

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO/CITY OF AKRON

C. A. No. 25035

Appellee

v.

DAVID C. WIGLE

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 09CRB01459

DECISION AND JOURNAL ENTRY

Dated: August 25, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, David Wigle, appeals from his conviction in the Akron Municipal Court. This Court affirms.

I

{¶2} On April 11, 2007, Wigle was arrested and charged with one count of criminal trespassing, in violation of Akron Codified Ordinance 131.08. The arresting officer’s field arrest form indicates that Wigle was arrested because he was part of a demonstration and refused to leave private property after several requests to do so. Wigle represented himself in the court below.

{¶3} On June 18, 2009, Wigle filed a “counter-complaint” against Akron’s Law Director, Chief Prosecutor, Mayor, and his arresting officer, accusing them of multiple violations of the Ohio Revised Code and the City of Akron’s Code. The court struck Wigle’s filing as a nullity. On July 6, 2009, Wigle filed a “motion in limine [to] bar[] evidence.” The court

construed Wigle's motion as a pre-trial, Crim.R. 12 motion and denied it as being untimely. Ultimately, the matter proceeded to a jury trial, and the jury found Wigle guilty. The court sentenced Wigle to a suspended jail term, probation, and a fine.

{¶4} Wigle now appeals from the court's judgment and raises twelve assignments of error for our review. We rearrange and consolidate the assignments of error.

II

Assignment of Error Number Five

"CRIMINAL RULE 43. PRESENCE OF THE DEFENDANT, (A) DEFENDANT'S PRESENCE. (1) EXCEPT AS PROVIDED IN RULE 10 OF THESE RULES AND DIVISION (A)(2) OF THIS RULE, THE DEFENDANT MUST BE PHYSICALLY PRESENT AT EVERY STAGE OF THE CRIMINAL PROCEEDING AND TRIAL[.]" (Sic.)

{¶5} Initially, we note that Wigle appears pro se on appeal and his arguments are difficult to understand. This Court has repeatedly held that:

"[P]ro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes. This Court, therefore, must hold [pro se appellants] to the same standard as any represented party." (Internal citations omitted.) *Sherlock v. Myers*, 9th Dist. No. 22071, 2004-Ohio-5178, at ¶3.

With this in mind, we turn to the arguments Wigle makes on appeal.

{¶6} In his fifth assignment of error, Wigle argues that a criminal defendant has a right to be present at every stage of the proceedings against him. There is no evidence in the record that Wigle was absent during any critical stage of the proceedings. Therefore, his fifth assignment of error is overruled.

Assignment of Error Number One

“THE CRIMINAL TRESPASS CHARGE: BECAME AT TRIAL A VIOLATION OF: ARTICLE THE FIRST. NO PERSON, DEMEANING HIMSELF IN A PEACEABLE AND ORDERLY MANNER, SHALL EVER BE MOLESTED ON ACCOUNT OF HIS MODE OF WORSHIP OR RELIGIOUS SENTIMENTS IN THE SAID TERRITORY. UNITED STATES IN CONGRESS ASSEMBLED, THE 13TH DAY OF JULY, THE YEAR OF THE LORD 1787, AND OF THEIR SOVEREIGNTY AND INDEPENDENCE THE 12TH. AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES, NORTH-WEST OF THE RIVER OHIO.” (Sic.)

Assignment of Error Number Two

“APPELLANT’S CONVICTION FOR CRIMINAL TRESPASS WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF ARTICLE IV, SECTION 3, OF THE OHIO CONSTITUTION.” (Sic.)

Assignment of Error Number Four

“OFFICER SANDOR, THE ARRESTING OFFICER, VIOLATED LAW UNDER 42 U.S.C.S[.] 1983, VIOLATING MY CONSTITUTIONAL RIGHTS, AS WELL AS VIOLATIONS OF STATE TORT LAW, HAVING NO PROBABLE CAUSE TO ARREST; ON A PUBLIC BUSINESS PROPERTY CONSISTING OF THREE COMMERCIAL ENTITIES, WITH PUBLIC ACCESS TO THEIR PROPERTY.” (Sic.)

