

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-VS-	:	
	:	
REGINALD OCTAVE GIBSON	:	Case No. 2015CA00039
	:	
Defendant - Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2013CR0120
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	May 26, 2015
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APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO
Prosecuting Attorney

By: RENEE M. WATSON
Assistant Prosecuting Attorney
110 Central Plaza South, Suite 510
Canton, OH 44702

For Defendant-Appellant

REGINALD OCTAVE GIBSON, pro se
Inmate # 643-525
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, OH 44030

Baldwin, J.

{¶1} Appellant Reginald Octave Gibson appeals a judgment of the Stark County Common Pleas Court dismissing his petition for postconviction relief. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} In January of 2013, appellant assaulted his girlfriend during a stay at a motel, causing broken bones and lacerations to her face. She attempted to flee to a neighboring room, but appellant dragged her back to the room by her hair. After appellant fell asleep, she escaped and called the police. When police arrived, they found appellant with his girlfriend's blood on his hands and face. Appellant was charged with felonious assault and abduction.

{¶3} Appellant hired two attorneys who both withdrew before trial. Appellant desired to proceed pro se. After a hearing, appellant insisted on representing himself, and the court appointed standby counsel.

{¶4} The matter proceeded to jury trial. Appellant was convicted as charged and sentenced to eight years incarceration for felonious assault and 36 months incarceration for abduction, to be served concurrently.

{¶5} Appellant filed a timely appeal and was represented by counsel on appeal. This Court affirmed his conviction and sentence on March 17, 2014. *State v. Gibson*, 5th Dist. Stark No. 2013CA00175, 2014-Ohio-1169.

{¶6} Appellant filed a petition for postconviction relief on February 5, 2014. The trial court dismissed his petition as res judicata on May 23, 2014, as all of his claims

could have been raised on direct appeal. Appellant did not file an appeal from this decision.

{¶7} While his motion for postconviction relief was pending in the trial court, appellant filed a pro se motion on April 15, 2014, with this Court to reopen his direct appeal pursuant to App. R. 26(B), which was denied.

{¶8} On June 19, 2014, appellant filed a second pro se motion for postconviction relief, presenting 33 claims, which he improperly filed with this Court. We dismissed the petition for want of jurisdiction on July 30, 2014. Appellant did not re-file the petition in the Common Pleas Court, but the State nevertheless responded to the petition and appellant filed a reply. Appellant also filed a writ of procedendo in the Ohio Supreme Court, seeking an order for the trial court to rule on his petition. While the writ was pending, the trial court dismissed appellant's petition. The trial court found that appellant had not demonstrated or argued the prerequisites for filing a second or successive postconviction petition pursuant to R.C. 2953.23, and the court was therefore without jurisdiction to rule on his petition. The court further found that his claims were barred by res judicata.

{¶9} Appellant assigns thirty-three errors to this Court on appeal from this judgment:

{¶10} 1. APPELLATE (SIC) WAS DENIED HIS DUE PROCESS RIGHT DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL.

{¶11} 2. THE TRIAL COURT ERRED BY SETTING THE APPELLATE (SIC) BOND SO EXCESSIVE.

{¶12} 3. THE TRIAL COURT ERRED BY NOT COMPELLING THE STATE TO PRODUCE ALL EXCULPATORY EVIDENCE.

{¶13} 4. THE TRIAL COURT ERRED DENYING APPELLATE (SIC) THE RIGHT TO A FAIR TRIAL.

{¶14} 5. THE TRIAL COURT ERRED WHEN IT DENIED APPELLATE (SIC) REQUEST FOR A CONTINUANCE TO PREPARE FOR TRIAL BECAUSE THE STATE FAILED TO PROVE APPELLATE (SIC) GUILT BEYOND A REASONABLE DOUBT.

{¶15} 6. PROSECUTOR INFLAMMATORY STATEMENT DENIED APPELLATE (SIC) A FAIR TRIAL.

{¶16} 7. THE TRIAL COURT ERRED DENYING APPELLATE (SIC) EXPERT ASSISTANCE.

{¶17} 8. THE TRIAL COURT ERRED BY NOT PROVIDING APPELLATE (SIC) WITH A COPY OF THE TRANSCRIPTS OF HIS PROCEEDINGS.

{¶18} 9. THE TRIAL COURT ERRED WHEN IT DENIED APPELLATE (SIC) POST-CONVICTION RELIEF APPEAL UNDER THE DOCTRINE OF RES JUDICATA.

{¶19} 10. THE TRIAL COURT ERRED IN HOLDING A PRO SE LITIGANT TO THE SAME STANDARDS AS A LICENSED ATTORNEY, WHILE DENYING HIM EFFECTIVE ACCESS TO LAW MATERIALS.

{¶20} 11. DUE TO BRADY VIOLATIONS THE APPELLATE (SIC) WAS DENIED HIS DUE PROCESS RIGHTS.

{¶21} 12. APPELLATE (SIC) WAS DEPRIVED HIS SIXTH AMENDMENT RIGHT TO HAVE EFFECTIVE ASSISTANCE OF COUNSEL.

{¶22} 13. WHEN THE TRIAL JUDGE FAILED TO DO HIS/HER DUTY, APPELLATE (SIC) WAS DEPRIVED HIS DUE PROCESS RIGHTS.

