

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

STATE OF OHIO,	:	Case Nos. 14CA3668
		14CA3669
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
		<u>JUDGMENT ENTRY</u>
RAY S. HEID,	:	
Defendant-Appellant.	:	RELEASED: 04/15/2015

APPEARANCES:

Ray S. Heid, Chillicothe, Ohio, pro se appellant.

Mark E. Kuhn, Scioto County Prosecuting Attorney, and Danielle M. Parker, Scioto County Assistant Prosecuting Attorney, Portsmouth, Ohio, for appellee.

Harsha, J.

{¶1} Ray S. Heid pleaded guilty to a charge of murder with an accompanying firearm specification and the trial court sentenced him to prison. Over six years later Heid filed motions seeking court records without cost in two separate cases to obtain information to support future actions for delayed appeal and postconviction relief.

{¶2} In his consolidated appeals from the denial of his motions, Heid claims that the trial court abused its discretion in denying them. Heid's claim is meritless because he did not establish that the information in the requested records was necessary to support a justiciable claim. Heid did not identify an actual pending proceeding for which the requested records would be material. And for one of the two cases, the requested records did not exist. Therefore, the trial court did not abuse its discretion in denying his motions.

I. FACTS

{¶3} In February 2008, the grand jury returned an indictment in Scioto County C.P. Case No. 08CR039, which charged Heid with one count of aggravated murder with a firearm specification, one count of burglary with a firearm specification, one count of aggravated robbery with a firearm specification, one count of tampering with evidence, and one count of theft of a motor vehicle.

{¶4} Then in May 2008, the grand jury returned an indictment in Scioto County C.P. Case No. 08CR467, which superseded the February indictment. The new indictment charged Heid with similar crimes, but included a charge of aggravated burglary in place of burglary. As a result of the superseding indictment, the state dismissed Case No. 08CR039 without prejudice; the records in that case were subsequently destroyed in April 2012.

{¶5} In the active case Heid entered a plea of guilty to murder and a firearm specification. In May 2008, the trial court sentenced Heid to an aggregate prison term of 18 years to life. Heid did not timely appeal his conviction and sentence.

{¶6} Over six years later in late July 2014, Heid filed motions in both the dismissed case and the case in which he was convicted. In these motions Heid requested that the trial court provide him with copies of certain records without cost. He claimed that he needed the records “to point out specific Constitutional and Statutory violations that will be raised on a Delayed Appeal pursuant to App.R. 5, and a Post-Conviction Petition pursuant to R.C. 2953.21.” After the state filed memoranda in opposition, the trial court denied the motions on August 20, 2014.

{¶7} Eight days later Heid filed motions requesting copies of different records without cost in the cases, again claiming that the information was needed to support a

future delayed appeal. In a subsequent memorandum in support of his motions Heid claimed that he sought the records pursuant to the federal Freedom of Information Act and R.C. 149.43(B)(8) of the Ohio Public Records Act. The trial court denied the motions. Heid appealed the trial court's judgments, and we consolidated the appeals.

II. ASSIGNMENT OF ERROR

{¶8} Heid assigns the following error for our review:

The trial court abused its discretion and violated Ray S. Heid's right to due process and equal protection of the laws when it failed to abide by Ohio law and refused to grant him access to court records in order to adequately support his claims in redressing his grievance in post-conviction remedies created by the State. Thus violating his right to the First, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution; Ohio Constitution, Article I, Sections 1, 2, 3, 10, 11 and 16; RC 149.43 and other Statutory Laws.

III. LAW AND ANALYSIS

{¶9} In his sole assignment of error Heid asserts that the trial court abused its discretion by denying his motions seeking court records without cost. In memoranda he filed in support of these motions, Heid claimed that he filed them pursuant to the federal Freedom of Information Act ("FOIA"), 5 U.S.C. 552, and the Ohio Public Records Act, R.C. 149.43.

{¶10} Insofar as Heid premised his entitlement to the requested records on FOIA, the court correctly denied his requests because FOIA does not apply to nonfederal agencies and officers. *See State ex rel. Cincinnati Enquirer v. DuPuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, citing 5 U.S.C. 551(1) and 552(f); *State v. Gibson*, 2d Dist. Champaign No. 06CA37, 2007-Ohio-7161, ¶ 10 ("the Federal Freedom of Information Act * * * does not apply to state or local government agencies or officers").

{¶11} Thus the dispositive issue is whether Heid is entitled to the requested records under R.C. 149.43. The provision applicable to Heid's requests is R.C. 149.43(B)(8), which creates a heightened standard for convicted inmates requesting copies of public records about a criminal investigation or prosecution:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, 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.

