

[Cite as *State v. Battle*, 2013-Ohio-1759.]

COURT OF APPEALS
MORGAN COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

BILLY J. BATTLE

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 12AP008

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Morgan County Common
Pleas Court, Case No. 07CR0064

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

April 26, 2013

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Billy J. Battle appeals the August 9, 2012 Journal Entry entered by the Morgan County Court of Common Pleas. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE¹

{¶2} On appeal from his original conviction, this Court affirmed Appellant's conviction in *State v. Battle*, Morgan No. 09 AP 001, 2010-Ohio-4327. Appellant filed an application for delayed appeal on April 11, 2012, submitting in conjunction therewith a transcript of a motions hearing conducted on August 28, 2008. Subsequently, on May 18, 2012, Appellant filed an application for reopening. This Court denied delayed appeal on April 19, 2012, and denied the application for reopening via Judgment Entry of June 12, 2012.

{¶3} On July 13, 2012, Appellant filed a motion in the trial court to certify the previously omitted record of the August 26, 2008 hearing, pursuant to R.C. 2301.23, with the trial court herein. On July 23, 2012, the State filed a motion contra.

{¶4} Via Journal Entry of August 9, 2012, the trial court denied Appellant's motion.

{¶5} Appellant now appeals, assigning as error:

{¶6} "I. THE TRIAL COURT DIRECTLY VIOLATED O.R.C. §2301.23 WHEN IT STATED TO APPELLANT'S COUNSEL THAT NO HEARING TOOK PLACE ON AUGUST 26, 2008. NO RECORD OF A HEARING EXISTED [SIC] FOR AUGUST

¹ A rendition of the underlying facts is unnecessary for our resolution of this appeal.

26, 2008. THUS, NO TRANSCRIPT COULD BE MADE FOR A HEARING FOR AUGUST 26, 2008.

{¶17} “II. THE TRIAL COURT DIRECTLY VIOLATED O.R.C. §149.43 WHEN IT REFUSED TO TURN OVER PUBLIC RECORDS THAT WERE REQUESTED, IN WRITING, FOR A HEARING THAT TOOK PLACE ON AUGUST 26, 2008.

{¶18} “III. A WRIT OF MANDAMUS IS THE SOLE APPROPRIATE REMEDY FOR RECORDS VIOLATIONS MADE BY THE TRIAL COURT.

{¶19} “IV. THE RECORD OF THE AUGUST 26, 2008 HEARING THAT SUPPORTS AND CONFIRMS [SIC] TWO (2) ASSIGNMENTS OF ERRORS [SIC] FROM MY APPELLANT’S BRIEF FOR CASE NO. 09AP0001, MY INITIAL APPEAL AS OF RIGHT, ALSO BRINGS ONE (1) NEW ERROR MADE AT TRIAL LEVEL TO LIGHT.”

I, II, III, & IV.

{¶10} Initially, we note, Appellant's merit brief is entitled "Mandamus Complaint; Merit Brief of Relator." Appellant filed with this Court a Pro Se Motion of Billy J. Battle, Relator, Appellant, for Leave to Amend His Mandamus Complaint/Appeal. This Court via Judgment Entry of February 4, 2013, denied Appellant's motion finding Appellant was attempting to combine two actions: an appeal and a complaint for a writ of mandamus. This Court directed Appellant to comply with the local and civil rules for filing a complaint with appropriate instructions to the clerk, should Appellant desire to initiate an original action separate from the within appeal. Accordingly, this Court will address only those arguments relative to the appeal properly before this Court.

{¶11} Appellant asserts the trial court erred in failing to provide the recording or now certify a transcription of the recording of the August 26, 2008 hearing for his appeal.

{¶12} Appellant's only conceivable purpose in filing the motion with the trial court is for use in reopening his direct appeal. As set forth in the Statement of the Case above, this Court denied delayed appeal on April 19, 2012 and denied Appellant's motion for reopening via Judgment Entry of June 12, 2012. Accordingly, we find no error in the trial court's denial of Appellant's motion.

{¶13} Appellant's assigned errors are overruled.

{¶14} The August 9, 2012 Journal Entry of the Morgan County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR MORGAN COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
BILLY J. BATTLE	:	
	:	
Defendant-Appellant	:	Case No. 12AP008

For the reason stated in our accompanying Opinion, the August 9, 2012 Journal Entry of the Morgan County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY