

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
LICKING COUNTY, OHIO

STATE OF OHIO,

Plaintiff - Appellee

-vs-

DUSTIN HARVEY,

Defendant - Appellant

Case No. 2026 CA 00041

Opinion And Judgment Entry

Appeal from the Licking County Court of
Common Pleas, Case No. 2013 CR 00351

Judgment: Dismissed

Date of Judgment Entry: August 14, 2026

BEFORE: Andrew J. King; Craig R. Baldwin; Kevin W. Popham, Judges

APPEARANCES: JENNY WELLS, Prosecuting Attorney, KENNETH W. OSWALT, Assistant Prosecuting Attorney, for Plaintiff-Appellee; DUSTIN HARVEY, Inmate #695-656, Pro Se, for Defendant-Appellant.

Baldwin, J.

{¶1} Appellant Dustin Harvey appeals the trial court's May 4, 2026, Judgment Entry denying his April 2, 2026, post-conviction Motion to Seal. Appellee is the State of Ohio.

STATEMENT OF FACTS AND THE CASE

{¶2} The appellant was convicted on November 8, 2013, on four counts of rape and seven counts of gross sexual imposition of a minor child, and was sentenced to a cumulative prison sentence of fifteen years to life and designated a Tier III sex offender. His conviction was affirmed by this Court in *State v. Hervey*, 2014-Ohio-2683, (5th Dist.); *motion denied*, 2014-Ohio-4414; *discretionary appeal not allowed*, 2015-Ohio-554. The appellant has filed a number of post-conviction motions in the years since his conviction, which have been denied.

{¶3} On April 2, 2026, the appellant filed a Motion to Seal in which he asked the trial court to “seal the filing, the facts and findings and the judgement [sic] regarding [appellant’s] motion for reversal of conviction due to errors of law and possible subversive activities by the State.” The appellant filed a Motion Requesting Reversal of Conviction on the same day.

{¶4} On April 3, 2026, the trial court issued an order scheduling a non-oral hearing on May 4, 2026, on the appellant’s Motion to Seal. On April 13, 2026, the appellant filed a Motion to Supplement to which he attached a portion of the trial testimony of Nurse Practitioner Kelly Morrison, and two “affidavits” signed by the appellant attesting to the allegedly subversive activities of the prosecutor’s office, the appellant’s original trial counsel, and the trial court “to be reviewed during the scheduled non-oral hearing for [sic] 5.4.26.” The “affidavits” disputed evidence that was presented during the appellant’s 2013 trial.

{¶5} The trial court denied the appellant’s Motion to Seal on May 4, 2026, following the non-oral hearing. The appellant filed a timely appeal in which he sets forth the following two assignments of error:

{¶6} “I. DEFENDANT WAS DENIED A FAIR AND IMPARTIAL TRIAL DUE TO DISINFORMATION DELIBERATELY FED TO THE JURY FROM COUNTY PROSECUTOR, PAULA M. SAWYERS, UNDER CHIEF PROSECUTOR KENNETH W. OSWALT, IN THE PRESENCE OF JUDGE THOMAS M. MARCELAIN.”

{¶7} “II. DEFENDANT’S TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL, WHICH PREJUDICED THE DEFENDANT.”

ANALYSIS

{¶8} The appellant's Notice of Appeal states that he is appealing "from the judgment entry of conviction, entered in this court of the 4th day of May, 2026." The appellant filed a Docketing Statement in which he lists May 4, 2026, as the date of the judgment entry being appealed; the appellant attached a copy of the trial court's May 4, 2026, Judgment Entry denying his Motion to Seal to his Docketing Statement.

{¶9} The arguments set forth in the appellant's brief do not address the trial court's May 4, 2026, Judgment Entry denying his Motion to Seal. Instead, the appellant addresses why he believes he did not receive a fair trial in November of 2013, and why his conviction should be reversed. Indeed, the appellant states in the final paragraph of his brief that he "respectfully asserts that if this is in anyway [sic] deemed successive it is only because the proper authority refuses to acknowledge defendant's innocence, esp. [sic] in light of clear and concise evidence, on the record, of ineffective assistance of counsel, prosecutorial misconduct and abuse of discretion by the Judge. Defendant also requests that this Court reverse the conviction based on the fact defendant was denied a fair and impartial trial and was denied the effective assistance of counsel or any other relief that this Court deems just and proper."

