

[Cite as *State v. Chatfield*, 2010-Ohio-4261.]

COURT OF APPEALS  
PERRY COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAMES L. CHATFIELD

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. W. Scott Gwin, J.

Hon. William B. Hoffman, J.

Case No. 10CA12

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Perry County Court of  
Common Pleas, Case No. 09CR0003

JUDGMENT:

Reversed and remanded

DATE OF JUDGMENT ENTRY:

September 8, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Hoffman, J.*

{¶1} Defendant-appellant James L. Chatfield appeals the May 11, 2010 Judgment Entry entered by the Perry County Court of Common Pleas, which found his motion for request for justiciable finding for public records to not be proper at the time filed. Plaintiff-appellee is the State of Ohio.<sup>1</sup>

#### STATEMENT OF THE CASE<sup>2</sup>

{¶2} On June 25, 2008, the Perry County Grand Jury indicted Appellant in Case No. 08CR0050 on five counts of breaking and entering, four counts of theft, and one count of attempted theft. A warrant was issued for Appellant's arrest. Appellant appeared before the trial court for arraignment on January 26, 2009, and entered a plea of not guilty to the charges. On January 27, 2009, the Perry County Grand Jury issued a second indictment against Appellant in Case No. 09CR0003. The indictment charged one count of breaking and entering and one count of theft. Appellant appeared for arraignment in Case No. 09CR0003 on February 4, 2009, and entered a plea of not guilty to the indictment. The two cases were tried together. After hearing all the evidence and deliberating, the jury found Appellant guilty of all twelve counts. The trial court ultimately sentenced Appellant to a prison term of eighty-two months and ordered him to pay restitution. Appellant filed a Notice of Appeal to this Court. Via Judgment Entry filed June 24, 2009, the trial court appointed Attorney Deborah Lamneck to represent Appellant in the appeal process.

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<sup>1</sup> The State has not filed a brief in this matter.

<sup>2</sup> A Statement of the Facts underlying Appellant's convictions is not necessary for our disposition of this Appeal.

{¶13} On April 28, 2010, while his appeal was still pending before this Court, Appellant filed a Motion for Request for Justiciable Finding for Public Records R.C. 149.43(B)(8). The State filed a memoranda contra. Via Entry filed May 11, 2010, the trial court found Appellant's motion, "to not be proper at this time" as Appellant "is represented by Court Appointed Attorney Deborah Lamneck". May 11, 2010 Entry. Also on May 11, 2010, Appellant filed a motion to correct his April 28, 2010 motion. Later on that same day, the trial court issued an entry, finding the second motion to not be proper as Appellant was represented by court appointed counsel. This Court affirmed Appellant's convictions and sentence via Opinion filed May 26, 2010. *State v. Chatfield*, Perry App. No. 09-CA-11, 2010-Ohio-2398.

{¶14} It is from the trial court's May 11, 2010 Entry relative to his April 28, 2010 motion Appellant appeals, raising as error:

{¶15} "I. THE TRIAL COURT ERRED AND OR / ABUSED ITS DISCRETION WHEN IT FAILED TO MAKE A FINDING THAT THE INFORMATION SOUGHT IN THE PUBLIC RECORD EITHER IS OR NOT NECESSARY TO SUPPORT WHAT APPEARS TO BE A JUSTICIABLE CLAIM OF THE APPELLANT.

{¶16} "II. IT WAS ABUSE OF DISCRETION WHEN THE TRIAL COURT FOUND DEFENDANTS MOTION TO NOT BE PROPER PURSUANT TO O.R.C. §149.43(B)(8). WHEN THE DEFENDANT FILED A PRO'SE MOTION AND THE DEFENDANT WAS NOT APPOINTED COUNSEL A A [SIC] ATTORNEY, THUS DEPRIVED THE DEFENDANT ACCES [SIC] TO THE PUBLIC RECORDS ACT WHEN THE DEFENDANT RAISED A JUSTICIABLE CLAIM THAT WAS NOT RULED ON BY O.R.C. §149.43(B)(8). BY THE JUDGE THAT SENTENCED HIM."

{¶17} This case comes to us on the accelerated calendar, and is governed by App.R. 11.1. App.R. 11.1 provides:

{¶18} “(E) Determination and judgment on appeal

{¶19} “The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court’s decision as to each error to be in brief and conclusionary form.

{¶10} “The decision may be by judgment entry in which case it will not be published in any form.”

I & II

{¶11} Because our disposition of Appellant’s assignments of error involves a similar analysis, we shall address said assignments of error together. In his first assignment of error, Appellant maintains the trial court erred and/or abused its discretion in failing to make a finding as to whether the information contained in the public records he sought was necessary to support a justiciable claim. In his second assignment of error, Appellant contends the trial court abused its discretion in finding his motion not to be proper because Appellant was represented by counsel as counsel was appointed for the appellate process, not for the filing of a public records request.

{¶12} R.C. 149.43(B)(8) provides:

{¶13} “A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the

request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.”

**{¶14}** In a June 24, 2010 Judgment Entry, the trial court appointed Attorney Lamneck to represent Appellant “in the case at bar in the appeal process.” The trial court found Appellant’s R.C. 149.43(B)(8) not to be proper as Appellant was represented by counsel. The June 24, 2009 Entry did not authorize Attorney Lamneck to represent Appellant beyond the appeal of his conviction and sentence. Accordingly, the fact Appellant had a counsel appointed attorney for his appeal did not prevent him from filing a pro se motion in the trial court. Because Appellant properly filed his motion in the trial court, we reverse and remand the matter to the trial court for determination of his public records request pursuant to the mandates of R.C. 149.43(B)(8).

**{¶15}** Appellant’s first and second assignments of error are sustained.

{¶16} The judgment of the Perry County Court of Common Pleas is reversed and the matter remanded to the trial court for further proceedings consistent with the law and this Opinion.

By: Hoffman, J.

Edwards, P.J. and

Gwin, J. concur

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

s/ Julie A. Edwards  
HON. JULIE A. EDWARDS

s/ W. Scott Gwin  
HON. W. SCOTT GWIN

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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JAMES L. CHATFIELD	:	
	:	
Defendant-Appellant	:	Case No. 10CA12

For the reason stated in our accompanying Opinion, the judgment of the Perry County Court of Common Pleas is reversed and the matter remanded to the trial court for further proceedings consistent with the law and our Opinion. Costs assessed to Appellee.

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

s/ Julie A. Edwards  
HON. JULIE A. EDWARDS

s/ W. Scott Gwin  
HON. W. SCOTT GWIN