

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio

Court of Appeals No. E-06-016

Appellee

Trial Court No. 94-CR-357

v.

Dewitt McDonald

DECISION AND JUDGMENT ENTRY

Appellant

Decided: May 4, 2007

* * * * *

James Conway, Special Prosecutor, and Mary Ann Barylski, Assistant
Prosecuting Attorney, for appellee.

John Vogel and Richard Parry, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Dewitt McDonald, appeals the judgment of the Erie County
Court of Common Pleas, denying his motion for a new trial.

{¶ 2} Appellant was found guilty of complicity to the 1994 aggravated murder of
Vivian Johnson following a jury trial. The trial court sentenced him to a life term of
imprisonment without parole possibility for 20 years. We affirmed his conviction and
sentence. *State v. McDonald* (Feb. 7, 1997), 6th Dist. No. E-95-046, discretionary appeal

not allowed, 106 Ohio St. 3d 1462, 2005 Ohio 3490. A subsequent petition for postconviction relief, a motion to declare R.C. 2953.23 unconstitutional and a motion for leave to seek a new trial were denied in the trial court, a decision affirmed by this court. *State v. McDonald*, 6th Dist. No. E-04-009, 2005 Ohio 798, discretionary appeal not allowed, 106 Ohio St. 3d 1462, 2005 Ohio 3490.

{¶ 3} Appellant's most recent motion for a new trial is premised on what he asserts is newly discovered evidence, specifically an affidavit from Vivian Johnson's son who avers that Jerome Caffey attempted to goad him into a bar fight saying that he (Caffey) killed Johnson's mother.

{¶ 4} When the trial court denied appellant's motion, this appeal followed. In a single assignment of error, appellant asserts that the trial court's ruling was erroneous.

{¶ 5} After examining the record in this matter, we conclude that the trial court properly considered the facts and the applicable law. Accordingly, we find appellant's sole assignment of error not well-taken and adopt the well-reasoned decision of Judge Tygh M. Tone as our own. (See *State v. McDonald* (Feb. 3, 2006), Erie C.P. No. 94-CR-357 attached hereto as appendix A.)

{¶ 6} On consideration whereof, the judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Erie County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.