

[Cite as *State v. Davis*, 2009-Ohio-5175.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ROLAND DAVIS

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 09-CA-0019

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Licking County, Ohio, Case No. 04-CR-464

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 24, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant Roland Davis appeals the January 30, 2009 Judgment Entry entered by the Licking County Court of Common Pleas, denying his motion for leave to file a motion for a new trial upon finding he was not unavoidably prevented from discovering new evidence. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On July 8, 2005, a Licking County jury found Appellant guilty of aggravated murder, kidnapping, aggravated robbery, and aggravated burglary. Following the mitigation phase of the trial, the jury recommended Appellant be sentenced to death. The charges arose from the July, 2000 death of 86 year old Elizabeth Sheeler by an intruder into her apartment. The murder went unsolved for almost four years and became a cold case. In 2004, DNA testing identified Appellant as the murderer. Appellant appealed to the Ohio Supreme Court, which upheld his convictions and the imposition of the death sentence. *State v. Davis*, supra. Appellant filed a petition for certiorari with the United States Supreme Court, which was denied on October 6, 2008.

{¶3} Appellant subsequently filed a petition for post-conviction relief. The State filed its answer to the petition as well as a motion for summary judgment. Appellant filed a response to the State's motion to dismiss and filed a motion for leave to respond to the State's motion for summary judgment. Thereafter, Appellant filed a number of other motions, which the State opposed. The State filed a supplemental motion for

¹ A thorough rendition of the facts underlying Appellant's convictions and sentence can be found in *State v. Davis*, 116 Ohio St.3d. 404, 2008-Ohio-2.

summary judgment on November 8, 2007. Appellant mailed his response to the supplemental summary judgment motion, however, the trial court issued its findings of fact and conclusions of law on that same day. The trial court issued its Final Judgment Entry, granting the State's Motion for Summary Judgment on January 14, 2008. Appellant appealed to this Court, which affirmed. *State v. Davis*, Licking App. No. 2008-CA-16, 2008-Ohio-6841.

{¶4} On October 31, 2008, Appellant filed a motion requesting the trial court to find he was unavoidably prevented from discovering new evidence within 180 days of verdict under Ohio Crim.R. 33(B) and, if so found, leave to file a motion for a new trial. Therein, Appellant explained his newly discovered evidence was the affidavit of DNA expert, Dr. Laurence Mueller, a professor in the Ecology and Evolutionary Biology Department at the University of California, Irvine. Appellant asserted Dr. Mueller's affidavit undermined the State's DNA evidence which was essential to its case against Appellant. Appellant concluded because his trial counsel was ineffective for failing to properly challenge the State's DNA evidence, a miscarriage of justice resulted and he was entitled to a merit review of his motion for new trial. The State responded, arguing Appellant's motion was defective both procedurally and substantively. Specifically, the State maintained the trial court lacked jurisdiction to entertain the motion due to a pending appeal of the trial court's denial of his petition for post-conviction relief; the motion for new trial was barred by the doctrine of res judicata; and the evidentiary material offered by Appellant in support of his motion was not "newly discovered".

{¶5} Via Judgment Entry filed January 2, 2009, the trial court denied Appellant's request to find he was unavoidably prevented from discovering new

evidence. The trial court found Appellant failed to demonstrate why he was unable to obtain the “newly discovered” evidence within the timeframe prescribed in Crim.R. 33(B). The trial court also found Appellant failed to demonstrate, but for trial error, to wit: the unavailability of Dr. Mueller’s testimony, no reasonable factfinder would have found him guilty.

{¶16} It is from this judgment entry Appellant appeals, raising as his sole assignment of error:

{¶17} “I. THE TRIAL COURT VIOLATED APPELLANT’S DUE PROCESS RIGHTS WHEN IT DENIED HIS REQUEST FOR LEAVE TO FILE A NEW TRIAL MOTION. U.S. CONST. AMEND. XIV.”

I

{¶18} Herein, Appellant maintains the trial court erred in denying his request for leave to file a motion for new trial as the trial court’s finding he was not unavoidably delayed in discovering new evidence was erroneous.

{¶19} We begin by addressing the threshold issue of whether the trial court had jurisdiction to act on Appellant’s motion for new trial.

{¶10} In *State ex rel. Special Prosecutors v. Judges* (1978), 55 Ohio St.2d 94, the Supreme Court of Ohio granted the relator’s request for a writ of prohibition to prevent the trial court from granting a motion to withdraw a guilty plea and conducting a new trial. The Court held the trial court lost jurisdiction to grant a motion to withdraw a guilty plea and grant a new trial when the defendant lost the appeal of his conviction based upon a guilty plea. *Id.* at 97.

{¶11} The Ohio Supreme Court further held the trial court did not regain jurisdiction subsequent to the court of appeals' decision affirming the defendant's conviction. *Id.* The Court reasoned allowing the trial court to consider a Crim.R. 32.1 motion to withdraw a guilty plea subsequent to an appeal and affirmance by the appellate court "would affect the decision of the reviewing court, which is not within the power of the trial court to do." *Id.* at 97-98. Thus, the Supreme Court found "a total and complete want of jurisdiction by the trial court to grant the motion to withdraw [the defendant's] plea of guilty and to proceed with a new trial." *Id.* at 98.

{¶12} For the same rationale set forth in *Special Prosecutors*, we find the trial court's granting of Appellant's motion for new trial would be inconsistent with the judgment of the Ohio Supreme Court, affirming Appellant's convictions and sentence. Accordingly, we find the trial court was without jurisdiction to entertain Appellant's motion for new trial subsequent to the Ohio Supreme Court's decision.

{¶13} Because the trial court was without jurisdiction to hear Appellant's motion for new trial, we find the trial court did not err in denying Appellant's request for leave to file said motion.

{¶14} Appellant's sole assignment of error is overruled.

{¶15} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Hoffman, J.

Farmer, P.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