{¶12} By enacting this provision "[t]he General Assembly clearly evidenced a public-policy decision to restrict a convicted inmate's unlimited access to public records in order to conserve law enforcement resources." *See State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5838, 856 N.E.2d 966, ¶ 14, construing the similarly worded former R.C. 149.43(B)(4). To achieve this purpose "R.C. 149.43(B)(8) requires an incarcerated criminal offender who seeks records relating to an inmate's criminal prosecution to obtain a finding by the sentencing judge or the judge's successor that the requested information is necessary to support what appears to be a justiciable claim." *State ex rel. Fernbach v. Brush*, 133 Ohio St.3d 151, 2012-Ohio-4214, 976 N.E.2d 889, ¶ 2, citing *State ex rel. Chatfield v. Flautt*, 131 Ohio St.3d 383, 2012-Ohio-1294, 965 N.E.2d 304.

{¶13} The word "justiciable" is not defined by statute so we must construe it in accordance with rules of grammar and common usage. *State ex rel. Baroni v. Colletti*,

130 Ohio St.3d 208, 2011-Ohio-5351, 957 N.E.2d 13, ¶ 18; R.C. 1.42. According to its common usage, a “justiciable” claim is one that is “properly brought before a court of justice; capable of being disposed of judicially.” *Black’s Law Dictionary* 882 (8th Ed.2004). Consistent with this definition, we have held that a “justiciable” claim must be capable of affording appropriate relief. See *State v. Seal*, 4th Dist. Highland No. 13CA10, 2014-Ohio-4168, ¶ 8, citing *State v. Wilson*, 2d Dist. Montgomery No. 23734, 2011-Ohio-4195, ¶ 9. “Establishing a justiciable claim ordinarily involves identifying a ‘pending proceeding with respect to which the requested documents would be material.’” *State v. Rodriguez*, 12th Dist. Preble No. CA2013-11-011, 2014-Ohio-2583, ¶ 14, quoting *State v. Rodriguez*, 6th Dist. Woods Nos. WD-13-026, WD-13-053, and WD-13-071, 2014-Ohio-1313, ¶ 5; *Seal* at ¶ 8.

{¶14} We review the trial court’s decision on whether the inmate requesting these records established a justiciable claim under an abuse of discretion standard. *Id.* “A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary.” *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34. Included within this definition is the situation in which a trial court does not engage in a sound reasoning process. *Id.*

{¶15} The trial court acted reasonably in denying Heid’s requests because he did not identify a pending proceeding for which the requested records would be material. Instead, he conceded that he wanted to support a potential delayed appeal or postconviction action that he had not yet filed, i.e. he did not have a pending proceeding at the time he sought the records. Alluding to possible future proceedings that could

result from access to the records is insufficient to satisfy this burden. *Rodriguez*, 6th Dist. Wood Nos. WD-13-026, WD-13-053, and WD-13-071, 2014-Ohio-1313, at ¶ 6.

{¶16} To the extent that Heid sought the records pursuant to the Public Records Act based on his indigency, R.C. 149.43(B)(1) authorizes a public office to require the prepayment of costs before providing copies of public records. R.C. 149.43 does not require a public-records custodian to provide copies of records free of charge. *State ex rel. Dehler v. Mohr*, 129 Ohio St.3d 37, 2011-Ohio-959, 950 N.E.2d 156, ¶ 3.

Nevertheless, an indigent prisoner has a constitutional right to relevant portions of a transcript at public expense upon direct appeal or in seeking postconviction relief. *State ex rel. Murr v. Thierry*, 34 Ohio St.2d 45, 517 N.E.2d 226 (1987); *State v Jackson*, 2d Dist. Montgomery No. 25478, 2013-Ohio-3650, ¶ 14. A prisoner must exercise this right in accordance with R.C. 149.43(B)(8) when applicable and it is similarly limited to the appeal or postconviction action being pending at the time the transcript is requested. *Id.* at ¶ 14-17. But Heid had no appeal or postconviction action pending at the time he filed his motions requesting the records here.

{¶17} Finally, for Case No. 08CR039, no records exist for the original indictment that was dismissed after filing of the superseding indictment in Case No. 08CR467. The docket indicates that they were destroyed before Heid filed his motion requesting records. Under the Public Records Act, the clerk of the trial court has “ ‘no duty to create or provide access to nonexistent records.’ ” *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, 986 N.E.2d 931, ¶ 16, quoting *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, 861 N.E.2d 530, ¶ 15.

{¶18} The trial court properly determined that Heid did not establish that the requested records were necessary to support what appears to be a justiciable claim. It did not act in an unreasonable, unconscionable, or arbitrary manner in denying the motions; instead, its denials were based on a sound reasoning process. We overrule Heid's assignment of error.

IV. CONCLUSION

{¶19} Because the trial court did not abuse its discretion in denying Heid's motions seeking records without cost, we affirm the judgments.

JUDGMENTS AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENTS ARE AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for these appeals.

It is ordered that a special mandate issue out of this Court directing the Scioto 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.

Hoover, P.J. & Abele, 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.