

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

State of Ohio

Court of Appeals No. WD-12-069

Appellee

Trial Court No. 11 CR 276

v.

Dwain Hines

DECISION AND JUDGMENT

Appellant

Decided: September 13, 2013

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney,
Gwen Howe-Gebbers, Chief Assistant Prosecuting Attorney,
and David E. Romaker, Jr., Assistant Prosecuting Attorney, for appellee.

Dwain Hines, pro se.

* * * * *

SINGER, P.J.

{¶1} Appellant appeals the order of the Wood County Court of Common Pleas denying his motion for appointment of counsel for postconviction relief.

{¶2} In 2011, appellant, Dwain Hines, pled guilty and was convicted of a single count of aggravated drug possession, a second degree felony. He was sentenced to a three-year term of imprisonment. He did not appeal.

{¶3} On October 22, 2012, appellant filed a “Motion for Appointment of Counsel” to aid in his pursuit of postconviction relief. The state filed a memorandum in opposition. The trial court denied the motion. Appellant now brings this appeal.

{¶4} Pursuant to 6th Dist.Loc.App.R. 12(A), we sua sponte transfer this matter to our accelerated docket and hereby render our decision.

{¶5} In two assignments of error, appellant contends that he was denied due process when the trial court refused to appoint counsel to obtain evidentiary support for post-conviction relief and in denying the petition before consideration by the public defender.

{¶6} There is neither a state nor federal right for an indigent petitioner to be represented by an attorney in a postconviction proceeding. *State v. Crowder*, 60 Ohio St.3d 151, 153, 573 N.E.2d 652 (1991). If a petitioner convicted of a criminal offense claims his or her constitutional rights were violated, that person may petition the court which imposed sentence to vacate or set aside the sentence or the judgment of conviction. Unless the petitioner establishes, through supporting affidavits, files and records related to the proceedings which resulted in the petitioner’s conviction, that there are substantive grounds for relief, the court may dismiss the petition without hearing. *Id.*

{¶7} If a hearing is set, the public defender must be notified. The public defender must then evaluate the petitioner's claim to determine whether it has "arguable merit." If the public defender finds "arguable merit" in the petitioner's claim, the office may undertake representation. *Id.*, R.C. 120.16(A)(1),(D).

{¶8} Appellant filed a petition for the court to appoint a public defender in order to ascertain whether he was denied any constitutional rights. He submitted nothing to support any substantive ground for relief. Indeed, beyond his assertion that "[t]his case appears to have merit," he makes no particular claim for relief.

{¶9} Absent any assertion of a ground for relief, the trial court properly denied what it construed as appellant's petition for postconviction relief. Absent some ground of "arguable merit," neither was any public defender engagement warranted. Appellant was entitled to neither relief nor appointment of a postconviction relief attorney. As a result, both of his assignments of error are not well-taken.

{¶10} On consideration, the judgment of the Wood 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, 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>.