

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

State of Ohio

Court of Appeals No. L-11-1112

Appellee

Trial Court No. CR0201101326

v.

Michael Degens

DECISION AND JUDGMENT

Appellant

Decided: July 26, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Martin E. Mohler and Deborah Kovac Rump, for appellant.

* * * * *

PER CURIAM.

{¶ 1} This matter is before the court on the motion of defendant-appellant, Michael Degens, to reconsider our decision and judgment of June 21, 2011, in which we denied his motion for bail and suspension of the execution of his sentence pending appeal. The state has filed a memorandum in opposition.

{¶ 2} The standard for granting a motion for reconsideration is well established. "The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 140.

{¶ 3} In our decision of June 21, 2011, we denied appellant's motion because he did not support it with any papers, affidavits or portions of the record in relation to any of the eight factors that this court is required to consider when reviewing a motion for bail and suspension of execution of sentence pending appeal. Contrary to appellant's interpretation of our decision, we did not deny it for appellant's failure to confirm whether a motion for release on bail was denied by the trial court. Rather, we recognized that the docket revealed that the trial court had in fact denied such a motion. App.R. 8(B) and 6th Dist.Loc.App.R. 17 demand that motions for release on bail be supported by papers, affidavits or portions of the record so that this court has some evidence from which we can evaluate the factors we are required to consider. As we stated in our prior decision, "[a]ppellant's statement that 'All of the information contained in this request is a matter of public record in the trial court,' is not sufficient."

{¶ 4} In support of his motion for reconsideration, appellant has now filed a portion of the transcript from his sentencing hearing in which several of the factors that

this court is required to consider are addressed. The transcript confirms that a motion for release on bail was denied by the trial court, that appellant was convicted of child endangering, and that he was sentenced to four years in prison. The transcript further reveals that appellant only has one prior conviction, a 1994 misdemeanor conviction for violating an open container law. There do not appear to be any current charges pending against appellant. The transcript also reveals that appellant has a solid employment history in northwest Ohio. At the time of the sentencing hearing below, April 20, 2011, appellant had been offered a position doing medical transcription work in a doctor's office had he been sentenced to community control. There is nothing in the record before us, however, to support appellant's assertion that this job would still be available to him if he were released. Finally, the transcript reveals that appellant is married, has faithfully been attending a local AA program since March 2010, and, at the time of the sentencing below, had been sober for one year and 19 days.

{¶ 5} Although appellant's motion neither calls to our attention an obvious error in our prior decision nor raises an issue that was not considered or not fully considered when it should have been, we find in the interests of justice that appellant's motion for reconsideration should be granted.

{¶ 6} Upon reconsideration, we find appellant's motion for bail and suspension of the execution of his sentence pending appeal well-taken and granted. Appellant is ordered released on his own recognizance. He is ordered to have no direct or indirect

contact with the victim in this case. It is further ordered that he not live in the same home with his adolescent stepdaughter.

MOTION GRANTED.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

Stephen A. Yarbrough, J.
CONCUR.

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.
