

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	CASE NO. CA2025-06-067
Appellee,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
BRIAN T. STEPP,	:	9/21/2026
Appellant.	:	
	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2004-02-0266

Michael T. Gmoser, Butler County Prosecuting Attorney, and Michael Greer, Assistant Prosecuting Attorney, for appellee.

Brian T. Stepp, pro se.

OPINION

BYRNE, P.J.

{¶ 1} Brian T. Stepp appeals the order of the Butler County Court of Common Pleas denying (1) his motion requesting public records pursuant to R.C. 149.43(B)(8) and (2) his motion to compel discovery from the State pursuant to Crim. R. 16. Upon review, we affirm the trial court's decision. Stepp's briefing on appeal identifies no pending

litigation the documents he requested would be material to, does not demonstrate why Crim.R. 16 would be applicable to these post-trial proceedings, and otherwise wholly fails to cite and apply the standards of review and applicable law at issue in this appeal. In addition, Stepp's persistent appeals are frivolous or have not been reasonably grounded in fact or law. As a result, we sua sponte declare Stepp a vexatious litigator.

Background

{¶ 2} The facts of this case for purposes of this appeal are simple. A jury convicted Stepp of three counts of rape, three counts of kidnapping, and one count of sexual battery in 2007. Stepp filed a direct appeal, but this court affirmed his convictions. *See generally, State v. Stepp*, 2008-Ohio-4305 (12th Dist.). "Since Stepp's convictions and sentence were upheld on appeal, Stepp has continuously filed a variety of pleadings in both federal and state courts in an attempt to set his convictions and/or sentence aside, but to no avail." *State v. Stepp*, 2020-Ohio-6901, ¶ 3 (12th Dist.) (affirming the trial court's denial of Stepp's motion for leave to file a delayed motion for a new trial), citing *Stepp v. Warden*, S.D. Ohio No. 1:10-cv-282, 2011 WL 5520985, (Nov. 14, 2011) (denying Stepp's petition for a writ of habeas corpus); *State v. Stepp*, 12th Dist. Butler No. CA2013-12-226 (Feb. 02, 2015) (Accelerated Calendar Judgment Entry affirming trial court's denial of Stepp's motion to vacate sentence—construed as a postconviction petition for relief—on the basis that it was untimely and barred by res judicata); *State v. Stepp*, 12th Dist. Butler No. CA2016-12-232 (May 1, 2017) (Accelerated Calendar Judgment Entry affirming trial court's denial of Stepp's motion to correct an illegal sentence—construed as a postconviction petition for relief—on the basis that it was untimely and barred by the doctrine of res judicata); *Stepp v. Warden*, S.D. Ohio No. 1:16-cv-283, 2018 WL 2063017, (May 3, 2018) (denying Stepp's petition for a writ of habeas corpus).

{¶ 3} In December of 2024, Stepp filed a pro se motion to request public records

pursuant to R.C. 149.43(B)(8). The motion stated Stepp's "reasons for needing this file is to support what is a justiciable claim. Defendant does have cases pending in Federal and State Court(s)." Stepp later filed a motion to compel discovery from the State pursuant to Crim. R. 16. Within these filings, Stepp alleged various instances of misconduct by the State regarding his criminal trial nearly 20 years ago. The trial court denied both motions. Regarding the motion to request public records, the court found that Stepp failed to establish the existence of a "justiciable claim" that would merit granting the public records request and that Stepp's claims were likely barred by the doctrine of res judicata. The trial court denied Stepp's motion to compel after concluding that Crim. R. 16 does not apply to post-trial proceedings.

{¶ 4} Stepp now appeals. In addition to the instant appeal, we note that Stepp recently filed two other appeals with this court stemming from the denial of two other post-trial motions. These appeals were dismissed because Stepp failed to file a merit brief as ordered by this court. *See State v. Stepp*, 12th Dist. Butler No. CA2026-01-009 (Jul. 21, 2026); *State v. Stepp*, 12th Dist. Butler No. CA2026-02-027 (May 19, 2026).

