

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

STATE OF OHIO

Plaintiff-Appellee

V.

ANTHONY WILSON

Defendant-Appellant

Appellate Case No. 23313

Trial Court Case No. 07-CR-2134/2

(Criminal Appeal from
Common Pleas Court)

OPINION

Rendered on the 23rd day of July, 2010.

MATHIAS H. HECK, JR., by EMILY E. SLUK, Atty. Reg. #0082621, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

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Attorney for Defendant-Appellant

RINGLAND, J.

{¶ 1} Defendant-appellant Anthony Wilson appeals from the Montgomery County Common Pleas Court's refusal to grant his request to obtain a copy of certain public records.

{¶ 2} In 2007, Wilson was convicted and sentenced for two counts of

complicity to commit felonious assault. Wilson filed a notice of appeal, and counsel was appointed to prosecute the appeal. Thereafter, on August 13, 2008, Wilson, acting pro se, filed a motion with the trial court seeking access to the records in his case. The request was denied by the trial court on August 18, 2008. On January 2, 2009, Wilson, again acting pro se, filed a second request for records pursuant to R.C. 149.43. On February 6, 2009, this court affirmed Wilson's convictions. See, *State v. Wilson*, Montgomery App. No. 22581, 2009-Ohio-525. The trial court denied Wilson's second public records request on February 19, 2009.

{¶ 3} Wilson filed a timely appeal raising a single assignment of error:

{¶ 4} "TRIAL COURT WAS PREJUDICE [SIC] IN DENYING DEFENDANT ACCESS TO PUBLIC RECORDS DOCUMENTS, AND MATERIALS FOR ESTABLISHING A JUSTICIABLE CLAIM OF DEFENSE IN VIOLATION OF OHIO REVISED CODE 149.43(B)(8) AN [SIC] OHIO CONSTITUTION ARTICLE 1 SECTION 10."

{¶ 5} Wilson contends that the trial court erred by denying his public records request. In support, he argues that he presented a justiciable claim upon which the trial court should have relied in determining that he should be permitted access to the tapes pursuant to R.C. 149.43.

{¶ 6} R.C. 149.43(B)(8) provides in part:

{¶ 7} "A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction * * * to obtain a copy of any public record concerning a criminal investigation or prosecution * * *, 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.”

{¶ 8} This section requires Wilson to demonstrate that the information sought is “subject to release as a public record” under R.C. 149.43 and that “the judge who imposed the sentence” has determined that “the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.” *Jones v. Dann*, Franklin App. No. 09AP-352, 2009-Ohio-5976, ¶10.

{¶ 9} In his request for release of the records, Wilson stated that he sought the release of “any documents.” He further stated that he was “going through the appellate and trial process.” Wilson claimed that he was deprived a full trial transcript because he only received four volumes of transcript while he believed that the record contained what “would equal up to six volumes.” Finally, Wilson claimed that access to the records would “help establish a defense to the constitutional rights of the defendant.”

{¶ 10} The trial court found that Wilson did not demonstrate that the records sought were needed to support a justiciable claim. We must agree. Other than a generalized statement regarding the need for the documents to “establish a defense,” Wilson has provided nothing that would support his request. We conclude that the trial court, therefore, did not err in finding that Wilson did not satisfy the requirements of R.C. 149.43(B)(8) as he has failed to demonstrate that the records

are necessary to support a justiciable claim.

{¶ 11} The judgment of the trial court is affirmed.

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DONOVAN, P.J., and GRADY, J., concur.

(Hon. Robert P. Ringland, Twelfth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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