Assignment of Error Number Six

“PREJUDICE BY THE JUDGE WAS CLEARLY EVIDENT. RULE 52. PLAIN ERROR (B) PLAIN ERROR. PLAIN ERRORS OR DEFECTS AFFECTING SUBSTANTIAL RIGHTS MAY BE NOTICED ALTHOUGH THEY WERE NOT BROUGHT TO THE ATTENTION OF THE COURT. [EFFECTIVE: JULY 1, 1973.] MANY ERRORS WERE ADDRESSED BY THE DEFENDANT, IGNORED, AND OR ADDRESSED FOR A LATER TIME; OF WHICH THE LATER TIME, NEVER OCCURRED. IN THIS CASE THERE WERE SO MANY ERROR’S AS TO CONSTITUTE DERELICTION OF DUTY, MISFEASANCE, MALFEASANCE; OF THE TRIAL JUDGE(S), THE AKRON MUNICIPAL CLERK OF COURTS. VIOLATIONS OF THE 4TH AND 6TH, AMENDMENTS TO THE U.S. CONSTITUTION.” (Sic.)

Assignment of Error Number Seven

“PROSECUTORIAL AND POLICE MISCONDUCT. A FOURTH AMENDMENT CLAIM. THE FOURTH AMENDMENT PROHIBITS A POLICE OFFICER FROM ARRESTING A CITIZEN WITHOUT PROBABLE CAUSE. (Sic.)

Assignment of Error Number Eight

“DENIED ACCESS TO THE COURTS, BASED ON PROCEDURAL ERRORS IN FILING. THE TRIAL COURT AS WELL AS THE APPELLATE COURT, HAS OPERATED ON STRICT PROCEDURE, IN VIOLATION OF LAWS. THE DEFENDANT OPERATED AS PRO PER, AND APPEARED SPECIFICALLY TO THE COURT, AND RETAINS ALL RIGHTS AND PRIVILEGES. PRO SE DESIGNATION IS ASSIGNED TO THE DEFENDANT BY THE COURT[S], WITHOUT CITATION OF AUTHORITY; REMOVING THE DEFENDANTS DUE PROCESS, AND QUESTIONS OF JURISDICTION. EVEN SO, UNDER THE CORPORATE COURT PROCEEDINGS, PRO SE PLEADINGS ARE GENERALLY HELD TO A LESS STRINGENT STANDARD THAN PLEADINGS DRAFTED BY ATTORNEYS, AND THUS SHOULD BE LIBERALLY CONSTRUED BY THE COURT.” (Sic.)

Assignment of Error Number Nine

“‘THERE IS INSUFFICIENT EVIDENCE TO SUPPORT A CHARGE AND OR CONVICTION UPON ALL THE ELEMENTS OF CRIMINAL TRESPASS. ANY RATIONAL TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF THE CRIME WERE BEYOND A REASONABLE DOUBT.’ *** THE ISSUE OF SUFFICIENCY OF THE EVIDENCE IS PRESERVED WHEN DEFENDANT MOTIONED FOR DISMISSAL OF THE CHARGES ON MORE THAN ONE OCCASION.” (Sic.)

Assignment of Error Number Ten

“THE COURT’S DECISION WAS ‘CONTRARY TO . . . CLEARLY ESTABLISHED FEDERAL LAW.’ A DECISION IS CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW WHEN IT STATES THE WRONG STANDARD.” (Sic.)

Assignment of Error Number Twelve

“PROCEDURAL TERMINATION(S) – A JUDGMENT BASED ON THE METHODS AND MECHANICS OF THE LEGAL PROCESS, INCLUDING ALL THE RULES AND LAWS GOVERNING THAT PROCESS. PROCEDURAL LAW IS DISTINGUISHED FROM ‘SUBSTANTIVE’ LAW, WHICH INVOLVES THE STATUTES AND LEGAL PRECEDENTS UPON WHICH CASES ARE TRIED AND JUDGMENTS MADE. SEE ALSO, ‘ADMINISTRATIVE ON THE MERITS’ PROCEDURAL TERMINATION(S); IS THE PRIMARY DENIAL OF MY ACCESS TO COURTS, DENYING ME MY CONSTITUTIONAL SUBSTANTIVE RIGHTS.” (Sic.)

