

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	Case No. 08CA3083
	:	
Respondent-Appellee,	:	
	:	
v.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
JOHN HAUGH, JR.,	:	
	:	
	:	Released 12/23/09
Petitioner-Appellant.	:	

APPEARANCES:

John Haugh, Jr., Chillicothe, Ohio, pro se appellant.

Michael M. Ater, ROSS COUNTY PROSECUTOR, and Jeffrey C. Marks, ROSS COUNTY ASSISTANT PROSECUTOR, for appellee.

Harsha, J.

{¶1} John Haugh, Jr. appeals the trial court's decision to uphold his reclassification as a Tier III sex offender under recently amended R.C. Chapter 2950. Haugh contends that a sergeant at the Chillicothe Correctional Institution ("CCI") erroneously told him that he could not bring legal research to the hearing on the petition contesting the reclassification. Haugh argues that if he had this research at the hearing, he could have shown the trial court that he was not subject to community notification requirements. Because no evidence in the record supports Haugh's claims, we must afford the trial court proceedings and judgment a presumption of regularity. Accordingly, we affirm the trial court's judgment.

I. Facts

{¶2} In September 2007, Haugh pled guilty in Franklin County to one count of rape and one count of abduction and was classified as a Sexually Oriented Offender under R.C. Chapter 2950.¹ Subsequently, while incarcerated at CCI in Ross County, Haugh received a notice from the Ohio Attorney General informing him that he had been reclassified as a Tier III sex offender based on the amendments to R.C. Chapter 2950 imposed by Senate Bill 10. Haugh filed a petition to contest the reclassification and requested a hearing in the Ross County Court of Common Pleas.

{¶3} The trial court's journal entry indicates that at the hearing on the petition, Haugh acted pro se, was "given the opportunity to argue in support of * * * the petition[.]" and "[n]o evidence was presented." The court found that (1) Haugh failed to prove by clear and convincing evidence that the new registration requirements were incorrectly applied to him or that the new registration requirements did not apply to him at all; (2) the revised sections of R.C. Chapter 2950 that Haugh challenged in his petition were constitutional; and (3) none of the exceptions to the community notification requirements of R.C. 2950.11 applied. After the court denied Haugh's petition, he filed this appeal.

II. Assignment of Error

{¶4} Haugh assigns the following error for our review:

Appellant's right to present his defense pro se was not respected.

III. Timeliness of Haugh's Brief

{¶5} Initially, the State argues that we should dismiss Haugh's appeal because

¹ Given the sparse record on appeal, some of this information was obtained from the State's appellate brief.

his brief was untimely. We previously dismissed this appeal when Haugh failed to comply with this court's order instructing him to file an appellate brief that had a certificate of service evidencing service on the State. Subsequently, we granted Haugh's application for reconsideration, reinstated his appeal, and ordered him to file an amended copy of his brief with a correct certificate of service within 20 days of the journalization of our entry. Haugh filed his brief two days late. If an appellant's brief is untimely, App.R. 18(C) provides that the court of appeals "may dismiss the appeal." Thus, we have discretion in ruling upon the State's request. Here, the brief was only a few days late, and there has been no showing of prejudice to the State. We do not believe that dismissal is warranted because "[f]airness and justice are best served when a court disposes of a case on the merits. Only a flagrant, substantial disregard for the court rules can justify a dismissal on procedural grounds." *DeHart v. Aetna Life Ins. Co.* (1982), 69 Ohio St.2d 189, 193, 431 N.E.2d 644.

IV. Community Notification Requirements

{¶6} In his sole assignment of error, Haugh contends that before the hearing on his petition, Sergeant Charles at CCI erroneously told him that he could not bring legal research to the hearing. Haugh claims that if he had this research, he would have submitted evidence that the factors outlined in R.C. 2950.11(F)(2) prevented the court from subjecting him to community notification requirements. Although Haugh did not provide a transcript of the hearing for our review, he admits that he did not tell the trial court about Charles's alleged statement. Furthermore, the trial court's judgment entry indicates that Haugh presented no evidence at the hearing. The only evidence Haugh offers to support his argument is an affidavit which is attached to his appellate brief and

which is not part of the trial record. See App.R. 9.

{¶7} Haugh can point to no evidence in the record that substantiates his allegations. “A reviewing court will not reverse a judgment of the trial court unless error appears affirmatively on the record. In the absence of indication to the contrary, the appellate court will presume regularity in the proceedings and judgment.” *Hamm v. Heritage Professional Services, Inc.*, Scioto App. No. 92CA2082, 1993 WL 112566, at *2, citing *Palmer v. Kaiser Found. Health* (1991), 64 Ohio App.3d 140, 580 N.E.2d 849. Because we are required to presume regularity in the trial court proceedings absent evidence to the contrary, we cannot conclude that Haugh was misinformed about his ability to bring legal research to the hearing, impeding his ability to effectively defend against imposition of the community notification requirements. There being nothing in the record to support Haugh’s assertion that the trial court improperly upheld his reclassification, we affirm the trial court’s judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Kline, P.J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.