

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

State of Ohio

Court of Appeals Nos. L-14-1265

Appellee

Trial Court Nos. CR0201202162

v.

Emmanuel Andre Wright

DECISION AND JUDGMENT

Appellant

Decided: March 31, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Emmanuel Andre Wright, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant, Emmanuel Andre Wright, appeals from a decision of the Lucas County Court of Common Pleas wherein the court denied appellant's "motion for findings of fact and conclusions of law" regarding the denial of his petition for post-conviction relief. For the reasons that follow, we affirm.

Procedural History

{¶ 2} In 2008, appellant was indicted in on three counts of burglary in violation of R.C. 2911.12(A)(1) and (C), felonies of the second degree, and three counts of theft in violation of R.C. 2913.02(A)(1) and (B)(2), felonies of the fifth degree. He ultimately entered a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) to one count of burglary and was found guilty.

{¶ 3} While awaiting sentencing, he was indicted on one count of burglary in violation of R.C. 2911.12(A)(1) and (C), a felony of the second degree, and one count of grand theft in violation of R.C. 2913.02(A)(3) and (B)(2), a felony of the fourth degree. He again entered an *Alford* plea and was convicted of the lesser offense of attempted theft.

{¶ 4} A consolidated sentencing hearing was held at which time he was sentenced to a three-year term of community control for his burglary conviction. Additionally, the court notified Wright that “violation of community control * * * will lead to a longer or more restrictive sanction for defendant, including a prison term of 8 years.”

{¶ 5} As for his attempted theft conviction, the court imposed another three-year community control sentence, and informed him that violation of the terms of community control could result in the imposition of a one-year prison sentence. Additionally, the court instructed that the sentence was to be served consecutive to the sentence imposed for burglary.

{¶ 6} While on community control, appellant was indicted on one count of passing bad checks in violation of R.C. 2913.11(B) and (F), a felony of the fifth degree. He entered a no contest plea. At the sentencing hearing, the court imposed a six-month prison sentence. Additionally, because appellant acknowledged that his conviction for passing bad checks constituted a violation of the terms of his community control, the court imposed the prison sentences for a total of nine and one-half years.

{¶ 7} On October 4, 2013, appellant filed a motion for postconviction relief. On October 10, 2013, the court granted appellant's motion for appointed counsel and appointed counsel to represent appellant for purposes of postconviction. Through counsel, a second petition for postconviction relief was filed on November 8, 2013.

{¶ 8} On December 30, 2013, this court affirmed in part and reversed in part the judgments on appeal. *State v. Wright*, (*Wright I*) 6th Dist. Lucas Nos. L-13-1056, L-13-1057, and L-13-1058, 2013-Ohio-5903. We remanded the cases for resentencing because the trial court failed to comply with R.C. 2929.14(C)(4) and make the necessary findings to impose consecutive sentences, however, we affirmed his convictions.

{¶ 9} On February 19, 2014, the court resentenced appellant pursuant to our mandate. On February 21, 2014, the trial court dismissed appellant's first postconviction relief petition without a hearing and without making findings of fact and conclusions of law.

{¶ 10} On March 11, 2014, appellant filed an appeal from the February 19, 2014 judgments in all three cases and from the February 21, 2014 judgment. All of the appeals were consolidated. In *State v. Wright*, (*Wright II*) 6th Dist. Lucas App. Nos. L-14-1041, L-14-1044, L-14-1042, L-14-1043, 2014-Ohio-4734, this court affirmed his convictions and but dismissed his appeal of his first postconviction decision finding it to not be a final, appealable order.

{¶ 11} On November 4, 2014, the court denied appellant's second petition for postconviction relief. On November 13, 2014, appellant filed a "motion for findings of facts and conclusions of law of postconviction petition denial on Feb. 21, 2014." The court denied his motion on November 13, 2014. This matter has been placed on the court's accelerated calendar. Appellant sets forth the following assignments of error:

I. The trial court erred to make the required findings to give findings of fact and conclusion of law in the denial of defendant's post-conviction petition constituted prejudicial error and reversal error.

II. Appellant received ineffective assistance of counsel in violation of his rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §10 of the constitution of the State of Ohio.

{¶ 12} As discussed above, this court found the trial court’s February 21, 2014 decision was not a final, appealable order. In denying appellant’s second petition for postconviction relief, the court did so “mindful of the decision of the Sixth District Court of Appeals, issued Oct. 24, 2014.”

{¶ 13} The subject of appellant’s first assignment of error is the decision regarding appellant’s first petition for postconviction relief, not his second petition. However, there is no evidence in the record that the trial court ever revisited its February 21, 2014 decision regarding appellant’s first petition for postconviction relief. As such, for the same reasons explored in *Wright II*, that decision remains not final and appealable and appellant’s first assignment of error is moot.

{¶ 14} In his second assignment of error, appellant alleges that his counsel was ineffective in failing to attach affidavits to his second petition for postconviction relief.

{¶ 15} In order to demonstrate ineffective assistance of counsel, appellant must satisfy the two-prong test developed in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). That is, appellant must show counsel's performance fell below an objective standard of reasonableness, and a reasonable probability exists that, but for counsel's error, the result of the proceedings would have been different. *Id.* at 687–688, 694.

{¶ 16} Appellant has failed to explain who these affidavits would be from or what crucial information these affidavits may contain. Accordingly, appellant has not shown

that the outcome of his case would have been different had counsel included affidavits.

Appellant's second assignment of error is found not well-taken.

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

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, 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>
