

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

State of Ohio

Court of Appeals No. L-10-1059

Appellee

Trial Court No. CR0200902197

v.

James Murray

DECISION AND JUDGMENT

Appellant

Decided: January 16, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Kathryn J. T. Sandretto, Assistant Prosecuting Attorney,
for appellee.

James Murray, pro se.

* * * * *

HANDWORK, J.

{¶ 1} This matter is before the court upon the pro se motion of appellant for reconsideration of our decision and judgment journalized October 26, 2012. In that decision, we held in part that we had to presume that the trial court properly notified appellant of postrelease control in a prior criminal action because he failed to incorporate

the transcript in the record below. Appellant argues that he had insisted that his attorney file the transcript, but he refused to do so. Appellant asserts that the trial court in the prior action told him that he would serve three years of postrelease control, but that Adult Parole Authority imposed five years of postrelease control. Appellee opposes the motion.

{¶ 2} First, appellant is represented by appointed counsel for purposes of this appeal and, therefore, cannot file any pro se motions, without first obtaining leave of court. *Toledo v. Dandridge*, 6th Dist. No. L-10-1333, 2011-Ohio-3712, ¶ 18. Second, the motion for reconsideration is untimely because it was filed on November 19, 2012. See App.R. 26(A)(1). We have no authority to allow a late filing.

{¶ 3} However, upon a review of the records in this case, we find that there are possible issues related to the postrelease control sanction imposed in this case. Therefore, we are treating this motion as appellant's application to reopen his appeal and we find appellant has presented a colorable claim of ineffective assistance of counsel. Upon a review of the prior Lucas County criminal actions involving appellant, case Nos. CR0200403611 and CR0200801405, as well as the current Lucas County criminal case on appeal, case No. CR0200902197, we find that the trial court confused the two prior cases and imposed a sanction citing to one case at the sentencing hearing and another in its judgment. Furthermore, the trial court stated it would "impose the remaining time on that postrelease control, which is 1,258 days" as a sanction for the postrelease control violation caused by the current offense. It appears that some error has occurred in this case that appellant's attorney failed to address on appeal.

{¶ 4} Appellant's application is granted and this appeal is ordered to be reopened.

Finding that appellant is indigent, we hereby order that Matthew B. Bryant, 3361 Executive Parkway, Suite 100, Toledo, Ohio 43606 be appointed to represent appellant for purposes of reopening this appeal to address the issue of whether the trial court properly imposed a postrelease control sanction. Since the record has already been filed in this case, appellant is ordered to file his brief within 30 days of the date of this order.

{¶ 5} Appellant also moved to supplement the record with correspondence from his appointed counsel on appeal and a November 5, 2005 sentencing hearing transcript from Lucas County case No. CR0200403611. We find this motion not well-taken because neither of these documents were part of the record below.

{¶ 6} It is so ordered.

Application granted.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, 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>.