

[Cite as *State v. Bozsik*, 2004-Ohio-4947.]

STATE OF OHIO)	IN THE COURT OF APPEALS
)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA)	

STATE OF OHIO	C.A. No.	03CA0141-M
Appellee		
v.		
STEVEN A. BOZSIK	APPEAL FROM JUDGMENT	
	ENTERED IN THE	
	COURT OF COMMON PLEAS	
	COUNTY OF MEDINA, OHIO	
Appellant	CASE No.	99-CR-0446

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

WHITMORE, Judge.

{¶1} Appellant, Steven A. Bozsik, appeals from an order of the Medina County Court of Common Pleas, which denied his motion for contempt of court. We affirm.

I

{¶2} In June 2000, a jury convicted Appellant of the aggravated murder of his wife. Appellant was sentenced to life imprisonment. Appellant appealed his conviction, where among other things, he challenged the weight of the evidence, charged improper trial testimony, and alleged that evidence had been improperly withheld. See *State v. Bozsik* (Dec. 26, 2001), 9th Dist. No.

01CA3091-M (“*Bozsik I*”). This Court thoroughly reviewed the record and affirmed the trial court on all issues. *Id.*

{¶3} In January 2003, Appellant sought a new trial under Crim.R. 33, based on his purported discovery of new evidence. See *State v. Bozsik* (July 23, 2003), 9th Dist. No. 03CA0017-M, 2003-Ohio-3919, at ¶4 (“*Bozsik II*”). This motion was made two and one-half years after his verdict, and the trial court denied him leave to file. *Id.*, at ¶8. Upon full review of the purported evidence, this Court determined that Appellant knew of the evidence at the time of trial. Therefore, we affirmed the trial court decision denying him leave to file. *Id.*

{¶4} In July 2003, Appellant filed a petition to vacate his sentence under the Ohio post conviction relief statute, codified at R.C. 2953.21. His petition was based upon renewed allegations of witness perjury and the supposed withholding of exculpatory evidence. The State responded with a motion for summary judgment. The trial court granted summary judgment, and noted: “[Appellant] himself was in the best position to know all the facts upon which his motion relies before, during and after his trial.” Appellant appealed to this Court, but his appeal was ultimately dismissed.

{¶5} In November 2003, Appellant filed a motion for contempt of court, which is the claim that underlies this present appeal. In that motion, Appellant alleged that the State prosecutors in his murder trial disregarded court discovery

orders, withheld and falsified evidence, and suborned perjury. The trial court succinctly denied the motion, and Appellant has now appealed.

{¶6} Appellant asserts four assignments of error. We address the first three assignments of error together to facilitate review.

II

Assignment of Error Number One

“THE TRIAL COURT ERRED AND PREJUDICED APPELLANT DENYING A SHOW CAUSE HEARING FOR CONTEMPT OF THE COURT IN VIOLATION OF DUE PROCESS RIGHT FROM THE UNITED STATES AND STATE OF OHIO CONSTITUTION.” [sic]

Assignment of Error Number Two

“THE TRIAL COURT ERRED AND COMMITTED PREJUDICIAL ERROR ALLOWING THE STATE OF OHIO AND STATE WITNESSES ABUSE THE TRIAL COURT’S INTEGRITY WITHOUT A HEARING ALLOWING THE APPELLANT TO SHOW CONTEMPT AND THE CRIMINAL INJURY AGAINST THE TRIAL COURT AND APPELLANT’S DUE PROCESS RIGHTS FOR POST TRIAL EXCULPATORY EVIDENCE.” [sic]

Assignment of Error Number Three

“THE TRIAL COURT ERRED AND PREJUDICED THE APPELLANT WHEN IT FAILED TO CONDUCT A HEARING TO SHOW CAUSE OF CONTEMPT VIOLATING ITS OWN LOCAL RULES PREJUDICING THE APPELLANT’S DUE PROCESS AFTER COMPLYING TO THE LOCAL RULE OF THE TRIAL COURT.” [sic]

{¶7} Appellant’s first three assignments of error all urge the same premise, namely that the trial court’s denial of his request for a hearing on his

accusations of contempt against the State violated his constitutional right to due process. We disagree.

