

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DEWIGHT WHITE

Plaintiff-Appellant

vs.

STATE OF OHIO, ET AL. JUDGE, RONALD SUSTER

Defendant-Appellee

: JUDGES:

: Hon. W. Scott Gwin, P.J.

: Hon. Sheila G. Farmer, J.

: Hon. John F. Boggins, J.

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: Case No. 03CA92

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: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 03CV175H

JUDGMENT:

Reversed and remanded

DATE OF JUDGMENT ENTRY:

February 6, 2004

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

DEWIGHT WHITE

#331-976

Ri.C.I.

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Farmer, J.

{¶1} On March 28, 1996, in the Court of Common Pleas of Cuyahoga County, Ohio, appellant, Dewight White, pled guilty to two counts of burglary in violation of R.C. 2911.12 and three counts of theft in violation of R.C. 2913.02. By judgment entry filed April 3, 1996, the trial court sentenced appellant to a total aggregate term of three to fifteen and one-half years in prison.

{¶2} On February 18, 2003, appellant filed a declaratory judgment action in the Court of Common Pleas of Richland County, Ohio, seeking to invalidate his sentence as it violated his constitutional rights. By judgment entry filed August 29, 2003, the trial court dismissed the action, finding it was without jurisdiction to entertain the matter.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶4} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF BY DENIED AND DISMISS HIS MOTION FOR DECLARATORY JUDGMENT WITHOUT A HEARING, DESPITE THE FACT THAT THE PLAINTIFF DEMAND A JURY TRIAL AS OF RIGHT, THUS, DENYING THE PLAINTIFF HIS CONSTITUTIONAL RIGHTS TO DUE-PROCESS AND EQUAL PROTECTION AS GUARANTEED BY THE FOURTEENTH AMENDMENT AND ARTICLE I., SECTION 16., OF THE OHIO CONSTITUTION."

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{¶5} Appellant claims the trial court erred in determining it lacked venue pursuant to Civ.R. 12(B)(3).

{¶6} Through his action, appellant sought a declaration that the judgment entry of conviction and sentence was a "fraud" and such "fraud" violated his state and federal constitutional rights. Appellant argued the sentence violated Crim.R. 32 and Crim.R. 11. Attached to his complaint are the transcript of his sentencing hearing and the judgment entry of sentencing, all of which occurred in Cuyahoga County, Ohio. The action is filed against a judge whose address and jurisdiction are alleged to be in said county.

{¶7} Pursuant to Civ.R. 3(B), proper venue lies in a "county in which a public officer maintains his or her principal office if suit is brought against the officer in the officer's official capacity" or a "county in which all or part of the claim for relief arose." From the verified complaint and attached exhibits, the proper place to initiate the action was Cuyahoga County, Ohio.

{¶8} While we agree the trial court was without jurisdiction to entertain the matter, we disagree with its disposition of the case. The trial court dismissed the case "with prejudice." The trial court should have transferred the case to Cuyahoga County, Ohio pursuant to Civ.R. 3(C) and appellee's July 22, 2003 motion.

{¶9} Upon review, we reverse the trial court's decision and remand the case for transfer to Cuyahoga County, Ohio.

{¶10} The sole assignment of error is granted.

{¶11} The judgment of the Court of Common Pleas of Richland County, Ohio is hereby reversed and remanded.

By Farmer, J.

Gwin, P.J. and

Boggins, J. concur.