

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-09-084

Appellee

Trial Court No. 2006CR0476

v.

Jeremy Kerr

DECISION AND JUDGMENT

Appellant

Decided: May 21, 2010

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Aram
Ohanian and David E. Romaker, Jr., Assistant Prosecuting
Attorneys, for appellee.

Jeremy Kerr, pro se.

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OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas which denied appellant's motion to vacate conviction. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Jeremy Kerr, sets forth the following sole assignment of error:

{¶ 3} "THE TRIAL COURT ERRORED [SIC] TO THE PREJUDICE OF THE APPELLANT BY DENYING HIS MOTION TO VACATE CONVICTION."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On October 19, 2006, appellant was indicted on three counts of passing bad checks. On October 27, 2006, appellant was arraigned and defense counsel appointed. On August 29, 2007, the case proceeded to bench trial. Appellant was found guilty on all three counts.

{¶ 5} On March 3, 2008, this court granted appellant's motion for leave to file a delayed appeal. The arguments presented on appeal included the claimed lack of trial court jurisdiction. This unsuccessful contention is again presented in the instant case. On March 20, 2009, this court affirmed the trial court judgment.

{¶ 6} On April 1, 2009, appellant filed a motion for reconsideration. On April 15, 2009, this court denied the motion for reconsideration. On June 12, 2009, appellant filed a motion for delayed appeal to the Supreme Court of Ohio. On August 14, 2009, the Supreme Court of Ohio denied the motion.

{¶ 7} On October 14, 2009, appellant filed a motion to vacate conviction. On November 19, 2009, the motion was denied. On December 2, 2009, notice of appeal disputing the denial of the motion to vacate conviction was filed with this court.

{¶ 8} In his sole assignment of error, appellant asserts that the trial court erred in denying the motion to vacate conviction. In support, appellant again argues that the trial

judge lacked jurisdiction. Appellant's argument stems from a preliminary, administrative case reassignment triggered by appellant's multiple, similar cases.

{¶ 9} Appellant determinatively relies upon and cites Sup.R. 36 in support of his lack of jurisdiction argument. Sup.R. 36(B)(1) states in relevant part, "upon filing in or transfer to the courts or a division of the court, a case immediately is assigned by lot to a judge of the division, who becomes primarily responsible for the determination of every issue and proceeding in the case until its termination."

{¶ 10} Appellant's position centers upon the claimed impropriety of the latter case filed against him being assigned by lot to Judge Pollex, and subsequently being reassigned by certification to Judge Mayberry, the judge to whom appellant's initial case had previously been assigned by lot upon its filing.

{¶ 11} Appellant's argument fails to acknowledge the applicability and impact of Loc.R. 5.02 to the instant case. Loc.R. 5.02(E) establishes an exception to the general rule of assignment of criminal cases by lot. It directs a new criminal filing related to an existing, pending criminal filing, be assigned to the same trial judge to whom the first filed, related case was already assigned by lot.

{¶ 12} The record of evidence in this case includes the requisite prosecutor certification establishing that the later filed criminal case against appellant was related to the earlier filed case previously signed by lot to Judge Mayberry. This triggered the disputed case reassignment under the authority of Loc.R. 5.02(E).

{¶ 13} Given these facts and circumstances, appellant's contention that the case transfer was improper and that Judge Mayberry lacked jurisdiction is without merit. On the contrary, the record establishes that the disputed case reassignment to Judge Mayberry was proper and expressly authorized by Loc.R. 5.02(E).

{¶ 14} In addition to failing on technical grounds, we further find appellant's claim that the trial erred in its denial of appellant's motion to vacate conviction likewise fails on its substantive merits. R.C. 2953.21(A)(2) mandates that such a motion must be filed no more than 180 days after the date upon which the trial transcript is filed. As applied to the instant case, the trial transcript was filed on June 6, 2008. Accordingly, to be timely, appellant's motion had to be filed on or before December 6, 2008. The motion was filed on October 14, 2009, approximately eleven months subsequent to the lapse of the filing deadline. Given the propriety of the case reassignment pursuant to Loc.R. 5.02 and the untimely filing of appellant's motion, we find appellant's assignment of error not well-taken.

{¶ 15} Wherefore, we find substantial justice has been done in this matter. The trial court's judgment is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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