

[Cite as *State v. Hairston*, 2009-Ohio-3382.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92716

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHARLES C. HAIRSTON

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-331664

BEFORE: Jones, J., Rocco, P.J., and Dyke, J.

RELEASED: July 9, 2009

JOURNALIZED:

FOR APPELLANT

Charles C. Hairston, Pro Se
6111 Butler Avenue
Cleveland, Ohio 44127

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Diane Smilanick
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Charles C. Hairston (“Hairston”), appeals the judgment of the lower court. Having reviewed the arguments of the parties and the pertinent law, we hereby reverse the trial court and remand for a hearing.

STATEMENT OF THE CASE AND THE FACTS

{¶ 2} Hairston was convicted of murder in 1971 in Winston-Salem, North Carolina and sentenced to life imprisonment. He served 18 years and was released on parole on July 17, 1989. Parole was terminated and rights restored on October 28, 1992. Approximately three years later in 1995, Hairston was indicted in a different case.

{¶ 3} On December 19, 1995, Hairston was indicted by the Cuyahoga County Grand Jury in a multi-count indictment charging the following: Counts 1 through 5, rape, in violation of R.C. 2907.02(A)(1)(b), with an aggravated felony specification; Counts 6 through 10, felonious sexual penetration, in violation of R.C. 2907.12(A)(1)(b), with an aggravated felony specification; Counts 11 through 25, rape, in violation of R.C. 2907.02(A)(2), with an aggravated felony specification; Counts 26 through 40, felonious sexual penetration, in violation of R.C. 2907.12(A)(2), with a violence specification; Counts 41 through 45, gross sexual imposition in violation of R.C. 2907.05(A)(4); and Counts 46 through 60, gross sexual imposition, in violation of R.C. 2907.05(A)(1), with a violence specification. Hairston entered a plea of not guilty.

{¶ 4} Hairston's trial commenced on March 19, 1996 and concluded on March 22, 1996. On March 26, 1996, the trial court found Hairston not guilty on all counts, except for two counts, Counts 20 and 46. On those two counts, appellant was found guilty of corruption of a minor, in violation of R.C. 2907.04. Hairston was sentenced to a term of two-to-ten years, on each of Counts 20 and 46, to be served concurrent to each other.

{¶ 5} Hairston appealed and this court affirmed in part and reversed in part. See *State v. Hairston* (July 17, 1996), Cuyahoga App. No. 70745. Hairston filed an application for relief from disability on October 25, 2006. The state filed a brief in opposition to the application for relief from disability. The trial court denied the application on October 31, 2006. On December 20, 2006, Hairston filed a voluntary dismissal.

{¶ 6} On December 10, 2008, Hairston filed a motion to correct the docket, which was denied on December 16, 2008. Hairston filed a second application for relief from disability on December 22, 2008. On January 14, 2009, the state filed its response, and on January 20, 2009, Hairston's second application was denied.

{¶ 7} Hairston now appeals the trial court's denial of his application for relief from disability.

Appellant's Four Assignments of Error

{¶ 8} Hairston assigns four assignments of error on appeal:

{¶ 9} “[1.] The trial court abused its discretion by denying appellant's application for relief from disability without a hearing as mandated by law;

{¶ 10} “[2.] The trial court violated appellant’s right to Due Process of Law by denying appellant’s application for relief from disability without a hearing;

{¶ 11} “[3.] Under the totality of the circumstances, appellant cannot receive a fair and impartial review, on the merits, in the trial court;

{¶ 12} “[4.] The trial court abused its discretion by denying appellant’s application for relief from disability without specifically reviewing the statutory edibility criteria set forth in R.C. 2923.14(F)(1) through (3).”

LEGAL ANALYSIS

Application for Relief from Disability

{¶ 13} Hairston argues that the trial court erred by denying his application for relief from judgment without first conducting a hearing. Specifically, Hairston maintains the language of R.C. 2923.14(D) and its subsequent judicial interpretation requires that a hearing be held by the trial court prior to issuing its ruling. Hairston’s argument has merit.

{¶ 14} R.C. 2923.14, Relief from disability, provides that any person who is prohibited from acquiring, having, carrying or using firearms because of a disability for the conviction or indictment of felonies of violence or offenses involving drugs may apply to the court of common pleas for relief from such disability. The provisions for obtaining such relief provide the following:

“(B) The application shall recite the following:

“(1) All indictments, convictions, or adjudications upon which the applicant’s disability is based, the sentence imposed and served, and probation, parole, or partial or conditional pardon granted, or other disposition of each case;

“(2) Facts showing the applicant to be a fit subject

for relief under this section.

“(C) A copy of the application shall be served on the county prosecutor, who shall cause the matter to be investigated, and shall raise before the court such objections to granting relief as the investigation reveals.

“(D) Upon hearing, the court may grant the applicant relief pursuant to this section, if all of the following apply:

“(1) The applicant has been fully discharged from imprisonment, probation, and parole, or, if he is under indictment, has been released on bail or recognizance;

“(2) The applicant has led a law-abiding life since his discharge or release, and appears likely to continue to do so;

“(3) The applicant is not otherwise prohibited by law from acquiring, having, or using firearms.”

{¶ 15} In *Smith v. State* (April 21, 1994), Cuyahoga App. No. 65101, this court provided the following: “A hearing must be held by the trial court following the filing of an application seeking relief from disability pursuant to Ohio Rev. Code Ann. § 2923.14(D). At the required hearing, an opportunity for both sides to present evidence must be afforded relevant to the facts enunciated in the statute. Due process so dictates!”

{¶ 16} Moreover, in *State v. Jomaa* (November 30, 1990), Lucas App. No. L-90-026, the Sixth District Court of Appeals determined R.C. 2923.14(D) requires that a hearing must be held by the trial court following the filing of an application seeking relief from disability. *Id.* at 2-3. In so holding, the court rejected the

prosecuting attorney's arguments that a hearing was not required because the applications failed to adequately set forth the essential factors required by the statute and contained an alleged inaccuracy. *Id.* at 2.

{¶ 17} Here, the trial court summarily denied Hairston's application for relief from disability without a hearing. Upon consideration of the arguments of counsel, the statutory language and the applicable law, we find that the lower court erred in denying Hairston's application for relief from disability without a hearing. It should be noted however, that this court is not stating that Hairston's application for relief has merit or should be granted. We are only stating that the lower court needs to provide Hairston with a hearing in order to determine the merit of his application for relief. Accordingly, we conclude that Hairston was entitled to a hearing and did not receive one. Therefore, this case is reversed and remanded to the trial court with instructions that the trial court hold a hearing and receive evidence on Hairston's application for relief from disability.

{¶ 18} Pursuant to our disposition of Hairston's first assignment of error, Hairston's remaining assignments of error are rendered moot under App. R. 12(A)(1)(c) and any discussion thereunder would be superfluous.

Judgment reversed and cause remanded for hearing.

It is ordered that appellant recover of appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

KENNETH A. ROCCO, P.J., and
ANN DYKE, J., CONCUR