

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

State of Ohio

Court of Appeals No. L-09-1245

Appellee

Trial Court No. CR0200703143

v.

James Krug aka Ross Baker

DECISION AND JUDGMENT

Appellant

Decided: May 28, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael E. Narges, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, James Krug, appeals from the judgment of the Lucas County Court of Common Pleas finding him guilty of one count of passing bad checks. For the reasons set forth below, we affirm.

{¶ 2} Appellant was indicted on October 16, 2007, on one count of passing bad checks, a violation of R.C. 2913.11 (B) and (F). On August 27, 2009, appellant plead guilty pursuant to *North Carolina v. Alford* (1970), 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162, to the indictment of passing bad checks. Appellant was found guilty and sentenced to a term of ten months to run consecutive to a sentence already being served. Appellant now appeals setting forth the following assignment of error:

{¶ 3} "The Trial judge did not properly inform appellant of the possible conflict of interest that existed between himself and the Lucas County Prosecutor's Office."

{¶ 4} Prior to pleading, appellant and his counsel signed a "Canon 3D Remittal of Disqualification" on August 5, 2009 which stated:

{¶ 5} "Having become aware that there may be a perceived conflict for the above named Judge [James D. Bates] in this matter, that he is the husband of Julia R. Bates, Lucas County Prosecuting Attorney, and independently of the Judge's participation in this case, it is hereby agreed that the perceived conflict of interest is immaterial and the Judge may participate in the proceedings."

{¶ 6} On appeal, appellant contends that the trial judge should have engaged in colloquy with him to determine whether he knowingly, intelligently, and voluntarily signed the form. Appellant contends that as a result of his medical condition, causing him to suffer legal blindness, the trial court should have asked if he had reviewed the form with his attorney and confirmed he understood what he was signing. Without doing

so, appellant argues it was impossible to determine from the record whether he knowingly, intelligently, and voluntarily understood the form he signed.

{¶ 7} Canon 3 of the Ohio Code of Judicial Conduct states: "If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding."

{¶ 8} Here, appellant signed the document on August 5, 2009, in the presence of legal counsel. There is no evidence to suggest he did not understand what he was signing nor is there evidence to suggest he had any objections at the time he signed the form.

{¶ 9} Secondly, appellant contends the form was invalid because it contained an incorrect citation of the Ohio Code of Judicial Conduct, thereby preventing him from obtaining potential adequate research to make a knowing, intelligent, and voluntary decision to sign the "Remittal of Disqualification" form. The form appellant signed cites Canon 3 of the Code of Judicial Conduct, effective May 1, 1997 which states:

{¶ 10} "(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

{¶ 11} "(d) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

{¶ 12} "(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

{¶ 13} "(ii) Is acting as a lawyer in the proceeding;

{¶ 14} "(iii) Has acted as a judge in the proceeding;

{¶ 15} "(iv) Is known by the judge to have an economic interest that could be substantially affected by the proceeding;

{¶ 16} At the time appellant signed his form on August 5, 2009, Ohio had adopted a new Ohio Code of Judicial Conduct effective March 1, 2009, which states in part:

{¶ 17} "(A) A judge shall disqualify himself or herself in any proceeding in which the judge's *impartiality* might reasonably be questioned, including but not limited to the following circumstances:

{¶ 18} "(2) The judge *knows* that the judge, the judge's spouse or *domestic partner*, or a person within the *third degree of relationship* to either of them, or the spouse or *domestic partner* of such a person is any of the following:

{¶ 19} "(a) A party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

{¶ 20} "(b) Acting as a lawyer in the proceeding;

{¶ 21} "(c) Has more than *de minimis* interest that could be substantially affected by the proceeding."

{¶ 22} We agree the remittal form cites an outdated rule. However, that being the case, a conviction should not be reversed on appeal due to harmless error which is not prejudicial to the accused. *United States v. Hasting* (1983), 461 U.S. 499; *State v. Zimmerman* (1985), 18 Ohio St.3d 43. In addition, prejudice will not be presumed when none is demonstrated. *State v. Freeman* (1985), 20 Ohio St.3d 55. Irrespective of citing

an outdated authority, the similarities between the old and new rules does not cause any issues that may prejudice appellant in any manner. Furthermore, the "Canon 3d Remittal of Disqualification" is very clearly worded and does not require further research. Therefore, the citation to incorrect authority in this case does not prejudice appellant and did not prevent him from knowingly, intelligently, and voluntarily signing the Canon 3d form.

{¶ 23} Appellant's sole assignment of error is not well taken.

{¶ 24} On consideration whereof, we find substantial justice has been done the parties complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay 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, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

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.
