

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

State of Ohio

Court of Appeals No. H-15-003

Appellee

Trial Court No. CRI 20111089

v.

Gary L. Lacy

DECISION AND JUDGMENT

Appellant

Decided: June 19, 2015

* * * * *

Gary L. Lacy, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant, Gary L. Lacy, appeals from the January 14, 2015 judgment of the Huron County Court of Common Pleas denying appellant’s Civ.R. 60(B) motion to set aside the judgment dismissing his postconviction relief petition. The appeal was placed on our accelerated calendar pursuant to 6th Dist.Loc.App.R. 12. For the reasons which follow, we affirm.

{¶ 2} In 2012, appellant was convicted by a jury on three counts: receiving stolen property, failure to comply with the order or signal of a police officer, and assault on a police officer. Appellant was sentenced to one year of imprisonment on both Counts 1 and 3, to run consecutively, and 30 months imprisonment on Count 2, which was to run consecutive to the other sentences. Furthermore, the court concluded that a risk reduction sanction under R.C. 2929.143 was not appropriate because of appellant's past record. After the sentencing hearing, but before the journalization of the court's judgment of conviction and sentencing, the court sua sponte ordered a post-sentence investigation report. The report was filed on May 29, 2012.

{¶ 3} Following his conviction, appellant has filed numerous motions, petitions, and appeals, some of which challenged the subject-matter jurisdiction of the court. Most recently, appellant filed a postconviction relief petition on November 14, 2014, and amended it on December 1, 2014, seeking to set aside the sentencing judgment on the ground that it was void because the trial court lacked subject-matter jurisdiction. The trial court denied the motion on December 8, 2014, on the ground that the issue lacked merit and this was the tenth time the issue had been raised and denied.

{¶ 4} On January 8, 2015, appellant moved pursuant to Civ.R. 60(B) for relief from the December 8, 2014 judgment asserting that subject-matter jurisdiction can be challenged at any time. The trial court denied the motion on January 14, 2014. Appellant filed an appeal from only this judgment.

{¶ 5} On appeal, appellant asserts a single assignment of error:

The Court Of Common Pleas of Huron County is required to make a legal determination when the question as to whether or not, the case in controversy, is at law or in equity, and if the proper procedure exist, to deny the same without proper in equal determination required by law. When confronted with the issue, the Trial Court's failure to determine the issues is an abuse of discretion, the issues warrant an examination. See Civ. Rules Of Procedure Rule one (A), 2, and see, also, Crim. R. 57 (B). A determination is warranted of the question, whether this case is at law, or in equity. [Sic.]

{¶ 6} Appellant argues that the trial court erred by failing to consider his petition when subject-matter jurisdiction can be raised at any time. The trial court, however, did not deny appellant relief on that basis. Rather, the trial court denied the petition on the ground the issue lacked merit and was also barred from being raised under the doctrine of res judicata because it had been raised in the past and rejected.

{¶ 7} To prevail on a motion brought under Civ.R. 60(B), the movant must demonstrate that:

(1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not

more than one year after the judgment, order or proceeding was entered or taken. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113(1976), paragraph two of the syllabus.

{¶ 8} The appellate court will not overturn the trial court's ruling on a motion for relief from judgment unless the trial court abused its discretion. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988). The abuse of discretion standard requires a showing of more than an error of law or judgment. The court's attitude must be shown to have been unreasonable, arbitrary, or unconscionable. *In re Jane Doe 1*, 57 Ohio St.3d 135, 137, 566 N.E.2d 1181 (1991).

{¶ 9} Upon a review of the record, we find that appellant's Civ.R. 60(B) motion fails because he has failed to satisfy either the first or second part of the test for granting the motion. Appellant has repeatedly raised the issue of the subject-matter jurisdiction of the sentencing court and that issue has been rejected. Appellant has also failed to demonstrate how he is entitled to relief under any of the grounds stated in Civ.R. 60(B)(1) through (5). Therefore, we find that the trial court did not abuse its discretion by denying the Civ.R. 60(B) motion. We find appellant's sole assignment of error not well-taken.

{¶ 10} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Huron County Court of Common Pleas is affirmed. Appellant is ordered to pay the court 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.

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, 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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.