

[Cite as *State v. McDuffie*, 2017-Ohio-8490.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105614

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MAURICE McDUFFIE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-12-567263-A

BEFORE: McCormack, P.J., S. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: November 9, 2017

FOR APPELLANT

Maurice McDuffie, pro se
Inmate No. A650882
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, OH 44030

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor

By: Amy Venesile
Assistant County Prosecutor
Justice Center, 9th Floor
1200 Ontario Street
Cleveland, OH 44113

TIM McCORMACK, P.J.:

{¶1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Defendant-appellant Maurice McDuffie, pro se, appeals from the postconviction judgment of the trial court denying his petition to vacate or set aside judgment of conviction or sentence. For the reasons that follow, we affirm the trial court.

Procedural Background

{¶2} In June 2013, McDuffie was convicted of felonious assault and he was sentenced to eight years imprisonment. In December 2013, McDuffie appealed his conviction, and in November 2014, this court affirmed the conviction. *See State v. McDuffie*, 8th Dist. Cuyahoga No. 100826, 2014-Ohio-4924. McDuffie appealed this court's decision to the Ohio Supreme Court, which declined jurisdiction. In May 2014, while the appeal in this court was pending, McDuffie filed a petition to vacate or set aside judgment of conviction or sentence, in which he claimed ineffective assistance of counsel relating to the trial court's failure to instruct the jury on a lesser offense. The trial court denied McDuffie's petition.

{¶3} In January 2015, McDuffie filed an application for reopening of his appeal, which this court denied. *See State v. McDuffie*, 8th Dist. Cuyahoga No. 100826, 2015-Ohio-3223. In his application, McDuffie claimed ineffective assistance of counsel concerning the trial court's failure to consider the presentence investigation report before sentencing, the trial court's failure to grant his Crim.R. 29 motion for acquittal, and the

trial court's "having allowed defendant-appellant's counsel to not withdraw after showing cause" and then refusing to allow a continuance in order to determine whether new counsel should be appointed. *Id.* at ¶ 4. McDuffie also appealed this court's decision denying his application for reopening to the Ohio Supreme Court, which declined jurisdiction.

{¶4} In December 2015, McDuffie filed with the trial court a "motion/demand to turn over jury verdict form for justifiable claim presentation via R.C. 149.43(B)(8)." In this motion, McDuffie claimed that his conviction was not a final appealable order because the signed jury verdict form was not provided to him. He subsequently filed a complaint in mandamus in the Ohio Supreme Court requesting the jury verdict form, in January 2016, which the Supreme Court dismissed.

{¶5} In January 2017, McDuffie filed another petition to vacate or set aside judgment of conviction or sentence, claiming that his conviction should be vacated because he was not provided with the jury verdict form. The trial court denied the motion. McDuffie now appeals, assigning one error for our review: the trial court abused its discretion when it denied defendant-appellant's petition for postconviction relief without conducting a hearing.

Law and Analysis

{¶6} We find that *res judicata* bars McDuffie's claim in this appeal. Under the doctrine of *res judicata*,

a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at trial, which resulted in that judgment of conviction, or on an appeal from that judgment.

State v. Reynolds, 79 Ohio St.3d 158, 161, 679 N.E.2d 1131 (1997), citing *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), syllabus. Res judicata prevents repeated attacks on a final judgment, and it applies to all issues that were or might have been litigated. *State v. Orr*, 8th Dist. Cuyahoga No. 100841, 2014-Ohio-5274, ¶ 3.

{¶7} Here, McDuffie filed his direct appeal in December 2013. He did not request the verdict form at any time prior to filing his direct appeal, nor did he raise any error with respect to the jury verdict form at the time he filed his direct appeal. McDuffie also failed to raise this issue in his application for reopening of his appeal, which he filed in January 2015. In fact, McDuffie did not request the verdict form until December 2015, at which time his request (“motion/demand”) was denied. Moreover, after the trial court denied this request, McDuffie did, in fact, appeal the trial court’s denial in his complaint in mandamus filed in the Ohio Supreme Court in January 2016, which the Supreme Court denied. See *State ex rel. McDuffie v. Saffold*, 145 Ohio St.3d 1439, 2016-Ohio-1596, 48 N.E.3d 580. McDuffie’s claim that the trial court erred when

it denied his postconviction relief seeking a copy of the jury verdict form is therefore barred by res judicata.

{¶8} We note, however, that even if we were to consider McDuffie's claim, we would find no merit. McDuffie claims that the trial court erred in denying his petition for postconviction relief without providing a hearing. It is well-established, however, that a petitioner is not automatically entitled to an evidentiary hearing on a postconviction petition. *State v. Cody*, 8th Dist. Cuyahoga No. 102213, 2015-Ohio-2764, ¶ 28, citing *State v. Jackson*, 64 Ohio St.2d 107, 110-113, 413 N.E.2d 819 (1980). Rather, the petitioner must provide evidence demonstrating "a cognizable claim of constitutional error." *Id.*

{¶9} According to R.C. 2953.21(C), the statute governing postconviction relief, the trial court shall determine whether there are substantive grounds for relief before granting a hearing by considering the record, the petition, and any supporting affidavits. *Id.* And where the petition, supporting affidavits, evidence, and the record do not demonstrate sufficient operative facts to establish substantive grounds for relief, the trial court may deny the petitioner's postconviction relief without a hearing. *State v. Calhoun*, 86 Ohio St.3d 279, 714 N.E.2d 905 (1999), paragraph two of the syllabus.

{¶10} Here, McDuffie argues in his sole assignment of error that the trial court should have held a hearing on his claim that he is entitled to a copy of the jury verdict form. McDuffie, however, provided nothing to the trial court to warrant an evidentiary hearing. His claim regarding the verdict form is one that was either presented or could

have been presented on direct appeal. Accordingly, he failed to set forth sufficient operative facts to establish substantive grounds for relief, and he was therefore not entitled to a hearing on his petition. *Cody* at ¶ 31.

{¶11} Moreover, McDuffie cannot demonstrate he is entitled to access to the jury verdict form. R.C. 149.43(B)(8) governs when a public official must permit an incarcerated individual inspection of certain public records relating to a criminal investigation or prosecution:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

{¶12} This court has held that the names and addresses of jurors are not public records. *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, 8th Dist. Cuyahoga No.

93326, 2009-Ohio-3301, ¶ 4, citing *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, 781 N.E.2d 180. And because the jury verdict form contains the jurors' names, the verdict form is not a public record. See *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, 8th Dist. Cuyahoga No. 95005, 2010-Ohio-6190, ¶ 5 (denying a complaint for writ of mandamus regarding a list of prospective jurors and the jury verdict form that contains the jurors' names). Therefore, an incarcerated individual seeking a copy of the jury verdict form in his trial cannot satisfy the statutory requirements of R.C. 149.43(B)(8) for access to the records, and thus, the inmate fails to establish a clear legal right to the remedy. *Cuyahoga Cty. Jury Commr.*, 8th Dist. Cuyahoga No. 93326, 2009-Ohio-3301, ¶ 4; *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966.

{¶13} Accordingly, McDuffie's sole assignment of error is overruled.

{¶14} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

TIM McCORMACK, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR