

[Cite as *State v. Kubico*, 2016-Ohio-5066.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

PHILIP KUBICO

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 15 CA 28

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Guernsey County Court of
Common Pleas

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 21, 2016

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Philip J. Kubico appeals the November 18, 2015 Judgment Entry entered by the Guernsey County Court of Common Pleas, denying various motions relative to his criminal convictions and his motion for bond. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE

{¶2} On March 10, 1993, Appellant was indicted by the Guernsey County Grand Jury on twenty-four counts of sexually related offenses involving his two minor children. On January 4, 1994, Appellant entered a plea of guilty to the following: Count Ten, rape, a felony of the first degree; Count Twelve, rape, a felony of the first degree; and Count Twenty-three, gross sexual imposition, a felony of the third degree. All other counts were dismissed. Appellant was sentenced to an indefinite term of five to twenty-five years in prison on Counts Ten and Twelve, and a two year sentence on Count Twenty-three, all terms to be served concurrently.

{¶3} Appellant has filed various motions for documents and transcripts related to his criminal convictions. Also, on September 25, 2015, Appellant filed a motion for bond with the trial court.

{¶4} Via Judgment Entry of November 18, 2015, the trial court denied the various motions and Appellant's motion for bond.

{¶5} On December 7, 2015, Appellant filed a request for leave to file "delay of appeal" with this Court. Appellant stated he had newly discovered evidence, believed his rights were violated and he is being unlawfully incarcerated. Appellant made claims of

ineffective assistance of counsel, and prosecutorial misconduct. Appellant sought leave to appeal the trial court's entry dated January 7, 1994.

{¶6} Via Judgment Entry of January 19, 2016, this Court denied Appellant's motion for "Request for Leave to File Delay of Appeal." However, this Court found Appellant's appeal filed on December 7, 2015, would be timely as to the trial court's November 18, 2015 Judgment Entry, and allowed Appellant's appeal to proceed as to any errors in that entry only.

{¶7} Appellant assigns as error:

{¶8} "I. DELIBERATE INDIFFERENCE."

{¶9} "II. DELIBERATE INDIFFERENCE. INAFFECTIVE [SIC] ASSISTANCE OF COUNSEL.

{¶10} "III. APPELLANT WAS NOT ADVISED OF HIS RIGHT TO APPEAL."

I, II, III.

{¶11} Upon review of Appellant's assigned errors, we find the same do not relate to the November 18, 2015 Judgment Entry; Appellant's request for documents and transcripts; or his request for bond. Rather, the arguments challenge Appellant's underlying convictions and the trial court's January 4, 1994 Judgment Entry. Accordingly, we find Appellant's assignments of error barred by the doctrine of res judicata as they were capable of being raised on direct appeal.

{¶12} Appellant's first, second, and third assignments of error are overruled.

{¶13} The November 18, 2015 Judgment Entry of the Guernsey County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Baldwin, J. concur