

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

State of Ohio

Court of Appeals No. L-11-1188

Appellee

Trial Court No. CR0200902459

v.

Hassan Hassan

DECISION AND JUDGMENT

Appellant

Decided: August 3, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Howard C. Whitcomb, III, for appellant.

* * * * *

YARBROUGH, J.

{¶ 1} Defendant-appellant, Hassan Hassan, appeals a judgment of the Lucas County Court of Common Pleas dismissing with prejudice his petition for postconviction relief. Said judgment was entered on June 30, 2011, after the state moved for summary judgment on Hassan's petition.

{¶ 2} In July 2009, Hassan was indicted for aggravated robbery, a first degree felony, and felonious assault, a second degree felony, in connection with his armed robbery of a Gino's Pizza employee. The employee had left the pizza restaurant with cash proceeds to make a bank deposit, and Hassan was lying in wait behind a dumpster. When the employee came by, Hassan produced a knife and demanded the bag of money. The employee refused to surrender it. In the ensuing struggle over the deposit money, Hassan severely cut and injured the employee.

{¶ 3} On October 5, 2009, Hassan, represented by counsel, entered a no-contest plea to the charge of felonious assault and to a reduced robbery charge (a second degree felony). On October 28, 2009, he was sentenced. The court imposed a four-year prison term on each of the counts and ordered them to be served consecutively, for a total sentence of eight years.

{¶ 4} On September 20, 2010, Hassan filed a petition for postconviction relief in which he requested the sentencing court to "revisit" his original sentence. In his petition he alleged that the trial court erred by imposing consecutive sentences without making the required factual findings under R.C. 2929.14(E)(4), 2929.19(B)(2)(c) and 2929.41(A). In making this claim, Hassan cited *Oregon v. Ice*, 555 U.S. 160, 129 S.Ct. 711 (2009). The trial court, noting that the same *Ice*-based argument was rejected by the Ohio Supreme Court in *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, denied the requested relief and dismissed the petition. This appeal followed.

{¶ 5} In his appellate brief Hassan does not separately assign errors for the various arguments he offers for reversing the trial court, *see* App.R.16(A)(3) and (7), but instead lumps them under a heading called “statement of the issues.” Treating this as the sole assigned error, the “statement” reads, in pertinent part:

[T]he sole issue [presented] to this court is whether the defendant-appellant was denied the due process of law when the trial court did not properly advise the defendant-appellant of his appellate rights pursuant to R.C. 2953.08.

{¶ 6} Hassan complains that along with not receiving an adequate explanation of his appeal rights from the sentencing court, he was specifically never told that he had 30 days from the journalization of the sentencing entry to pursue a direct appeal to this court. This failure, he argues, denied him due process. We find the argument meritless. First, we note, this argument was not made below in support of Hassan’s postconviction relief petition. Hence, it is not properly before this court.¹ Second, even assuming this argument had been made below, the record does not support it.

{¶ 7} Hassan is not a United States citizen, having arrived here from Beirut, Lebanon some years ago. As noted, he tendered counseled no-contest pleas to the

¹ R.C. 2953.21(A)(4) states: “[a] petitioner shall state in the original or amended petition filed under division (A) of this section *all grounds* for relief claimed by the petitioner. Except as provided in R.C. 2953.23 of the Revised Code, *any ground for relief that is not so stated in the petition is waived.*” (Emphasis added). *See State v. Vincer*, 3d Dist. No. 9-03-32, 2003-Ohio-6703, ¶ 7.

indicated charges. In the course of those pleas, Hassan acknowledged in writing that “[b]y pleading no contest * * * I understand my right to appeal a maximum sentence, my other limited appellate rights, and that any appeal must be filed within 30 days of my sentence.” The signed plea-form further indicated his understanding “that if I am not a U.S. citizen, conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. I enter this plea voluntarily.”

{¶ 8} Nothing has been identified in the record to contradict Hassan’s stated understanding of the above-quoted material. Also, nothing in the presentence proceedings indicates that Hassan either requested or required the services of an interpreter or that he had any difficulty understanding or communicating with his attorney. To maintain otherwise is simply unsupported surmise.

{¶ 9} At the October 28 sentencing hearing, Hassan, standing with counsel, directly and intelligibly addressed the sentencing court with a statement in mitigation. The court then acknowledged having previously read a letter Hassan wrote and gave to the court in support of mitigation. Not once did Hassan or his counsel suggest that he lacked an understanding of the proceeding or its purpose, nor did he raise a concern about the consequences of his earlier pleas. In pronouncing sentence, the court stated “the defendant is again reminded of the limited right to appeal the plea, as well as the right to appeal the sentence under certain circumstances as provided for in R.C. 2953.08.”

{¶ 10} The claim now made—that because Hassan filed no appeal within thirty days of sentence, “his [trial] counsel did not fully explain the appellate process to him at any time”—is wholly speculative and on its face is contradicted by other indicia of record. Having reviewed the sentencing transcript, we find that the trial court’s advisements were both accurate and adequate.

{¶ 11} Accordingly, the sole “issue” for review treated as the assigned error, the same is not well-taken.

{¶ 12} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the 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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<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>
