The Supreme Court of Ohio

CASE ANNOUNCEMENTS

June 17, 2020

[Cite as *06/17/2020 Case Announcements #2*, 2020-Ohio-3276.]

APPEALS NOT ACCEPTED FOR REVIEW

2020-0210. State v. Bonnell.
Cuyahoga App. No. 108209, 2019-Ohio-5342. Appellant's motion to strike memorandum in response to jurisdiction, motion to disqualify Cuyahoga County Prosecutor's Office, motion to appoint Office of Ohio Attorney General as Special Prosecutor, and motion for relief pursuant to S.Ct.Prac.R. 4.01 denied.

Fischer, J., would deny all the motions as moot.

DeWine, J., would deny the motion to disqualify and the motion to appoint as moot.

French, J., dissents and would accept the appeal on proposition of law Nos. I through III.

Donnelly, J., dissents, with an opinion.

Stewart, J., dissents and would accept the appeal and would deny the motion to disqualify and the motion to appoint as moot.

DONNELLY, J., dissenting.

{¶ 1} Of all the shortcomings or deficiencies that one might identify in the postconviction-review process of death-penalty cases, there are two that have been identified as "particularly problematic: the reluctance of state trial courts to conduct evidentiary hearings to resolve contested factual issues, and the wholesale adoption of proposed state fact-finding instead of independent state court decision-making." Steiker, Marcus & Posel, *The Problem of "Rubber-Stamping" in State Capital Habeas Proceedings: A Harris County Case Study*, 55 Hous.L.Rev. 889, 893 (2018). Those are precisely the two problems involved in this case and presented to this court in this appeal.

{¶ 2} Despite appellant William Bonnell's repeated, ardent claims of his actual innocence, his colorable claims of the state's mishandling of the evidence in his case, and evidence showing a conflicting description of the assailant through a recent sworn statement by one of the witnesses to the 1987 offense who testified at trial, the Cuyahoga County Court of Common Pleas denied Bonnell's motion for leave to file a delayed motion for new trial without holding a hearing. Moreover, the trial court's decision on the motion was a verbatim repetition of the findings of fact and conclusions of law that were proposed by the state. The trial court similarly adopted, verbatim, the state's proposed findings of fact and conclusions of law in overruling Bonnell's postconviction motions in 2005 and 2017.

{¶ 3} An important job that we must perform as a state court of last resort is to exercise our discretion to review "cases of public or great general interest." Ohio Constitution, Article IV, Section 2(B)(2)(e). The problem of giving short shrift to defendants' postconviction litigation efforts and rejecting them through judgment entries authored by a prosecuting attorney exists in many jurisdictions, including Ohio. *See* Steiker, Marcus & Posel at 893-894; Ulate, *The Ghost in the Courtroom: When Opinions Are Adopted Verbatim from Prosecutors*, 68 Duke L.J. 807, 810, 813-814 (2019). One of the worst forms of injustice that our justice system can perpetrate is the dashing of a person's cherished right to freedom through the person's wrongful imprisonment, and worse yet, wrongful execution. The United States Supreme Court has recognized that in the context of capital-punishment cases, death is different. *Ford v. Wainwright*, 477 U.S. 399, 411, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986); *see also State v. White*, 132 Ohio St.3d 344, 2012-Ohio-2583, 972 N.E.2d 534, ¶ 81 (Lanzinger, J., dissenting). In light of the repeated claims of actual innocence by capital-defendant Bonnell, the evidentiary problems that his case presents, the severity of the penalty ordered to be imposed, and the nationwide problem that Bonnell's arguments on appeal exemplify, how could we *not* consider this case to be one of public or great general interest?

{¶ 4} Because I would accept Bonnell's jurisdictional appeal, I dissent.