{¶23} 14. DUE TO MISCONDUCT OF APPELLATE (SIC) HIRED COUNSEL, APPELLATE (SIC) WAS DENIED INEFFECTIVE ASSISTANCE OF COUNSEL.

{¶24} 15. THE TRIAL COURT VIOLATED DUE PROCESS AND COMMITTED PLAIN ERROR, BY FINDING APPELLATE (SIC)-DEFENDANTBGUILTY (SIC) WITHOUT OFFERING HIM AN OPPORTUNITY TO PRESENT A FULL DEFENSE.

{¶25} 16. APPELLATE (SIC) CONVICTIONS WAS OBTAINED UNCONSTITUTIONALLY DUE TO UNFAIR CONDUCT BY THE PROSECUTOR.

{¶26} 17. THE PROSECUTION FAILED TO COMPLY WITH OHIO RULE OF CRIMINAL PROCEDURE, APPELLATE (SIC) WAS DEPRIVED HIS DUE PROCESS RIGHTS.

{¶27} 18. DUE TO THE PROSECUTION CONCEALMENT OF INFORMATION AND EVIDENCE, APPELLATE (SIC) CONVICTIONS WAS OBTAINED UNCONSTITUTIONALLY.

{¶28} 19. THE TRIAL COURT ERRED BY NOT ALLOWINGTHE (SIC) JURY TO DETERMINE ALL MATERIAL FACTS IN THE CASE.

{¶29} 20. DUE TO INEFFECTIVE PRETRIAL COUNSEL, APPELLATE (SIC) WAS DENIED A FAIR TRIAL.

{¶30} 21. APPELLATE (SIC) WAS DENIED DUE PROCESS BECAUSE THE PROSECUTOR WAS WORKING UNDER THE COLOR OF LAW.

{¶31} 22. THE TRIAL COURT ERRED BY FORCING THE APPELLATE (SIC) TO TESTIFY VIOLATING HIS FIFTH AMENDMENT RIGHT.

{¶32} 23. APPELLATE (SIC) COUNSEL FAILED TO OBTAIN A COMPLETE RECORD OF ALL TRANSCRIPT PROCEEDINGS FOR APPEAL COURT REVIEW, DENYING HIM DUE PROCESS RIGHTS.

{¶33} 24. WHEN STANDBY COUNSEL FAILED TO SUBPOENA MATERIAL WITNESSES, APPELLATE (SIC) WAS DENIED DUE PROCESS AND A RIGHT TO A FAIR TRIAL.

{¶34} 25. WHEN THE TRIAL COURT ERRED BY NOT HOLDING ANY PRETRIAL HEARINGS, APPELLATE (SIC) WAS DENIED DUE PROCESS.

{¶35} 26. DUE TO PROSECUTORIAL MISCONDUCT AND VINDICTIVENESS, APPELLATE (SIC) WAS DEPRIVED HIS SIXTH AND FOURTEENTH RIGHTS TO THE U.S. CONSTITUTION.

{¶36} 27. DUE TO CUMULATIVE CONSTITUTIONAL ERRORS, APPELLATE (SIC) WAS DEPRIVED HIS DUE PROCESS RIGHTS.

{¶37} 28. THE TRIAL COURT ERRED BY NOT ALLOWING APPELLATE (SIC) TO BE PRESENT AT HIS BOND HEARING, APPELLATE (SIC) WAS DEPRIVED HIS DUE PROCESS RIGHT WHEN.

{¶38} 29. THE TRIAL COURT ERRED BY PERMITTING THE PROSECUTOR TO SPEAK ON EVIDENCE IN THE PRESENCE OF THE JUDGE.

{¶39} 30. THE TRIAL COURT ERRED BY NOT PRESERVING THE WRITTEN STATEMENT OF THE STATE'S WITNESS.

{¶40} 31. APPELLATE (SIC) WAS DENIED EQUAL PROTECTION GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

{¶41} 32. WHEN APPELLATE (SIC) HIRED COUNSEL(S) FAILED TO MOTION FOR AN EVIDENTIARY AND SUPPRESSION HEARING, APPELLATE (SIC) WAS DEPRIVED OF HIS DUE PROCESS RIGHTS.

{¶42} 33. THE TRIAL COURT ERRED WHEN IT DENIED APPELLATE (SIC) REQUEST TO RETAIL (SIC) COUNSEL AT SENTENCING.

{¶43} The trial court found that it did not have jurisdiction to entertain appellant's second petition for postconviction relief pursuant to R.C. 2953.23, which provides:

(A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or (2) of this section applies:

(1) Both of the following apply:

(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an

earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

(2) The petitioner was convicted of a felony, the petitioner is an offender for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual

innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death.

As used in this division, “actual innocence” has the same meaning as in division (A)(1)(b) of section 2953.21 of the Revised Code, and “former section 2953.82 of the Revised Code” has the same meaning as in division (A)(1)(c) of section 2953.21 of the Revised Code.

{¶44} Appellant did not argue or demonstrate the statutory grounds for entertaining a second petition for postconviction relief pursuant to these statutory requirements. The trial court therefore did not err in dismissing the petition.

{¶45} Appellant's thirty-three assignments of error are overruled, and the judgment of the Stark County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.