

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

State of Ohio

Court of Appeals No. L-09-1181

Appellee

Trial Court No. CR0198706062

v.

Charles Jones

DECISION AND JUDGMENT

Appellant

Decided: December 11, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and Evy M. Jarrett,
Assistant Prosecuting Attorney, for appellee.

Charles Jones, appellant, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the order of the Lucas County Court of Common Pleas, denying his motion for "Disclosure of Matters before the Grand Jury." For the reasons that follow, we affirm.

{¶ 2} Appellant, Charles Jones, was convicted of aggravated murder in the 1987 beating death of Thomas Robinson. He was sentenced to an indeterminate term of

imprisonment of from 30 years to life. His conviction was affirmed on appeal. *State v. Jones* (Mar. 3, 1989), 6th Dist. No. L-88-016.

{¶ 3} On Oct. 15, 2008, appellant filed a pro se motion seeking to examine the records of the grand jury that indicted him to ascertain whether the indictment was signed by the foreperson of the jury, with a sufficient number of grand jurors in concurrence as required by Crim.R. 7(B) and Crim.R. 6(C) and (F). Appellant stated that the examination requested was antecedent to a motion to dismiss his indictment. The state responded with a memorandum in opposition, characterizing the motion as untimely pursuant to Crim.R. 12(C)(2).

{¶ 4} When the trial court denied appellant's motion, he instituted this appeal. Appellant sets forth the following single assignment of error:

{¶ 5} "The Trial Court Committed An Error Of Law By Denying Defendant-Appellant's Motion For Disclosure of Matters Before The Grand Jury Pursuant To Criminal Rule 6(E)."

{¶ 6} The deliberations of a grand jury and the vote of any specific grand juror are not to be disclosed. Matters before the grand jury other than deliberations or specific votes may be disclosed, "* * * when so directed by the court preliminary to or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury." Crim.R. 6(E).

{¶ 7} Crim.R. 7(B) provides that, "[t]he indictment shall be signed, in accordance with Crim. R. 6 (C) and (F) * * *." Crim.R. 6(C) directs that the foreperson of the jury sign all indictments. Crim.R. 6(F) provides that an indictment may be returned only upon the concurrence of seven of the grand jurors and that when such concurrence is found the foreperson of the grand jury shall sign the indictment.

{¶ 8} With his motion, appellant attached a certified copy of his indictment which, on its face, reveals only the signature of the prosecuting attorney and no signature from the grand jury foreperson. Appellant insists that, absent the certification of sufficient concurrence evidenced by the signature of the grand jury foreperson, the indictment should be dismissed. Moreover, according to appellant, since this defect is jurisdictional the error may be raised at any time, including now – 21 years after his conviction.

{¶ 9} Because the success of a motion to dismiss the indictment rests on the certification of the vote of the grand jury and appellant has demonstrated the likelihood that no such certification exists, appellant maintains that he has made a " * * * showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury." Consequently, the trial court should have granted his motion.

{¶ 10} The state responds, first suggesting that an order denying a motion to disclose matters before the grand jury is not a final appealable order. On the merits, the state argues that a defective indictment does not deprive a court of jurisdiction to proceed

with a case and objections to such defects, pursuant to Crim.R. 12(C)(2), must be brought prior to trial. Absent timely objection, the state insists, any defect is waived.

{¶ 11} "An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶ 12} "(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment * * *." R.C. 2105.02(B)(1). "'Substantial right' means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2105.02(A)(1).

{¶ 13} Appellant aspires to have his indictment dismissed on grounds that he was prejudiced by a violation of statute and procedure. The denial of his motion essentially deprives him of any avenue to challenge this purported injustice. Consequently, the order appealed from is final and appealable.

{¶ 14} On the merits, however, appellant does not prevail. Aside from some older and clearly overruled cases cited by appellant, principally *Kennedy v. Alvis* (C.P. 1957), 76 Ohio L. Abs. 132, 145 N.E.2d 361, it has consistently been held that the absence of a grand jury foreperson's signature on an indictment is a claim related to the sufficiency of the indictment, *Kroger v. Engle* (1978), 53 Ohio St.2d 165, and does not deprive the trial court of jurisdiction. *State ex rel. Justice v. McMackin* (1990), 53 Ohio St.3d 72, 73; *VanBuskirk v. Wingard* (1998), 80 Ohio St.3d 659, 660.

{¶ 15} Absent a jurisdictional question, appellant's attack on the sufficiency of the indictment should have been tendered prior to trial pursuant to Crim.R. 12(C). R.C. 2941.29. Failure to do so constitutes a waiver of the issue. *State v. Jain*, 6th Dist. No.WD-03-037, 2004-Ohio-893, ¶ 17.

{¶ 16} Appellant's failure to timely challenge the sufficiency of his indictment waived further consideration. Consequently, he could not be prejudiced by the trial court's decision to deny his motion to disclose information from the grand jury proceedings. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 17} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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