

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

State of Ohio

Court of Appeals No. OT-10-044

Appellee

Trial Court Nos. CRB 1000942-A
CRB 1000942-C

v.

Christopher Posey

DECISION AND JUDGMENT

Appellant

Decided: May 7, 2012

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Joseph H. Gerber, Assistant Prosecuting Attorney, for appellee.

Ron Nisch, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} Appellee, the state of Ohio, has filed a motion entitled “Application for Reconsideration En Banc” regarding our decision in *State v. Posey*, 6th Dist. No. OT-10-044, 2012-Ohio-1108. Appellee cites *State v. Dougherty*, 6th Dist. No. OT-07-026, 2008-Ohio-3271 as being in conflict with our decision. Appellant, Christopher Posey, opposes the motion.

{¶ 2} The standard to be applied to a motion for reconsideration is “whether the motion * * * calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been.” *Matthews v. Matthews*, 5 Ohio App.3d 140, 450 N.E.2d 278 (1981), syllabus.

{¶ 3} Our review of the motion reveals that appellee has failed either to establish an obvious error in our decision or to raise an issue that was not fully considered by this court. Appellee is again directed to Crim.R. 32.2 and R.C. 2951.03(B) for support for our decision. Crim.R. 32.2 provides that “[i]n felony cases the court shall, and *in misdemeanor cases* the court *may*, order a presentence investigation and report * * *.” (Emphasis added.) Thus, in a misdemeanor case, a presentence investigation report is not mandatory. Nevertheless, R.C. 2951.03(B), which pertains to presentence reports ordered pursuant to Crim.R. 32.2, states that, except under certain circumstances, the court “*shall permit the defendant or defendant’s counsel to read the report* * * *.” (Emphasis added.) Therefore, as we stated in our original decision, the court erred in denying appellant the opportunity to see the report.

{¶ 4} We acknowledge that, in *State v. Dougherty*, this court, in considering the same issue, stated that “[t]here is no requirement in misdemeanor offenses to furnish the presentencing report to the defendant.” *Dougherty, supra*, at ¶ 25. In that case, however, we failed to consider Crim.R. 32.2 and R.C. 2951.03(B) together as they pertain to misdemeanor offenses. Thus, although a trial court is not required to order a presentence

investigation report for a misdemeanor offense, once such report has been completed and is relied upon by the court for sentencing, it is mandatory that the court allow the defendant to read the report. Accordingly, to clarify our decision in the instant appeal, *State v. Dougherty, supra*, is overruled to the extent that it determined that a trial court need not furnish a presentence investigation report to a defendant in misdemeanor offense cases.

{¶ 5} Therefore, although the issue was clarified, the ultimate outcome and ruling in the instant appeal is not affected. Accordingly, appellee's motion for reconsideration is not well-taken and is denied. Furthermore, since we have now overruled *State v. Dougherty, supra*, in part, appellee's motion for en banc consideration of our original decision is moot.

Application denied.

Peter M. Handwork, J.

Arlene Singer, P.J.

Thomas J. Osowik, J.
CONCUR.

JUDGE

JUDGE

JUDGE

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| <p>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.</p> |
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