

[Cite as *State v. Wilson* , 2009-Ohio-7035.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

LAWRENCE E. WILSON

Defendant-Appellant

Appellate Case No. 23247

Trial Court Case No. 1996-CR-1019

(Criminal Appeal from
Common Pleas Court)

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OPINION

Rendered on the 30th day of December, 2009.

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Defendant-Appellant, *pro se*

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BROGAN, J.

{¶ 1} Lawrence E. Wilson appeals pro se from the trial court's decisions and entries denying his R.C. 149.43(B)(4) public-records request and overruling his Crim.R. 33 motion for leave to file a delayed motion for new trial.

{¶ 2} Wilson advances two assignments of error on appeal. First, he contends the trial court abused its discretion in finding that he was not entitled to the requested records. Second, he claims the trial court abused its discretion in denying his motion for leave to seek a new trial.

{¶ 3} The record reflects that Wilson was convicted in 1997 for raping a ten-year-old child. We affirmed his conviction on direct appeal in 1998. Since then, he has filed numerous unsuccessful actions, including motions for a new trial, petitions for post-conviction relief, and a federal habeas corpus action. Most recently, Wilson filed a September 20, 2007 request for public records under R.C. 149.43(B)(4) and a June 23, 2008 motion for leave to file a delayed motion for a new trial under Crim.R. 33. The trial court denied the public-records request and overruled the new-trial motion in separate entries on January 9, 2009. This timely appeal followed.

{¶ 4} Wilson's first assignment of error challenges the trial court's denial of his public-records request for failure to meet "his burden of showing his entitlement to such documents." Wilson's request sought copies of the docket of journal entries in his criminal case, all appeals, and all collateral proceedings. He wanted copies of these records to pursue future claims alleging "the deprivation of due process and equal protection of the laws; the denial of fundamentally guaranteed constitutional rights; actual innocence; the denial of access to and redress in the courts; the denial of the effective assistance of counsel for trial, and the first appeal as of right; the absence of a

sufficient formal accusation; plain error; structural error; and the deprivation of substantial rights * * *.”

{¶ 5} To obtain public records under R.C. 149.43(B)(4), an inmate must “demonstrate that the information he is seeking * * * is necessary to support a justiciable claim or defense.” *State v. Gibson*, Champaign App. No. 06CA37, 2007-Ohio-7161, ¶13. This ordinarily involves identifying a “pending proceeding with respect to which the requested documents would be material.” *Id.* at ¶14. Wilson has not identified any pending proceeding at all, much less one to which a docket of journal entries would be material. Moreover, while Wilson has identified a number of potentially cognizable claims in the abstract, he has not shown that any of them remain justiciable in his case, which already has seen a direct appeal, multiple motions for a new trial, petitions for post-conviction relief, and a federal habeas corpus action. As a result, the trial court did not abuse its discretion in denying the public-records request. Wilson’s first assignment of error is overruled.

{¶ 6} Wilson’s second assignment of error concerns the trial court’s denial of his motion for leave to seek a new trial. In support of his motion, Wilson professed to have newly discovered evidence establishing a link between steroid use and psychosis in some children. He asserted that his friends and relatives had uncovered this link while researching internet sites from WebMD, the National Institutes of Health, and Wikipedia. He further asserted that this information “did not exist or was unavailable to him until recently” when his friends and relatives found it. Wilson alleged that “[t]he source of the newly discovered evidence includes current technological and medical research and development which was nonexistent or unavailable at the time of trial, and

the defendant had no knowledge or awareness of the grounds supporting [the] motion[.]”

{¶ 7} Wilson supported his motion with an affidavit in which he averred that the child-victim in his case had been “prescribed steroids for a serious medical condition within the proximity of the complaint.” He further averred that the child-victim had displayed “psychiatric symptoms” at the time of his offense. Wilson theorized in his affidavit that these symptoms were the result of steroid use. Finally, he averred that “an objective evaluation of the [child] witness and circumstances surrounding this case, by [a] competent physician or psychiatrist, would prove that, due to the steroid treatment, and the corresponding mental abnormalities, the child’s ability to accurately testify about factual events was impaired, and she did not possess the basic abilities required for competency, and that the child was unable to accurately perceive and recollect factual events relevant to the charge of conviction.”

