

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 24580

Appellee

v.

DONALD LAVELL CRAIG

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 2006-01-0340

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 16, 2009

CARR, Judge.

{¶1} Appellant, Donald Craig, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} Craig was indicted on one count of aggravated murder, along with three specifications for death; one count of rape; and one count of kidnapping. At the conclusion of the guilt phase of the trial, the jury found Craig guilty on all counts and specifications. At the conclusion of the mitigation phase of trial, the jury recommended “death” for Craig. Upon finding that the aggravating circumstances of the case outweighed the mitigating factors by proof beyond a reasonable doubt, the trial court sentenced Craig to death for the crime of aggravated murder. The trial court further sentenced Craig to ten years in prison for each of the remaining counts. Craig was adjudicated to be a sexual predator. Craig appealed both his conviction and sentence to the Ohio Supreme Court. That appeal has not yet been disposed.

{¶3} The clerk’s official transcript of docket and journal entries indicates that Craig filed a petition for post-conviction relief on May 16, 2007. The petition, however, is not contained in the record. On June 11, 2007, Craig filed an amendment to the petition to add “Exhibit 18” in support of seven of his purported grounds for relief. The State filed a memorandum in opposition and a motion to dismiss the petition. Craig filed a memorandum contra the State’s motion to dismiss. On January 18, 2008, Craig filed a motion for leave to conduct discovery, with the intent to subsequently amend his petition for post-conviction relief “to include all such potential claims for which he discovers a sufficient basis.” The State opposed the motion for leave to conduct discovery. The trial court denied the motion to conduct discovery. On December 19, 2008, the trial court issued a judgment entry denying and dismissing the petition for post-conviction relief.

{¶4} Craig filed a timely appeal, raising three assignments of error for review. As all of Craig’s assignments of error implicate the trial court’s treatment of issues in regard to his petition for post-conviction relief, this Court consolidates them for ease of discussion.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED WHEN IT DENIED THE POST-CONVICTION PETITION WITHOUT FIRST ALLOWING CRAIG TO CONDUCT DISCOVERY.”

ASSIGNMENT OF ERROR II

“THE TRIAL COURT ERRED WHEN IT DENIED CRAIG’S MOTION FOR FUNDS TO EMPLOY EXPERTS.”

ASSIGNMENT OF ERROR III

“THE TRIAL COURT ERRED IN DISMISSING CRAIG’S POST-CONVICTION PETITION WHEN HE PRESENTED SUFFICIENT OPERATIVE FACTS TO MERIT RELIEF OR, AT MINIMUM, AN EVIDENTIARY HEARING.”

{¶5} Craig argues that the trial court erred by denying his motion to conduct discovery for the purpose of supplementing his petition for post-conviction relief. He argues that the trial court erred by denying his motion for funds to employ experts in furtherance of the grounds he purportedly alleged in his petition for post-conviction relief. Finally, Craig argues that the trial court erred by denying his petition. This Court disagrees.

{¶6} R.C. 2953.21(A)(1)(a) allows anyone convicted of a criminal offense to file a petition, asking the trial court to vacate or set aside the judgment of conviction or sentence. The petitioner must state all grounds for relief on which he relies, and he waives all other grounds not so stated. R.C. 2953.21(A)(4). In determining whether substantive grounds for relief exist, the trial court must consider, among other things, the petition, the supporting affidavits, and the documentary evidence filed in support of the petition. R.C. 2953.21(C). If the trial court finds no grounds for granting relief, it must make findings of fact and conclusions of law supporting its denial of relief. R.C. 2953.21(G). The trial court’s judgment entry denying relief complies with these requirements.

{¶7} The official record on appeal consists of double-sided copies of the majority of the documents and other materials filed in this case. Missing from the record, however, is Craig’s petition for post-conviction relief. This Court has repeatedly held that “[i]t is the duty of the appellant to ensure that the record on appeal is complete.” *State v. Daniels*, 9th Dist. No. 08CA009488, 2009-Ohio-1712, at ¶22, quoting *Lunato v. Stevens Painton Corp.*, 9th Dist. No. 08CA009318, 2008-Ohio-3206, at ¶11. “Where the record is incomplete because of appellant’s failure to meet his burden of providing the necessary record, this Court must presume regularity of the proceedings and affirm the decision of the trial court.” *State v. Jones*, 9th Dist. No. 22701, 2006-Ohio-2278, at ¶39, citing *State v. Vonnjorsson* (July 5, 2001), 9th Dist. No. 20368.

Because the petition for post-conviction relief is necessary to this Court's determination of these assignments of error, this Court must presume regularity in the trial court's proceedings and affirm the judgment of the trial court. See *Jones* at ¶39. Craig's assignments of error are overruled.

III.

{¶8} Craig's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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 Summit, 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.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

ROBERT K. LOWE and BENJAMIN ZOBBER, Assistant State Public Defenders, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.