

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

City of Toledo

Court of Appeals No. L-10-1333

Appellee

Trial Court Nos. CBR-10-10207  
TRD-10-12906

v.

Keith D. Dandridge

**DECISION AND JUDGMENT**

Appellant

Decided: July 28, 2011

\* \* \* \* \*

Keith Dandridge, pro se.

\* \* \* \* \*

PER CURIAM.

{¶ 1} This matter is before the court on appellant's "Motion for Reconsideration of App.R. 9(E) Motion," "Motion for Judicial Notice," and "Request for Hearing" regarding these two motions. Upon consideration, we grant appellant's motion for reconsideration, and deny his "Motion for Judicial Notice" and "Request for Hearing." Further, we sua

sponte appoint counsel for appellant and order a brief to be filed on his behalf within 20 days from the transmission of the supplemental record from the trial court.

### **Motion for Reconsideration**

{¶ 2} On November 10, 2010, appellant, Keith D. Dandridge, a self-identified "Natural Moor," who also goes by the name, Keith Dandridge-El, filed a notice of appeal. The appeal arises from judgments of the Toledo Municipal Court, involving consolidated case numbers CRB-10-10207 and TRD-10-12906. Appellant also filed an affidavit of indigency, docketing statement, praecipe, "Statement(s) of Assignments of Error to be Presented on Appeal," and an "Order for Partial Transcript."

{¶ 3} On December 20, 2010, the trial court granted an extension of time for transmission of the record. On December 21, 2010, the trial court stayed appellant's sentences pending appeal. The record was eventually filed on January 20, 2011.

{¶ 4} On February 1, 2011, upon his request, this court granted an extension to appellant to file his brief on or before February 24, 2011. Appellant's second request for an extension of time to file his brief was filed on February 24, 2011. In that motion, he asked for "an indefinite amount of time to file briefs in this matter." Appellant also included a CD which he claims contains an audio file from his personal cell phone from which he recorded an August 27, 2010 pre-trial proceeding. Appellant further requested that the original stenographic notes from proceedings on "8/4/10, 8/26/10, 9/21/10 & 9/22/10" be provided so that "a third party stenographer could verify [the] transcript accuracy." On March 1, 2011, this court denied his request for the stenographic notes

and advised appellant that the remedy for correction or modification of the record pursuant to App.R. 9(E), is through a motion *in the trial court*. This court then sua sponte granted appellant a 30 day extension from the day he filed an App.R. 9(E) motion with the trial court to file his brief. Alternatively, we notified appellant that if he failed to file an App.R. (9)(E) motion in the trial court within 15 days, then his brief would be due on March 24, 2011.

{¶ 5} Thereafter, on April 1, 2011, appellant filed an App.R. 9(E) motion *in this court*, which was subsequently denied on May 9, 2011. In that decision and judgment, this court again granted appellant a sua sponte extension of time to file his brief within 20 days.

{¶ 6} On May 19, 2011, appellant filed this timely motion for reconsideration, a motion for judicial notice, and a request for hearing. Appellant argues that the transcripts of proceedings for certain pre-trial conferences were not transmitted as part of the record, and that they now need to be transmitted and "corrected" based upon his "Affidavit of Material Fact." In appellant's App.R. 9(E) motion, filed on April 1, 2011, he stated that "[The] [c]ourt reporter did not file the 7/20, 7/21, 8/04, 8/26, and 8/27 transcripts for the clerk to transmit to the appeals court; These transcripts hold core elements of this appeal."

{¶ 7} App.R. 9(E) provides: "If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the court of appeals, or the

court of appeals, on proper suggestion or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted."

{¶ 8} After reviewing the record, it appears that appellant, in his praecipe, only requested a partial transcript. Specifically, he wrote, "See 'Notice: Order for Partial Transcript' attached. Also, transcripts from pre-trial appearances are already complete." In his attached "Notice: Order for Partial Transcript," appellant requested the testimony of all witnesses made during his trial, all "related and resulting conversations, questions, orders, and demands made during the intercourse of each witness testimony," the oral motions and testimony of appellant, and all responses to the oral motions made by appellant. He further requested the original stenographic records of the two-day bench trial held on September 21 and 22, 2010, and of pre-trial proceedings allegedly held on August 4, 2010, and August 26, 2010.

{¶ 9} Apparently, appellant was under the erroneous impression that transcripts for his pre-trial proceedings were already completed and would be transmitted with the record on appeal. Pursuant to App.R. 9(E), we now order that the record from any pre-trial proceedings in this matter be transcribed at the state's expense and that a supplemental record comprised of the transcripts be filed within 14 days of the date of this decision. Appellant contends that these hearings occurred on July 20, 2010, July 21, 2010, August 4, 2010, August 26, 2010, and August 27, 2010.