{¶ 8} Upon review, we find no abuse of discretion in the trial court’s denial of Wilson’s motion for leave to seek a new trial. “Crim.R. 33(A)(6) permits a convicted defendant to file a motion for a new trial upon grounds that new evidence material to the defense has been discovered that the defendant could not with reasonable diligence have discovered and produced at the trial. However, such a motion must be filed within 120 days after the day of the verdict, unless the trial court finds by clear and convincing evidence that he was unavoidably prevented from discovering the evidence.” *State v. Parker*, 178 Ohio App.3d 574, 576-577, 2008-Ohio-5178, ¶15. To seek a new trial based on new evidence more than 120 days after the verdict, a petitioner “must first file a motion for leave, showing by ‘clear and convincing proof that he has been

unavoidably prevented from filing a motion in a timely fashion.” Id. at 577, quoting *State v. Morgan*, Shelby App. No. 17-05-26, 2006-Ohio-145. “[A] party is unavoidably prevented from filing a motion for new trial if the party had no knowledge of the existence of the ground supporting the motion for new trial and could not have learned of the existence of that ground within the time prescribed for filing the motion for new trial in the exercise of reasonable diligence.” Id., quoting *State v. Walden* (1984), 19 Ohio App.3d 141, 145-146.

{¶ 9} The trial court denied Wilson’s Crim.R. 33 motion on the basis of untimeliness, implicitly finding no clear and convincing evidence that he had been unavoidably prevented from discovering his new evidence earlier. We see no abuse of discretion in this ruling. Wilson cited nothing to support his claim that the alleged link between steroid use and psychosis was a recent medical discovery. In his motion, he alleged that the medical research “did not exist *or* was not available to him until recently[.]” (Emphasis added). He did not identify any of the research with specificity, however, or include it with his motion. Moreover, Wilson’s affidavit, which was the only evidence before the trial court, completely failed to address when the medical research was performed allegedly linking steroid use to potential childhood psychosis. Therefore, the trial court lacked any evidentiary basis to conclude that the research cited by Wilson was a recent medial discovery.

{¶ 10} At best, Wilson’s motion supported a finding that he personally recently discovered the existence of medical evidence linking steroid use to childhood psychosis. Absent any evidence to the contrary, the trial court reasonably could have concluded, however, that such evidence existed long before Wilson filed his motion on

June 23, 2008.¹ If so, the trial court also reasonably could have concluded that Wilson's friends and relatives, and even Wilson himself, were capable of discovering the evidence sooner than eleven years after his conviction. At a minimum, the trial court did not abuse its discretion in finding no clear and convincing evidence to the contrary.

{¶ 11} Finally, while our review of the trial court's ruling on Wilson's motion for leave to seek relief under Crim.R. 33 does not require us to resolve the merits of the new-trial issue (as opposed to Wilson's ability to move for a new trial), we do note an apparent lack of evidence establishing that the child-victim was suffering from steroid-induced delusions at the time of Wilson's offense. The child testified at trial that Wilson had inserted his tongue into her vagina and had licked her "privates." Wilson testified in his defense and admitted touching his tongue to a menstrual discharge between the child's vagina and anus. He only denied actually inserting his tongue into her vagina. See *State v. Wilson* (Aug. 7, 1998), Montgomery App. No. 16728, 16752. Given the similarity between Wilson's testimony and the victim's, we question his ability to establish that she was incompetent and that her recollection was the product of steroid-induced psychosis. In any event, we need not resolve that issue, having found no abuse of discretion in the trial court's threshold ruling denying Wilson leave to seek a new trial under Crim.R. 33. The second assignment of error is overruled, and the judgment of the Montgomery County Common Pleas Court is affirmed.

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¹See, e.g., David A. Fohrman, M.D. and Martin T. Stein, M.D., *Journal of Family Practice* (Vol. 5, No. 2, Feb. 2006), *Psychosis: 6 steps rule out medical causes in kids*, table 1, note 10 (citing a 2002 report and recognizing anabolic steroids as a drug that may cause psychotic symptoms in children).

DONOVAN, P.J., and FROELICH, J., concur.

Copies mailed to:

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