

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN L. DICKENS,	§
	§
Defendant Below-	§ No. 19, 2000
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. N96-02-0093
Plaintiff Below-	§
Appellee.	§

Submitted: January 12, 2001

Decided: February 26, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 26th day of February 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Kevin L. Dickens, filed this appeal from the December 15, 1999 order of the Superior Court affirming the March 12, 1998 re-sentencing order of the Court of Common Pleas. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Dickens claims that: 1) the re-sentencing order is invalid because the Court of Common Pleas judge who entered it did not have

the authority to do so; 2) the Superior Court erred in barring him from appealing any errors that might have occurred at his 1995 Court of Common Pleas trial; and 3) the Superior Court erred in refusing to provide him with a transcript of the 1995 Court of Common Pleas trial.

(3) On September 29, 1995, following a jury trial in the Court of Common Pleas at which Dickens represented himself, Dickens was convicted of one count of aggravated harassment. On December 18, 1995, Dickens was sentenced to 30 days incarceration at Level V, to be suspended for 1 year at Level II probation, plus a \$150 fine. Dickens appealed pro se to the Superior Court, which, in May 1996, dismissed the appeal as untimely. Dickens filed a further appeal in this Court. The Court of Common Pleas docket sheet indicates that the case was to be scheduled for re-sentencing pending a decision by this Court on appeal. This Court affirmed the decision of the Superior Court in September 1996.¹ It was not until March of 1998, however, that the Court of Common Pleas scheduled a date for Dickens' re-sentencing. By this time, the judge who

¹*Dickens v. State*, Del. Supr., No. 254, 1996, Veasey, C.J., 1996 WL 539804 (Sept. 16, 1996) (ORDER).

presided over Dickens' trial had retired. Dickens was re-sentenced by another Court of Common Pleas judge on March 12, 1998.

(4) Dickens' claim that the Court of Common Pleas judge who re-sentenced him in 1998 did not have the authority to do so is without merit. The Court of Common Pleas judge who sentenced Dickens in 1995 had retired from the bench by the time Dickens' re-sentencing was scheduled. Under the Court of Common Pleas Criminal Rules, any judge of the Court of Common Pleas may sentence a defendant if the judge who presided at trial is absent.² "Retirement" constitutes "absence" for purposes of the Rule. Thus, Dickens' re-sentencing was properly handled by another Court of Common Pleas judge in 1998.³

²Ct. Com. Pl. Crim. R. 25(b).

³The judge imposed the same sentence that had been imposed by the judge who presided over the trial.

(5) Dickens' second claim that the Superior Court incorrectly barred any claims arising out of his 1995 Court of Common Pleas trial is without merit. The Superior Court properly refused to consider any claims that could have been advanced in Dickens' original, time-barred appeal. In criminal appeals, this Court has held that an attorney's failure to file a timely appeal for a client who wanted to appeal constitutes ineffective assistance of counsel.⁴ In appropriate cases, this Court has provided a remedy for such a failure on the attorney's part by remanding the matter to the trial court for re-sentencing in order to provide a new 30-day appeal period.⁵ This is not such a case. Dickens represented himself both at his 1995 Court of Common Pleas trial and in his untimely appeal to the Superior Court in 1996. In this Court's 1996 Order affirming the Superior Court's dismissal of Dickens' appeal we noted that Dickens had chosen to act as his own counsel throughout the proceedings and, therefore, was personally responsible for failing to timely file his notice of appeal from his 1995 Court of Common Pleas trial. In the circumstances presented in this case, the Superior

⁴*Eley v. State*, Del. Supr., No. 137, 2000, Steele, J., 2000 WL 1887919 (Dec. 20, 2000) (ORDER); *Farley v. DSCYF*, Del. Supr., No. 368, 2000, 2000 WL 1862231 (Dec. 15, 2000) (ORDER) (en banc); *Bradley v. State*, Del. Supr., No. 557, 1999, Veasey, C.J., 2000 WL 1011084 (July 10, 2000) (ORDER).

⁵*Id.*

Court correctly refused to consider any claims of error arising out of that trial following Dickens' re-sentencing.

(6) Dickens' third claim that he is entitled to a transcript of his 1995 Court of Common Pleas trial is also without merit. Because the Superior Court correctly ruled that Dickens was barred from advancing claims of alleged errors at his 1995 Court of Common Pleas trial, it also correctly ruled that Dickens was not entitled to a transcript of that trial.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh
Justice