

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| STATE OF OHIO | : | JUDGES: |
| | : | Hon. Sheila G. Farmer, P.J. |
| Respondent-Appellee | : | Hon. Julie A. Edwards, J. |
| | : | Hon. John F. Boggins, J. |
| -vs- | : | |
| | : | Case No. CT2002-0037 |
| TONY R. GROSS | : | |
| | : | <u>OPINION</u> |
| Petitioner-Appellant | : | |
| | : | |

CHARACTER OF PROCEEDING: Civil appeal from Muskingum County Court of Common Pleas, Case No. CR-94-0140

JUDGMENT: Stayed

DATE OF JUDGMENT ENTRY: September 23, 2003

APPEARANCES:

COUNSEL FOR RESPONDENT-APPELLEE:

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Boggins, J.

{¶1} This is an appeal from a denial of Appellant's two post conviction Petitions without evidentiary hearings, without appointment of counsel, without experts and without discovery.

{¶2} There are eight Assignments of Error:

{¶3} "ASSIGNMENT OF ERROR NO. I: THE TRIAL COURT ISSUED INADEQUATE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN REGARD TO TONY GROSS' PETITIONS FOR POST-CONVICTION RELIEF."

{¶4} "ASSIGNMENT OF ERROR NO. II: THE ACTIONS OF THE TRIAL COURT AND POST-CONVICTION COUNSEL DEPRIVED PETITIONER OF HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL."

{¶5} "ASSIGNMENT OF ERROR NO. III: THE TRIAL COURT ERRED WHEN IT OVERRULED PETITIONER'S MOTIONS FOR FUNDS TO EMPLOY EXPERTS."

{¶6} "ASSIGNMENT OF ERROR IV. THE TRIAL COURT ERRED WHEN IT DENIED PETITIONER'S POST-CONVICTION PETITIONS WITHOUT FIRST AFFORDING HIM THE OPPORTUNITY TO CONDUCT DISCOVERY."

{¶7} "ASSIGNMENT OF ERROR V. THE TRIAL COURT ERRED WHEN IT RULED THAT PETITIONER'S CONSTITUTIONAL CLAIMS WERE BARRED BY RES JUDICATA."

{¶8} "ASSIGNMENT OF ERROR VI. THE TRIAL COURT ERRED IN DENYING THE MERITS, OR IN THE ALTERNATIVE FACTUAL DEVELOPMENT, AS

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TO THE CAUSES OF ACTIONS CONTAINED IN TONY GROSS' FIRST POST-CONVICTION PETITION."

{¶9} ASSIGNMENT OF ERROR NO. VII. THE TRIAL COURT ERRED IN DENYING FACTUAL DEVELOPMENT FOR THE CAUSES OF ACTION CONTAINED IN PETITIONER'S PRO SE POST-CONVICTION PETITION."

{¶10} ASSIGNMENT OF ERROR NO. VIII. THIS COURT IMPROPERLY DENIED PETITIONER'S APPOINTMENT OF COUNSEL IN HIS APPEAL TO THIS COURT."

{¶11} In considering this appeal, we note that, in addition to the matter as to sentencing which is pending before the Muskingum Common Pleas Court, the State has advised by its Brief that Appellant has filed an appeal to the United States Supreme Court as to his conviction being tainted. A scheduling conference as to certiorari was to be scheduled on May 15, 2003.

{¶12} The pending re-sentencing would not affect our jurisdiction on this matter as the post conviction petitions obviously relate to the conviction rather than the sentencing.

{¶13} The pending appeal to the United States Supreme Court directly affects the propriety of the conviction and does affect our jurisdiction.

{¶14} This appeal is stayed until such appeal has been resolved.

{¶15} Counsel for Appellant and Appellee are instructed to notify this Court upon resolution of such appeal.

By: Boggins, J.

Farmer, P.J. and

Edwards, J. , concur