Stepp's Assignments of Error

{¶ 5} We note that Stepp's briefing in this appeal failed to state assignments of error as required by App.R. 16(A) and Loc.R. 11. Upon review, Stepp's appeal stems from what he asserts are the trial court's improper denial of (1) Stepp's motion to request public records and (2) Stepp's motion to compel discovery pursuant to Crim.R. 16. Stepp asserts that various documents should have been provided via discovery before his trial and are now needed "for future litigation . . . [of] Appellants [sic] 33(B) (**pending dispute over Non-Service same as present appeal**) . . . " (Bold text in original.). Stepp does not elaborate on what this "33(B)" litigation is, but we surmise he is referring to a motion for a new trial under Crim.R. 33.

{¶ 6} "[I]n the interests of justice, [we] will construe appellants' arguments [regarding each motion] as assignments of error and consider the appeal." *Eagle's View Professional Park Condominium Unit Owners Assn., Inc. v. EVPP, L.L.C.*, 2015-Ohio-1929, ¶ 10 (12th Dist.), citing *HSBC Mtge. v. Ballard*, 2012-Ohio-2251, ¶ 4 (12th Dist.).

Applicable Law and Standards of Review

{¶ 7} "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*, 2012-Ohio-4214, ¶ 2, citing *State ex rel. Chatfield v. Flautt*, 2012-Ohio-1294. As we have previously held:

"A 'justiciable claim' is a claim properly brought before a court of justice for relief." *State v. Wilson*, 2d Dist. Montgomery No. 23734, 2011-Ohio-4195, ¶ 9. "Establishing a justiciable claim ordinarily involves identifying a 'pending proceeding with respect to which the requested documents would be material.'" *State v. Rodriguez*, 12th Dist. Preble No. CA2013-11-011, 2014-Ohio-2583, ¶ 14, quoting *State v. Rodriguez*, 6th Dist. Woods Nos. WD-13-026, WD-13-053, and WD-13071, 2014-Ohio-1313, ¶ 5. Therefore, merely "[a]lluding to possible future proceedings that could result from access to the records is insufficient to satisfy this burden." *State v. Heid*, 4th Dist. Scioto Nos. 14CA3668 and 14CA3669, 2015-Ohio-1502, ¶ 15, citing *Rodriguez*, 2014-Ohio-1313 at ¶ 6.

State v. Cope, 2015-Ohio-3935, ¶ 15 (12th Dist.). Importantly, however, "a defendant in a criminal case who has exhausted the direct appeals of his conviction may not avail himself of R.C. 149.43 to support a post-conviction relief petition." (Cleaned up.) *Id.* at ¶ 18. See also *State v. Rodriguez*, 2014-Ohio-2583, ¶ 17 (12th Dist.), quoting *Bowman v. City of Trotwood Police Dept.*, 2005-Ohio-4734, ¶ 10 (2nd Dist.), in turn quoting *State ex rel. Arnold v. Dept. of Pub. Safety, Div. of Police*, 2000 WL 1806986, *2 (8th Dist. Nov. 30, 2000).

{¶ 8} "A trial court's decision with respect to whether an inmate has established

a justiciable claim is reviewed under an abuse of discretion standard." *Id.* at ¶ 16. An abuse of discretion occurs when the trial court acts in an "unreasonable, arbitrary, or unconscionable" manner. *State v. Hancock*, 2006-Ohio-160, ¶ 130.

{¶ 9} In turn, Crim.R. 16, "requires the prosecuting attorney . . . to provide certain evidence in criminal discovery . . . [and] imposes a continuing duty to disclose on the state 'prior to or during trial.'" (Emphasis added.). *State ex rel. Flagner v. Arko*, 83 Ohio St.3d 176, 177 (1998). This duty does not extend to after a trial. *See id.* *See also* Crim.R. 16(L)(1) ("If at any time *during the course of the proceedings* it is brought to the attention of the court that a party has failed to comply with this rule . . . [the court] may make such other order as it deems just under the circumstances.") (Emphasis added.); Crim.R. 16(M) ("A party's motion to compel compliance with this rule shall be made no later than seven days *prior to trial*, or three days after the opposing party provides discovery, whichever is later . . . A subsequent motion may be made only upon showing of cause why such motion would be in the interest of justice.") (Emphasis added.).