{¶ 10} Appellant's renewed request to have the record "corrected" in accordance with his "Affidavit of material fact" is denied. We remind appellant that, pursuant to App.R. 9(E), "If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth." In this case, any correction to the record must be made by motion in the trial court. For the same reason, appellant's request for the original stenographic records is also denied.

### **Motion for Judicial Notice**

{¶ 11} Appellant wishes to have this court take judicial notice of the following: "(1) the 8/27/10 hearing was indeed an ex-parte hearing, and that (2) the CD Audio filed into this case on 2/24/2011 (hereinafter CD Audio) is (3) an admissible, (4) authentic and/or original recording of that event."

{¶ 12} App.R. 9(A) defines the record on appeal: "The original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases." App.R. 9(A)(2) goes on to state that "[t]he trial court shall ensure that all proceedings of record are recorded by a reliable method, which may include a stenographic/shorthand reporter, audio-recording device, and/or video-recording device. The selection of the method in each *case is in the sound discretion of the trial court \* \* \**" (Emphasis added).

{¶ 13} App.R. 9(B)(2) defines who may transcribe the recorded proceedings:

"Any stenographic/shorthand reporter selected by the trial court to record the proceedings may also serve as the official transcriber of those proceedings without prior trial court approval. Otherwise, the transcriber of the proceedings must be approved by the trial court. \* \* \* ."

{¶ 14} App.R. 9(C) provides, "If no recording of the proceedings was made, if a transcript is unavailable, or if a recording was made but is no longer available for transcription, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served upon the appellee no later than twenty days prior to the time for transmission of the record pursuant to App.R. 10, and the appellee may serve on the appellant objections or propose amendments to the statement within ten days after service of the appellant's statement; these time periods may be extended by the court of appeals for good cause. The statement and any objections or proposed amendments shall be forthwith submitted to the trial court for settlement and approval. \* \* \* ."

{¶ 15} If a recording was made in the trial court of the August 27, 2010 hearing it will be transcribed in accordance with our order above. There is no provision in App.R. 9(A) that allows a private recording of a hearing made by a party on his personal cell phone to be made part of the record on appeal. Therefore, appellant's "Motion for Judicial Notice" is found not well-taken and is hereby denied.

## **Appointment of Counsel on Appeal**

{¶ 16} Appellant has proceeded pro se in the lower court proceedings and, up to this point, on appeal. In CRB-10-10207, appellant was convicted of obstructing official business, a second degree misdemeanor, and sentenced to 45 days in jail, with those days suspended upon completing 45 hours of community service and six months of probation. Additionally, appellant was convicted of resisting arrest, also a second degree misdemeanor, and sentenced to 60 days in jail with those days suspended if appellant completes 45 days of community service and six months of probation.

{¶ 17} Appellant was found indigent by the trial court, and a public defender was appointed to assist appellant in his court trial. The record reflects that appellant refused the assistance of this public defender. Appellant does not have that choice on appeal.

{¶ 18} A criminal defendant "has no constitutional right to self-representation in the appellate process on direct appeal." *Martinez v. California Court of Appeal, Fourth Appellate Dist.* (2000), 528 U.S. 152, 163, 120 S.Ct. 684, 145 L.Ed.2d 597.

"Furthermore, '[a] defendant has no right to a "hybrid" form of representation wherein he is represented by counsel, but also acts simultaneously as his own counsel.' *State v. Keenan* (1998), 81 Ohio St.3d 133, 138, 689 N.E.2d 929, citing *McKaskle v. Wiggins* (1984), 465 U.S. 168, 183, 104 S.Ct. 944, 79 L.Ed.2d 122." *State v. Ferguson* (2006), 108 Ohio St.3d 451, 466, 2006-Ohio-1502, ¶ 97.

{¶ 19} Because of the potential for incarceration as part of appellant's sentences, and appellant's indigent status, counsel is necessary. Pursuant to 6th Dist.Loc.App.R. 14, we hereby appoint Dan Grna, 709 Madison Avenue, Suite 209, Toledo, Ohio, 43604, as counsel to represent appellant for purposes of this appeal only. Counsel for appellant is granted an extension of time to file his brief on appellant's behalf within 20 days from the date of the transmission of the supplemental record from the trial court.

{¶ 20} It is so ordered.

MOTIONS GRANTED, IN PART,  
AND DENIED, IN PART.

Peter M. Handwork, J.

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JUDGE

Thomas J. Osowik, P.J.

\_\_\_\_\_  
JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.