{¶7} In the assignments of error outlined above, Wigle appears to make several arguments, including that: he was arrested without probable cause; his arrest and/or conviction violated his constitutional rights and certain federal statutes; and his conviction is based on insufficient evidence and is against the manifest weight of the evidence. Wigle does not address any of his assignments of error separately in the body of his brief or support any of his arguments with relevant caselaw. See App.R. 16(A)(7). He devotes the majority of his brief to a discussion of two different cases he had in Summit County before two different trial court judges. Those cases are not properly before this Court, and this Court cannot address them. As to this case, Wigle never filed a proper and timely motion to suppress so as to challenge the basis for his arrest. Moreover, the record does not contain a transcript of the proceedings below. In the absence of a transcript, this Court must presume regularity. See *State v. Jalwan*, 9th Dist. No. 09CA0065-M, 2010-Ohio-3001, at ¶12 (presuming regularity in the absence of a transcript). Wigle’s primary argument appears to be that he was mistreated and wrongfully convicted based on “an ongoing daily conspiracy to violate my and my families[’] sovereign inalienable rights.” Yet, Wigle’s generic, non-specific, and conclusory statements provide no foundation or evidentiary basis upon which this Court can disturb the verdict of the trial court. As such, his first, second, fourth, sixth, seventh, eighth, ninth, tenth, and twelfth assignments of error are overruled.

Assignment of Error Number Three

“CRIMINAL RULE 33, NEW TRIAL TRIAL COURT COMMITTED VIOLATION OF ALL ELEMENTS OF CRIMINAL RULE 33.” (Sic.)

Assignment of Error Number Eleven

“VIOLATION OF THE SIXTH AMENDMENT RIGHTS BY TRIAL COURT. THE TRIAL COURT ‘HA[S] AN INDEPENDENT DUTY TO ENSURE THAT CRIMINAL DEFENDANTS RECEIVE A TRIAL THAT IS FAIR AND DOES

NOT CONTRAVENE THE SIXTH AMENDMENT. *** THIS TRIAL COURT'S PROCEDURES AND ORDER[S] HAVE BEEN PREMISED ON MISTAKE(S) REGARDING APPLICABLE LEGAL STANDARDS, RESULTING IN THE THE JUDGES' ABUSE OF DISCRETION. *** THE TRIAL COURTS FAILURE TO ENSURE SIXTH AMENDMENT RIGHTS OF THE DEFENDANT, AND INSURE JUDICIAL INTEGRITY, ARE CONSTITUTIONAL STRUCTURAL ERROR VIOLATIONS, NOT SUBJECT TO REVIEW FOR HARMFULNESS. *** I AM THEREFORE ENTITLED TO A NEW TRIAL." (Sic.)

{¶8} In his third and eleventh assignments of error, Wigle argues that he was entitled to a new trial on several bases. Wigle never filed a motion for a new trial in the court below and cannot argue for the first time on appeal that Crim.R. 33 entitles him to a new trial. *State v. Carpenter*, 9th Dist. No. 24601, 2009-Ohio-6614, at ¶16. As such, his third and eleventh assignments of error are overruled.

III

{¶9} Wigle's assignments of error are overruled. All other outstanding motions are denied. The judgment of the Akron Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, 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.

BETH WHITMORE
FOR THE COURT

BAIRD, J.
CONCURS

CARR, P. J.
CONCURS, SAYING:

{¶10} Although I concur, I do so solely on the basis that Mr. Wigle has not provided this Court with a transcript of the proceedings and, as a result, we must presume regularity.

(Baird, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to §6(C), Article IV, Constitution.)

APPEARANCES:

DAVID C. WIGLE, pro se, Appellant.

CHERI CUNNINGHAM, Director of Law, DOUGLAS J. POWLEY, Chief City Prosecutor, and ELISA B. HILL, Assistant City Prosecutor, for Appellee.