

[Cite as *State v. Dowell*, 2015-Ohio-3237.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102408

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMES A. DOWELL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-03-435225-ZA

BEFORE: S. Gallagher, J., Jones, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: August 13, 2015

FOR APPELLANT

James A. Dowell
Inmate No. A452-937
Grafton Correctional Institution
2500 S. Avon-Belden Road
Grafton, Ohio 44044

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Brett Hammond
Assistant Prosecuting Attorney
Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶1} Appellant James A. Dowell appeals the decision of the trial court that denied his request for an order pursuant to R.C. 149.43(B)(8) of the Ohio Public Records Act. Upon review, we affirm the decision of the trial court.

{¶2} In 2003, appellant was convicted of one count of murder with a three-year firearm specification and one count of having a weapon while under disability. The convictions were affirmed on appeal. *State v. Dowell*, 8th Dist. Cuyahoga No. 83575, 2004-Ohio-3870. The underlying facts were summarized as follows:

In the early morning hours of March 6, 2003, Chester came to the defendant's house to help him with some house and yard work. Defendant was a coin collector and noticed that some of his coins were missing. Defendant questioned Chester about the missing coins and a fight ensued. Defendant reached for a gun and shot Chester once in the chest. Defendant then put the gun in the basement. Approximately 50 minutes after the shooting, defendant made a 911 telephone call to the Cleveland Police Department.

Id. at ¶ 4.

{¶3} Appellant filed an application to reopen his appeal, which was denied. *State v. Dowell*, 8th Dist. Cuyahoga No. 83575, 2005-Ohio-1966. He also filed a petition for postconviction relief, the denial of which was affirmed on appeal. *State v. Dowell*, 8th Dist. Cuyahoga No. 86232, 2006-Ohio-110.

{¶4} On February 28, 2014, appellant filed a request for an order for public records pursuant to R.C. 149.43(B)(8), in which he sought

copies of any and all crime scene photos, a copy of the 911 tape, any and all documents in reference to the State's witnesses' criminal history, any and all of the arrest reports, and docket sheets pertaining to alleged victim Chester Bright III's criminal history, and * * * a copy of the state's exhibit 50 the telephone print-out, and a copy of the subpoena, or search warrant used to obtain said telephone print-out[.]

Appellant also filed a supplement to his request, along with a motion to proceed to judgment. The trial court denied the request, and this appeal followed.

{¶5} Appellant's sole assignment of error challenges the trial court's denial of his public records request.

{¶6} R.C. 149.43(B)(8) provides as follows:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

{¶7} R.C. 149.43(B)(8) creates a heightened standard for convicted inmates seeking public records and invokes a public-policy decision to restrict a convicted inmate's unlimited access to public records in order to conserve law enforcement resources. *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 412, 2006-Ohio-5858, 856 N.E.2d 966 (construing similarly worded former R.C. 149.43(B)(4)). "R.C. 149.43(B)(8) requires an incarcerated criminal offender who seeks records relating to an inmate's criminal prosecution to obtain a finding by the sentencing judge or the judge's successor that the requested information is necessary to support what appears to be a justiciable claim." *State ex rel. Fernbach v. Brush*, 133 Ohio St.3d 151, 152, 2012-Ohio-4214, 976 N.E.2d 889, citing *State ex rel. Chatfield v. Flautt*, 131 Ohio St.3d 383, 2012-Ohio-1294, 965 N.E.2d 304. A "justiciable" claim is one that is capable of affording appropriate relief and ordinarily involves identifying a pending proceeding to which the requested documents would be material. *State v. Heid*, 4th Dist. Scioto Nos. 14CA3668 and 14CA3669, 2015 Ohio App. LEXIS 1439, *6 (Apr. 15, 2015); *State v. Kendrick*, 2d Dist. Montgomery No. 26042, 2014-Ohio-2816, ¶ 7; *State v. Rodriguez*, 6th Dist. Wood Nos. WD-13-026, WD-13-053, and WD-13-071, 2014-Ohio-1313, ¶ 5.

{¶8} Here, the trial court made no finding that the requested information was necessary to support what appears to be a justiciable claim. Moreover, appellant did not establish this requirement. Appellant's conviction was affirmed on direct appeal, and postconviction actions have been completed. He did not identify any pending proceeding for which the requested records would be material. Under these circumstances, the trial

court did not err in denying his request. Appellant's sole assignment of error is overruled.

{¶9} Judgment affirmed.

It is ordered that appellee recover from appellant 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. Case remanded to the trial court for execution of sentence. The defendant's conviction having been affirmed, any bail pending appeal is terminated.

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

SEAN C. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and
EILEEN T. GALLAGHER, J., CONCUR