{¶8} We begin by noting that the trial court expressly stated in its judgment entry that it did hold a non-oral hearing: “This matter came on for non oral hearing upon [Appellant’s] ‘Motion for Contempt of Court Against State of Ohio and Witnesses’[.]” Appellant’s motion and supporting documentation was before the court. Thus, any question would involve the propriety of the non-oral hearing.

{¶9} Appellant sought contempt orders against State prosecutors, agents and witnesses, under R.C. 2705.01 and 2705.02(A)-(B). By express statutory provision and fundamental due process protection, an *accused* must be afforded a hearing under such circumstances. R.C. 2705.03 (stating that in cases under R.C. 2705.02, “an opportunity [must be] given to the accused to be heard”); R.C. 2705.05(A) (stating that during a contempt hearing, a trial court shall “hear any answer or testimony that the accused makes or offers”); *In re Parker* (1995), 105 Ohio App.3d 31, 35 (stating that a contemnor’s right to Due Process includes the right to be heard).

{¶10} However, in this instance, Appellant is the accuser, not the accused. Appellant points to no authority, and we find none, that provides the accuser with a due process right to be heard on his contempt charges and accusations. We

reject Appellant's due process claims. Appellant's first three assignments of error are without merit.

Assignment of Error Number Four

“BECAUSE APPELLANT WAS PREJUDICED BY THE STATE OF OHIO AND ITS AGENTS FOR CONTEMPT OF THE TRIAL COURT’S ORDERS FOR DISCOVERY AND STATE WITNESSES CRIMINALLY INJURED APPELLANT DURING TRIAL WITH PERJURY, THE TRIAL COURT ERRED IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I; SECTIONS TEN AND SIXTEEN OF THE STATE OF OHIO CONSTITUTION BY NOT RECOGNIZING THE CONTEMPT CORRECTING THE INJURY TO THE APPELLANT.” [sic]

{¶11} In his fourth assignment of error, Appellant has asserted that the trial court erred when it denied his motion, and thereby refused to find the State prosecutors, agents and witnesses in contempt. We disagree.

{¶12} We begin by noting that this Court reviews a trial court's decision in a contempt proceeding for abuse of discretion. *State ex rel. Ventrone v. Birkel* (1981), 65 Ohio St.2d 10, 11. Abuse of discretion is more than an error in judgment; it is an attitude by the trial court that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Under this standard, an appellate court may not substitute its judgment for that of the trial court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. In his appeal to this court Appellant did not even argue that the trial court abused its discretion, nor did he put forth evidence to support such a claim.

{¶13} However, we need not speculate on the trial court’s decision, as our own review of the record demonstrates that Appellant’s claim is barred by res judicata:

“[A] convicted defendant is precluded under the doctrine of res judicata from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction or on appeal from that judgment.” *State v. Szefcyk* (1996), 77 Ohio St.3d 93, 96.

{¶14} Appellant could have, should have and did raise on direct appeal the very issues he is now raising in his contempt proceeding. See *Bozsik I*, 9th Dist. No. 01CA3091-M, at 1-2. Furthermore, he challenged them again when seeking a new trial. See *Bozsik II*, 2003-Ohio-3919, at ¶4. And, he challenged them yet again in his petition to vacate his sentence. Appellant has exhausted his opportunities to litigate these issues, and public policy dictates that there be a finality to Appellant’s conviction. See *Szefcyk*, 77 Ohio St.3d at 95.

{¶15} Appellant’s fourth assignment of error is not well taken.

III

{¶16} Appellant’s assignments of error are overruled. The judgment of the trial court is affirmed.

Judgment affirmed

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

Exceptions.

BETH WHITMORE
FOR THE COURT

BOYLE, J.
CONCURS

CARR, P. J.
CONCURS IN JUDGMENT ONLY

APPEARANCES:

STEVEN A. BOZSIK, Inmate # 389-250, Mansfield Correctional Institution, 1150 N.Main Street, P. O. Box 788, Mansfield, Ohio 44901, Appellant.

DEAN HOLMAN, Prosecuting Attorney and RUSSELL HOPKINS, Assistant Prosecuting Attorney, 75 Public Square, Medina, Ohio 44256, for Appellee.