

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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|----------------------|---|-------------------------|
| State of Ohio, | : | |
| | : | |
| Plaintiff-Appellee, | : | |
| | : | |
| v. | : | No. 12AP-197 |
| | : | (C.P.C. No. 01-CR-6462) |
| Mark R. Russell, | : | |
| | : | (REGULAR CALENDAR) |
| Defendant-Appellant. | : | |

D E C I S I O N

Rendered on September 28, 2012

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

Mark R. Russell, pro se.

APPEAL from the Franklin County Court of Common Pleas
TYACK, J.

{¶ 1} Mark R. Russell is appealing from the denial of his petition for post-conviction relief. He assigns six errors for our consideration:

ASSIGNMENT OF ERROR NO. (1)

APPELLANT'S 5TH, 6TH AND 14TH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION WERE VIOLATED ALONG WITH HIS OHIO CONSTITUTIONAL RIGHTS WHEN THE TRIAL COURT JUDGE ERRED AND ABUSED HER DISCRETION WHEN SHE FAILED TO MAKE THE REQUISITE FINDING AS TO WHETHER APPELLANT WAS UNAVOIDABLY PREVENTED FROM THE DISCOVERY OF NEWLY DISCOVERED EVIDENCE THAT TOXICOLOGIST JAMES L. FERGUSON LIED ABOUT HIS CREDENTIALS IN ORDER TO GAIN EMPLOYMENT WITH THE FRANKLIN COUNTY CORONER'S OFFICE.

ASSIGNMENT OF ERROR NO. (2)

APPELLANT'S 5TH, 6TH, AND 14TH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION WERE VIOLATED ALONG WITH HIS OHIO CONSTITUTIONAL RIGHTS DUE TO JAMES L. FERGUSON'S PARTICIPATION IN THE AUGUST 12TH 2000 AUTOPSY OF KENNY SARTIN.

ASSIGNMENT OF ERROR NO. (3)

APPELLANT'S 5TH, 6TH AND 14TH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION WERE VIOLATED ALONG WITH HIS OHIO CONSTITUTIONAL RIGHTS WHEN THE INACCURATE, UNRELIABLE AND UNTRUSTWORTHY AUTOPSY REPORT OF KENNY SARTIN WAS ADMITTED INTO EVIDENCE, THE AUTOPSY REPORT WAS UNTRUSTWORTHY DUE TO THE PARTICIPATION OF JAMES L. FERGUSON.

ASSIGNMENT OF ERROR NO. (4)

APPELLANT'S 5TH, 6TH AND 14TH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION WERE VIOLATED ALONG WITH HIS OHIO CONSTITUTIONAL RIGHTS WHEN THE JUDGMENT HE RECEIVED WAS OBTAINED THROUGH A DUE PROCESS VIOLATION, OR TAINTED BY A DUE PROCESS VIOLATION RENDERING APPELLANT'S JUDGMENT AGAINST HIM VOID.

ASSIGNMENT OF ERROR NO. (5)

APPELLANT'S CONVICTION AND THE TOXICOLOGY REPORT TESTIFIED TO AT HIS TRIAL ARE FRUITS OF THE POISONOUS TREE, IN VIOLATION OF HIS 5TH, 6TH AND 14TH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION AND HIS OHIO CONSTITUTIONAL RIGHTS.

ASSIGNMENT OF ERROR NO. (6)

APPELLANT RECEIVED A VOID JUDGMENT DUE TO HIS CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION BEING VIOLATED. THE FRANKLIN COUNTY CORONER'S OFFICE MEDICAL

EXAMINER TESTIFIED ABOUT THE TOXICOLOGY
REPORT MADE BY JAMES L. FERGUSON.

{¶ 2} Russell was convicted of murder in 2003 and pursued a direct appeal which resulted in his conviction being affirmed in May 2004. Since then, he has filed several motions and petitions seeking to overturn his conviction. He also has appealed the adverse rulings which resulted from the motions and petitions.

{¶ 3} In this case, Russell alleges that his convictions should be overturned because a toxicologist with the Franklin County Coroner's Office had misrepresented his (the toxicologist's) credentials in other cases.

{¶ 4} The problem for Russell is that the cause of death in his murder case was a gunshot wound to the head of the victim. The assistant coroner who assigned the cause of death was not the toxicologist but Patrick J. Fardal, M.D. The toxicologist did not testify. Normally no toxicology would be necessary to establish the cause of death for a victim with a visible gunshot wound to the head.

{¶ 5} The misrepresentation about the credentials of the toxicologist was important in another case where the cause of death was heatedly and heavily contested, and dependent upon issues involving toxicology. The credentials of a non-testifying toxicologist could not have made an impact where another physician attributed the death to the gunshot wound.

{¶ 6} Russell's petition for post-conviction relief did not present a meritorious basis for overturning his conviction. The assignments of error are overruled and the judgment of the Franklin County Court of Common Pleas is once again affirmed.

Judgment affirmed.

BRYANT and FRENCH, JJ., concur.