{¶ 10} "Prosecutorial violations of Crim.R. 16 are reversible only when there is a showing that (1) the prosecution's failure to disclose was a willful violation of the rule, (2) foreknowledge of the information would have benefited the accused in the preparation of his defense, and (3) the accused suffered some prejudicial effect." *State v. Joseph*, 73 Ohio St.3d 450, 458 (1995). *See also State v. Leach*, 2024-Ohio-3145, ¶ 22 (12th Dist.), quoting *Joseph*.

Analysis

{¶ 11} Put simply, Stepp's briefing on appeal makes no references to the standards of review and applicable law described above or to the trial court's stated reasons for denying his motions, including that his request for records cannot be used to support a postconviction relief petition or that the arguments he seeks to raise may be

barred by res judicata. Instead, Stepp merely reiterates the same digressive and at times unintelligible allegations and arguments originally made to the trial court.

{¶ 12} Indeed, Stepp identifies no pending litigation the documents he requested would be material to, and his allusion to a motion for a new trial is insufficient to meet this burden. *Cope*, 2015-Ohio-3935, at ¶ 15 (12th Dist.). Moreover, Stepp makes no argument as to why the trial court's ruling that Crim.R. 16 does not apply to post-trial proceedings is incorrect. Ultimately, "[i]t is not an appellate court's duty to 'root out' or develop an argument that can support an assignment of error, even if one exists." *Rathert v. Kempker*, 2011-Ohio-1873, ¶ 12 (12th Dist.).

{¶ 13} We overrule Stepp's two assignments of error.

Vexatious Litigator

{¶ 14} Finally, we sua sponte address the issue of whether Stepp is a vexatious litigator. Under our local rules, this court may determine on its own accord "that an appeal, original action or motion is frivolous or prosecuted for the purpose of delay, harassment, or other improper purpose . . ." Loc. R. 25(A). Appeals are frivolous when they are "not reasonably well-grounded in fact or warranted by existing law, or by a good faith argument for the extension, modification or reversal of existing law." *Id.*

{¶ 15} Moreover, "[i]f a party . . . habitually, persistently and without reasonable cause engages in frivolous conduct . . . [this] court may, **sua sponte** . . . find the offending party or litigant to be a vexatious litigator." (Bold text in original.). Loc. R. 25(B). If this court declares someone a vexatious litigator, this court can impose "filing restrictions . . . [including] prohibiting the party . . . from continuing or instituting legal proceedings in the Twelfth District Court of Appeals without first obtaining leave of court . . . and/or any other sanction or restriction the court considers just and appropriate." *Id.*

{¶ 16} Upon review, we conclude Stepp is a vexatious litigator. In total, Stepp has

filed seven appeals stemming from his 2007 convictions in Butler County Case No. CR2004-02-0266. All but Stepp's direct appeal were brought pro se. In the past two years alone, Stepp instituted three of these appeals. Two were dismissed because Stepp failed to file an appellant's brief as ordered by this court. The instant appeal, as discussed above, wholly fails to grapple with the relevant law and standards of review at issue, including that the matters raised in his continued motions and appeals could or should have been raised in his direct appeal or one of his previous petitions for postconviction relief.

{¶ 17} Stepp's pro se appeals, particularly his three most recent appeals, are not merely the results of an inexperienced, pro se litigant, but a persistent and frivolous effort by him to pass blame onto anyone and everyone but himself. Stated differently, these appeals have not been reasonably well-grounded in fact or warranted by existing law and were prosecuted merely to delay the finality of his underlying conviction and sentence. Such obstinance need not be tolerated in perpetuity.

{¶ 18} We will therefore order that Stepp is prohibited from continuing or instituting legal proceedings in the Twelfth District Court of Appeals without first obtaining leave of this court.

{¶ 19} Judgment affirmed.

HENDRICKSON and SIEBERT, JJ., concur.

JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that appellant, Brian T. Stepp, is prohibited from continuing or instituting legal proceedings in the Twelfth District Court of Appeals without first obtaining leave of this court. This order shall apply solely to the Twelfth District Court of Appeals.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Matthew R. Byrne, Presiding Judge

/s/ Robert A. Hendrickson, Judge

/s/ Melena S. Siebert, Judge