

[Cite as *State v. Mathis*, 2018-Ohio-4090.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MICHAEL W. MATHIS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Patricia A. Delaney, J.

Hon. Earle E. Wise, Jr., J.

Case No. CT2018-0011

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court
of Common Pleas, Case No. CR2017-0427

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

October 5, 2018

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

D. MICHAEL HADDOX
Prosecuting Attorney
Muskingum County, Ohio

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Hoffman, P.J.

{¶1} Defendant-appellant Michael W. Mathis appeals the January 18, 2018 Entry entered by the Muskingum County Court of Common Pleas, which assessed \$1398.00 in costs against him. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE¹

{¶2} On November 2, 2017, the Muskingum County Grand Jury indicted Appellant on one count of felonious assault, in violation of R.C. 2903.11(A)(1), a felony of the second degree, with a repeat violent offender specification. The matter proceeded to jury trial on the felonious assault charge on January 16, 2018. After hearing the evidence and deliberating, the jury found him guilty as charged. The trial court found Appellant guilty on the repeat violent offender specification, which was tried separately to the court.

{¶3} On January 17, 2018, the trial court sentenced Appellant to an aggregate prison term of eighteen years. The trial court memorialized Appellant's sentence via Entry filed January 18, 2018. Therein, the trial court also assessed the costs of the prosecution in the amount of \$1398.00 to Appellant.

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

MR. MATHIS RECEIVED INEFFECTIVE ASSISTANCE OF
COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED
STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO
CONSTITUTION WHEN TRIAL COUNSEL FAILED TO FILE A MOTION

¹ A Statement of the Facts is not necessary to our disposition of the Appeal.

TO WAIVE COURT COSTS AT SENTENCING. (JANUARY 18, 2018 ENTRY).

I.

{¶5} This Court has recently addressed and rejected Appellant's argument in *State v. Davis*, 5th Dist. Licking App. No. 17-CA-55, 2017-Ohio-9445, and *State v. Harris*, 5th Dist. Muskingum App. No. CT2018-0005, 2018-Ohio-2257. Appellant cites nothing in his Brief to prompt us to deviate from our prior rulings. Accordingly, we adhere to our prior precedent in *Davis* and *Harris* and overrule Appellant's sole assignment of error.

{¶6} We note this issue is currently pending before the Ohio Supreme Court on a certified conflict between *Davis*, supra, and *State v. Springer*, 8th Dist. Cuyahoga No. 104649, 2017-Ohio-8861. *State v. Davis*, 152 Ohio St. 3d 1441, 2018-Ohio-1600.

{¶7} The judgment of the Muskingum County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Delaney, J. and

Wise, Earle, J. concur

