

[Cite as *State v. Phillips*, 2014-Ohio-597.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JEFFREY SCOTT PHILLIPS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2013 CA 00160

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 2010 CR 0772

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

February 18, 2014

APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO
PROSECUTING ATTORNEY
KATHLEEN O. TATARSKY
ASSISTANT PROSECUTOR
110 Central Plaza South, Suite 510
Canton, Ohio 44702-1413

For Defendant-Appellant

JEFFREY PHILLIPS
PRO SE
T.C.I.
Post Office Box 901
Leavittsburg, Ohio 44430

Wise, J.

{¶1} Appellant Jeffrey Scott Phillips appeals the July 12, 2012, decision of the Stark County Common Pleas Court denying his petition for post conviction relief.

{¶2} Appellee is the State of Ohio.

{¶3} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶4} “(E) Determination and judgment on appeal. The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court’s decision as to each error to be in brief and conclusionary form. The decision may be by judgment entry in which case it will not be published in any form.”

{¶5} This appeal shall be considered in accordance with the aforementioned rule.

STATEMENT OF THE FACTS AND CASE

{¶6} On June 3, 2010, Appellant Jeffrey Scott Phillips was indicted for aggravated murder, in violation of R.C. 2903.01(B), with two death penalty specifications pursuant to R.C. 2929.04(A)(7). Appellant was further charged with aggravated robbery, in violation of R.C. 2911.01(A)(3); aggravated burglary, in violation of R.C. 2911.11(A)(1); tampering with evidence, in violation of R.C. 2921.12(A)(1); and arson, in violation of R.C. 2909.03(A)(1).

{¶7} The charges arose from the murder of James Leeson, a sixty-six (66) year old retired Alliance firefighter, which occurred on March 10, 2010. Mr. Leeson was

beaten and stabbed in his home during the course of a robbery wherein two flat screen televisions and an automobile were stolen. The automobile was later set on fire.

{¶18} Following a jury trial, Appellant was convicted of aggravated murder, aggravated robbery, aggravated burglary, and tampering with evidence and arson.

{¶19} Following the mitigation phase of the trial, the jury recommended a sentence of life without parole.

{¶10} On November 15, 2010, the trial court sentenced appellant to life imprisonment without the possibility of parole for the aggravated murder of Leeson, a ten (10) year prison term for aggravated robbery, and a ten (10) year prison term for aggravated burglary. The trial court further sentenced appellant to a five (5) year prison term for tampering with evidence and an eighteen (18) month prison term for arson. In all, appellant was sentenced to a prison term of life without the possibility of parole and an additional twenty-five (25) years and was ordered to pay the costs of prosecution.

{¶11} On September 12, 2011, Appellant filed a Petition to Vacate or Set Aside Judgment of Conviction or Sentence, along with various other motions.

{¶12} On November 16, 2011, the State filed a Response to Petition to Vacate or Set aside Sentence, a Motion to Dismiss and Motion for Summary Judgment.

{¶13} On December 16, 2011, Appellant filed a direct appeal of his sentence and convictions.

{¶14} By Opinion and Entry filed December 19, 2011, this Court rejected the appeal. See *State v. Phillips*, 5th Dist. Stark App. No. 2010CA00388, 2011-Ohio-6569. Appellant's appeal to the Ohio Supreme Court was also rejected. See *State v. Phillips*, 131 Ohio St.3d 1510, 2012-Ohio-1710.

{¶15} On July 11, 2012, the trial court granted the State’s Motion to Dismiss and for Summary Judgment, dismissing Appellant’s Motion for Post-Conviction Relief.

{¶16} On December 14, 2012, Appellant filed a motion for “Relief from Judgment Civil Rule 60(B)”.

{¶17} On January 23, 2013, the State filed its Response to Relief from Judgment Civil Rule 60(B).

{¶18} On May 20, 2013, Appellant filed a Demand for Findings of Fact and Conclusions of Law.

{¶19} On June 5, 2013, the State filed its Response to Appellant’s Demand for Findings of Fact and Conclusions of Law.

{¶20} On June 24, 2013, Appellant filed a Motion for Findings of Fact and Conclusions of Law.

{¶21} By Judgment Entry filed July 12, 2013, the trial court granted the State’s Motion for Summary Judgment and Dismissing Petition for Post Conviction Relief.

{¶22} By Judgment Entry filed also on July 12, 2013, the trial court dismissed Appellant’s motion for findings of fact and conclusions of law.

{¶23} Appellant now appeals, assigning the following error for review:

ASSIGNMENT OF ERROR

{¶24} “I. THE COURT OF COMMON PLEAS ABUSED ITS DISCRETION WHEN IT FAILED AND/OR REFUSED TO PROVIDE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS DISCRETION TO DENY THE POST-CONVICTION RELIEF.”

I.

{¶25} In his sole Assignment of Error, Appellant claims that the trial court erred in refusing to provide findings of fact and conclusions of law in support of its denial of his petition for post-conviction relief. We disagree.

{¶26} As an initial matter, we must determine whether the instant appeal is timely. The decision from which Appellant is appealing is the trial court's July 12, 2012, decision denying his post-conviction relief petition. However, Appellant failed to appeal such decision, choosing instead to wait until May 20, 2013 to file a "Demand for Findings of Fact and Conclusions of Law", and a subsequent "Motion for Findings of Fact and Conclusions of Law" on June 24, 2013.

{¶27} We therefore find the instant appeal is not timely filed.

{¶28} For the foregoing reasons, the appeal of the judgment of the Court of Common Pleas of Stark County, Ohio, is dismissed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.