

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-09-044

Appellee

Trial Court No. 09-CRA-00890

v.

Robert Carlson

Defendant

DECISION AND JUDGMENT

[George C. Rogers-appellant]

Decided: August 31, 2009

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Aram M. Ohanian, Assistant Prosecuting Attorney, for appellee.

George C. Rogers, pro se.

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PIETRYKOWSKI, J.

{¶ 1} We address the motion of appellant, George C. Rogers, to reconsider the court's judgment of June 22, 2009 dismissing this appeal. In this case, Rogers, as a private citizen, seeks to appeal the judgment of the Bowling Green Municipal Court dismissing a criminal complaint for perjury.

{¶ 2} Rogers, an attorney, employed the citizen affidavit procedure under R.C. 2935.09 in an effort to cause the arrest and prosecution of a police officer for claimed perjury during the trial of one of his clients. Rogers submitted his own affidavit claiming perjury and submitted a proposed criminal complaint to the trial court. The trial court filed the complaint. Subsequently, in a judgment filed on April 13, 2009, the trial court dismissed the criminal complaint, sua sponte, for lack of probable cause.

{¶ 3} Rogers argues that his use of the affidavit procedure made him a party to the criminal prosecution at the time of the dismissal and that such status affords him with a right to appeal the dismissal of the criminal complaint. The prosecutor argues that R.C. 2945.67 controls and that Rogers, as a private citizen, has no authority to appeal dismissals of complaints in criminal proceedings.

{¶ 4} R.C. 2945.67 governs appeals by the prosecution of judgments dismissing criminal complaints. The statute provides in pertinent part:

{¶ 5} "(A) *A prosecuting attorney, village solicitor, city director of law, or the attorney general* may appeal as a matter of right any decision of a trial court in a criminal case, or any decision of a juvenile court in a delinquency case, *which decision grants a motion to dismiss all or any part of an indictment, complaint * * *.*" R.C. 2945.67(A). (Emphasis added.)

{¶ 6} In *State v. Matthews* (1998), 81 Ohio St.3d 375, 377-78, the Ohio Supreme Court explained that "R.C. 2945.67(A) is unique to criminal cases, dealing with procedural aspects that occur only in criminal cases, and draws a distinction between an

appeal as of right and an appeal by leave. This statute enumerates four trial court decisions from which the state may appeal as a matter of right: a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, a motion for return of seized property, or a motion granting postconviction relief. R.C. 2945.67(A)."

{¶ 7} Rogers contends that R.C. 2945.67(A) contemplates appeals of judgments dismissing criminal complaints only where the dismissal is pursuant to a motion to dismiss filed by the defendant. He argues that, here, the defendant had not been served with the criminal complaint or filed any motion and that jeopardy had not attached.

{¶ 8} The Supreme Court of Ohio, however, has recognized that, for purposes of R.C. 2945.67(A), whether the dismissal appealed is on the court's own motion or on motion of the defendant is of "no import." *State v. Craig*, 116 Ohio St.3d 135, 2007-Ohio-5752, ¶ 15. Such dismissals are subject to appeal under R.C. 2945.67(A) in either event:

{¶ 9} "Although the record here is not clear as to whether the trial judge dismissed this case in response to a motion by Craig or on her own motion, that distinction is of no import. As we noted in *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207, ¶ 13, a judge's dismissal on her own motion is the equivalent of a decision granting a motion to dismiss pursuant to R.C. 2945.67(A)." *Id.*

{¶ 10} Additionally, in *State v. Craig* the court held that appeals of dismissals under R.C. 2945.67(A) applied whether the dismissal was with or without prejudice. *Id.* at ¶ 16.

{¶ 11} R.C. 2945.67(A) by its own terms specifically identifies who may bring appeals on behalf of the state of Ohio of decisions dismissing criminal complaints. Appeals under R.C. 2945.67(A) may be brought by "[a] prosecuting attorney, village solicitor, city director of law, or the attorney general." R.C. 2945.67(A).

{¶ 12} Upon reconsideration, we reaffirm our judgment of June 22, 2009 dismissing this appeal. George C. Rogers, a private citizen, is without authority to pursue appeal of the April 23, 2009 judgment of the Bowling Green Municipal Court dismissing the criminal complaint in this matter. The motion to reconsider is denied. George C. Rogers is ordered to pay the costs of this appeal pursuant to App.R. 24.

MOTION DENIED.

Peter M. Handwork, P.J.

Mark L. Pietrykowski, J.

Thomas J. Osowik, J.
CONCUR.

JUDGE

JUDGE

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
