

IN THE COURT OF APPEALS
FOURTH APPELLATE DISTRICT
ADAMS COUNTY, OHIO

STATE OF OHIO, :
Plaintiff-Appellee, : CASE NO. 03CA773
-v- :
BOBBY J. YOUNG, : DECISION AND JUDGMENT ENTRY
Defendant-Appellant. :

APPEARANCES

APPELLANT PRO SE: Bobby J. Young, #A435-237, Chillicothe
Correctional Institution, P.O. Box 5500,
Chillicothe, Ohio 45601-0990
COUNSEL FOR APPELLEE: Jessica A. Little, Adams County
Assistant Prosecuting Attorney, 110 West
Main Street, West Union, Ohio 45693

_CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 1-21-04

ABELE, J.

{¶1} This is an appeal from an Adams County Common Pleas Court entry and order that denied a request to reduce the amount of bond pending appeal. Bobby J. Young, defendant below and appellant herein, raises the following assignment of error for review:

"THE COURT DENIED APPELLANT MOTION AS BEING "NOT WELL TAKEN," AND GAVE NO FINDINGS OR FACTS OR CONCLUSIONS OF LAW FOR THEIR DENIAL TO AFFORD THE APPELLANT AN APPEAL BOND AFTER HE GAVE GOOD CAUSE, AND BOND WAS EXCESSIVE GIVEN THE FACT THAT APPELLANT WAS INDICTED FOR ROBBERY AND GUN SPEC. EXCESSIVE BOND VIOLATED THE EIGHTH AND FOURTEENTH AMENDMENTS."

{¶2} On August 22, 2002, appellant entered a guilty plea to

the charge of robbery with a gun specification, a second degree felony. On September 9, 2002, the trial court sentenced appellant to five years imprisonment on the robbery conviction and to one year imprisonment on the gun specification. The court further ordered the appellant's prison terms to be served consecutively.

{¶3} Appellant appealed his conviction and on June 24, 2003, this court affirmed the trial court's judgment of conviction and sentence. See State v. Young (2003), Adams App. No. 02CA755. On July 15, 2003, appellant filed a motion with the Common Pleas Court for bond pending appeal in an amount lesser than the amount that the trial court had previously set (\$150,000, cash or surety). On August 13, 2003 the trial court denied appellant's motion. On August 19, 2003, appellant filed a notice of appeal with the Ohio Supreme Court. On August 26, 2003, appellant filed the instant appeal in order to review the Common Pleas Court's denial of appellant's request for bond pending appeal. On October 8, 2003 and November 5, 2003, the Ohio Supreme Court denied appellant leave to appeal and dismissed the appeal as not involving any substantial constitutional question. See State v. Young, Case No. 03-1248 and 03-14731.

{¶4} It appears from our review of appellant's "brief on appeal" and supporting argument that appellant asserts that the trial court erred by imposing an excessive bail which, appellant maintains, violates various constitutional provisions.

{¶5} Appellee aptly notes that this court affirmed appellant's judgment of conviction and sentence and that the Ohio Supreme Court

has declined to review our judgment. Thus, the underlying criminal case is not currently pending.

{¶6} For a variety of reasons too numerous to mention, appellant's argument in the instant case must fail. Most notably, as appellee points out, the underlying criminal case has been finally resolved and is no longer pending. App.R. 8 provides:

App.R. 8 Bail and suspension of execution of sentence in criminal cases

(A) Discretionary right of court to release pending appeal

The discretionary right of the trial court or the court of appeals to admit a defendant in a criminal action to bail and to suspend the execution of his sentence during the pendency of his appeal is as prescribed by law.

(B) Release on bail and suspension of execution of sentence pending appeal from a judgment of conviction

Application for release on bail and for suspension of execution of sentence after a judgment of conviction shall be made in the first instance in the trial court. Thereafter, if such application is denied, a motion for bail and suspension of execution of sentence pending review may be made to the court of appeals or to two judges thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee.

Thus, pursuant to App.R. 8 a court may admit a criminal defendant to bail during the pendency of the defendant's appeal. See, also, Crim.R. 46(H).

{¶7} Once again, we note that in the case sub judice the appellant's criminal case is no longer pending. This fact renders appellant's assertion moot.

{¶8} Accordingly, based upon the foregoing reasons we hereby dismiss the appeal.

APPEAL DISMISSED.

Kline, P.J. & Harsha, J.: Concur in Judgment & Opinion

For the Court

BY:

Peter B. Abele, Judge