

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff - Appellee

-VS-

RYAN M. LOUGHMAN

Defendant - Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 14CA70

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Richland County
Court of Common Pleas, Case No.
2012-CR-0845

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

April 23, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Baldwin, J.

{¶1} Appellant Ryan M. Loughman appeals a judgment of the Richland County Common Pleas Court dismissing his petition for postconviction relief without an evidentiary hearing. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} On December 7, 2012, the Richland County Grand Jury indicted appellant, Ryan Loughman, on nine counts of burglary in violation of R.C. 2911.12, two counts of attempted burglary in violation of R.C. 2911.12 and 2923.02, and three counts of theft in violation of R.C. 2913.02, one involving drugs and two involving firearms. On April 22, 2013, appellant pled guilty to all the charges but one of the attempted burglary counts, which was subsequently dismissed. By judgment entry filed June 11, 2013, the trial court sentenced appellant to an aggregate term of fourteen years in prison.

{¶3} Appellant filed an appeal to this Court. Appellant argued that the trial court erred in failing to recuse itself because the court's bailiff was a victim of the crimes, and that counsel was ineffective for failing to raise this issue. We affirmed the judgment of the trial court, finding that the record was silent as to the identity of the court bailiff as a victim of one of the crimes, and the record did not establish that the court was aware that the bailiff was a victim. *State v. Loughman*, 5th Dist. Richland No. 13CA57, 2014-Ohio-1667, ¶12-13.

{¶4} Appellant then filed a petition for postconviction relief, raising the same arguments raised on direct appeal. Appellant did not attach any evidentiary material to the petition. The court dismissed the petition, finding that the issues raised were *res*

judicata based on this Court's opinion on direct appeal. The court further made findings explaining why appellant's prison sentence was longer than that of his co-defendant.

{¶5} Appellant then filed a motion to reconsider, attaching an affidavit of appellant's mother. The affidavit averred that during both the plea hearing and the sentencing hearing, Lucinda Powers was present in the courtroom and acting as bailiff for the judge, and that her understanding is that Lucinda Powers was one of the victims of the alleged criminal activity. The trial court did not rule on the motion to reconsider, and appellant filed a notice of appeal from the court's original judgment dismissing his petition for postconviction relief.

{¶6} Appellant assigns one error:

{¶7} "WHETHER THE TRIAL COURT VIOLATED DUE PROCESS AND R.C. 2953.21 BY FAILING TO AFFORD DEFENDANT AN OPPORTUNITY TO PRESENT EVIDENCE IN A REQUESTED HEARING FOR POST-CONVICTION RELIEF."

{¶8} R.C. 2953.21(C) governs the requirements for an evidentiary hearing on a petition for postconviction relief:

{¶9} "The court shall consider a petition that is timely filed under division (A)(2) of this section even if a direct appeal of the judgment is pending. Before granting a hearing on a petition filed under division (A) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. The court

reporter's transcript, if ordered and certified by the court, shall be taxed as court costs. If the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal."

{¶10} Appellant did not attach any evidentiary material to his petition. Therefore, the court was left in the same procedural posture as this Court on direct appeal: the record did not demonstrate that the court bailiff was a victim of one of the crimes of which appellant was convicted. The court therefore did not err in dismissing the petition.

{¶11} While appellant did attach an affidavit to his motion to reconsider, there is no authority for filing a motion for reconsideration of a final judgment at the trial court level in a criminal case. *E.g., State v. Bennett*, 5th Dist. Muskingum No. CT2005-0009, 2006-Ohio-2812, ¶13. It is well settled that a motion for reconsideration of a final judgment is a nullity. *State v. Stillman*, 5th Dist. Fairfield No.2005-CA-55, 2005-Ohio-6299. Pursuant to R.C. 2953.23(B), "[a]n order awarding or denying relief sought in a petition filed pursuant to section 2953.21 of the Revised Code is a final judgment and may be appealed pursuant to Chapter 2953. of the Revised Code." Therefore, appellant's motion to reconsider was a nullity, and the court did not err in failing to reconsider the judgment, taking into consideration the affidavit appellant attached to his motion to reconsider.

{¶12} R.C. 2953.21(F) allows the petitioner to amend his petition with or without leave of court at any time before an answer is filed, or any time thereafter with leave of court. However, appellant did not seek to amend his petition to attach the affidavit.

{¶13} The assignment of error is overruled. The judgment of the Richland County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.