

[Cite as *State v. Christner*, 2012-Ohio-4790.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ALFRED CHRISTNER

Defendant-Appellant

JUDGES:

Hon. Patricia A. Delaney, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 2012 CA 00135

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 2011 CR 00521

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

October 15, 2012

APPEARANCES:

For Plaintiff-Appellee

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Wise, J.

{¶1} Appellant Alfred Christner appeals from the decision of the Court of Common Pleas, Stark County, which denied his request for judicial release. The relevant facts leading to this appeal are as follows.

{¶2} In May 2011, the Stark County Grand Jury indicted appellant on two counts of gross sexual imposition (R.C. 2907.05(A)(4)), both felonies of the third degree. The indictment was based on an allegation of acts by appellant occurring between November 2010 and March 2011.

{¶3} On June 29, 2011, appellant entered pleas of guilty as charged to both counts in the Stark County Court of Common Pleas. Appellant was thereafter sentenced to five years on each count, to be served concurrently. Appellant was also classified as a Tier II sex offender.

{¶4} Over the course of the ensuing months, appellant unsuccessfully sought judicial release in the trial court on several occasions. On June 25, 2012, appellant filed another motion for judicial release, which the trial court denied via judgment entry on the same day.

{¶5} On July 13, 2012, appellant filed a notice of appeal regarding the aforesaid judgment entry. He herein raises the following two Assignments of Error:

{¶6} "I. HOUSE BILL 86 (H.B. 86) CREATES A SUBSTANTIAL RIGHT OF LIBERTY FOR QUALIFIED, INCARCERATED, NON-VIOLENT OFFENDERS.

{¶7} "II. MR. CHRISTNER IS UNNECESSARILY BEING DEPRIVED OF HIS SUBSTANTIAL RIGHT TO LIBERTY AND THE PURSUIT OF HAPPINESS."

I., II.

{¶8} In his First and Second Assignments of Error, appellant essentially contends the trial court erred and deprived him of his constitutional rights in denying his motion for judicial release.

{¶9} As an initial procedural matter, we note R.C. 2929.20(C)(3) states in pertinent part as follows: “An eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods: *** If the aggregated nonmandatory prison term or terms is five years, the eligible offender may file the motion not earlier than four years after the eligible offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than four years after the expiration of all mandatory prison terms.”

{¶10} Based on the aforesaid procedural history of this matter, it appears impossible that appellant would have been “delivered to a state correctional institution” for his present gross sexual imposition crimes any earlier than 2011; thus, should we reach the issue, we would be inclined to find that his motion for judicial release is premature until some point in 2015, pursuant to R.C. 2929.20(C)(3).

{¶11} Nonetheless, it is well-established that the denial of a motion for judicial release is not a final appealable order. See, e.g., *State v. Bennett*, Muskingum App.No. CT2005-0009, 2006-Ohio-2812, ¶ 15, citing *State v. Masko*, Trumbull App. No. 2004-T-0070, 2004-Ohio-5297, ¶ 2. Appellant’s unsupported assertion in his reply brief that H.B. 86 vitiates this nonappealability rule is unpersuasive.

{¶12} Accordingly, we hold we lack jurisdiction to address the issues presented in appellant's First and Second Assignments of Error.

{¶13} For the reasons stated in the foregoing opinion, the appeal of the judgment of the Court of Common Pleas, Stark County, Ohio, is hereby dismissed.

By: Wise, J.

Delaney, P. J., and

Edwards, J., concur.

JUDGES

JWW/d 0913

