorney
Tammie M. Jones
Assistant Prosecuting Attorney
Columbiana County Courthouse
105 South Market Street
Lisbon, Ohio 44432

For Defendant-Appellant: Attorney David H. Bodiker
Ohio Public Defender
Molly J. McAnespie
Assistant State Public Defender
Office of the Ohio Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215

JUDGES:

Hon. Gene Donofrio

Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: May 30, 2003

PER CURIAM.

Defendant-appellant, Stevenbo T. Elliott, appeals a decision of the Columbiana County Common Pleas Court denying his petition for post-conviction relief.

On March 27, 2001, appellant was convicted of robbery in violation of R.C. 2911.02. On June 4, 2001, appellant filed a motion for new trial alleging newly discovered evidence. Specifically, appellant alleged that another individual, similar in appearance to him, had admitted to committing the robbery. The trial court overruled the motion.

Appellant assigned this as error in his direct appeal before this court under case No. 01 CO 24. On March 21, 2003, this court found merit to appellant's argument and reversed the trial court's decision, vacated appellant's conviction, and remanded the case for a new trial. See *State v. Elliott*, 7th Dist. No. 01 CO 24, 2003-Ohio-1426. Accordingly, the appeal from the denial of appellant's petition for post-conviction relief is moot.

This appeal is hereby dismissed as moot. Costs taxed against appellant.

Waite, P.J., Donofrio and DeGenaro, JJ., concur.