{¶10} App.R. 3 addresses the procedure regarding how appeals of right are taken, and states in pertinent part:

(D) Contents of the notice of appeal or cross-appeal. The notice of appeal or cross-appeal must (1) specify the party or parties taking the appeal by naming each one in the body of the notice or by using terms such as "all plaintiffs," "the defendants," "plaintiffs A, C, and D" or "all defendants except ____;" (2) designate the judgment--or the order or the part of it--from which the

appeal is taken; and (3) name the court to which the appeal is taken. The title of the case will stay the same as in the trial court, with the designation of the appellant added, as appropriate. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

The appellant designated the trial court's May 4, 2026, Judgment Entry denying his Motion to Seal as the judgment from which his appeal herein has been taken. Yet none of the arguments set forth in his appellate brief, or his response to the appellee's brief, address the denial of his Motion to Seal.

{¶11} In *State v. Green*, 2026-Ohio-738, (8th Dist.), the defendant asserted that the trial court erred when it denied her motion to withdraw her guilty plea. However, the court of appeals' review of the record revealed that the defendant had not filed a motion to withdraw in said case. The court stated:

“[The court of appeals] need not address an assignment of error pertaining to issues outside the scope of an appeal.” *State v. Briscoe*, 2012-Ohio-4943, ¶ 9 (8th Dist.). A notice of appeal shall “designate the judgment, order, or part thereof appealed from.” App.R. 3(D). See *State v. Schaible*, 2025-Ohio-5799, ¶ 13 (12th Dist.) (“An appellate court may only consider arguments regarding matters that are properly brought before it in compliance with App.R. 3(D)”). See also *State v. Walden*, 2016-Ohio-258, ¶ 24 (3d Dist.), quoting *State v. Darks*, 2013-Ohio-176, ¶ 6 (10th Dist.) (“ ‘[A]ssignments of error must relate to the judgment that is the subject of the notice of appeal.’ ”). “ ‘ “An appellate court can review only final orders, and without a final order, an appellate court has no jurisdiction.” ’ ” *State v. Dickerson*, 2019-Ohio-2738, ¶ 5

(8th Dist.), quoting *State v. Anderson*, 138 Ohio St. 3d 264, 2014-Ohio-542, ¶ 28, 6 N.E.3d 23, quoting *Supportive Solutions, L.L.C. v. Elec. Classroom of Tomorrow*, 137 Ohio St. 3d 23, 2013-Ohio-2410, ¶ 10, 997 N.E.2d 490.

Id. at ¶ 14. *See, also, State v. Browning*, 2022-Ohio-386, ¶ 18 (10th Dist.) (“...To the extent Browning challenges the trial court's imposition of a fine and court costs, ‘ “[w]e have jurisdiction to review assignments of error stemming only from the judgment subject of the notice of appeal” ’); and, *Campbell v. Campbell*, 2021-Ohio-2045, ¶ 13 (“ ‘[An appellate court] ha[s] jurisdiction to review assignments of error stemming only from the judgment subject of the notice of appeal.’ *State v. Thompkins*, 10th Dist. No. 07AP-74, 2007-Ohio-4315, ¶ 7, citing App.R. 3(D). In other words, ‘ “assignments of error must relate to the judgment that is the subject of the notice of appeal.” ’ *State v. Darks*, 10th Dist. No. 12AP-578, 2013-Ohio-176, ¶ 6, quoting *Thompkins* at ¶ 7; *see also State v. Smith*, 6th Dist. No. L-10-1150, 2011-Ohio-5945, ¶ 3 (‘proposed assignments of error are not properly before the court because the proposed errors do not relate to the judgment on appeal’)”.

{¶12} An appellate court has jurisdiction to review only those assignments of error relating to the decision of the trial court that is the subject of the notice of appeal filed by an appellant. In the case sub judice, the assignments of error and arguments set forth in the appellant’s brief are unrelated to the May 4, 2026, Judgment Entry denying the appellant’s Motion to Seal, which is the Judgment Entry from which the appellant appealed, and the Judgment Entry he attached to his Docketing Statement. As such, the appellant’s arguments related to the purported lack of evidence, prosecutorial misconduct, ineffective assistance of counsel, and abuse of discretion are not properly before this court. Since the appellant has failed to submit assignments of error and arguments in support thereof that relate to the Judgment Entry from which he appealed, this Court lacks jurisdiction herein. Accordingly, the appellant’s appeal is dismissed.

CONCLUSION

{¶13} Based upon the foregoing, the within appeal is dismissed.

{¶14} Costs to appellant.

By: Baldwin, J.

King, P.J. and

Popham, J. concur.