

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

State of Ohio

Court of Appeals No. L-10-1292

Appellee

Trial Court No. CR0200601137

v.

Matthew Wyburn

DECISION AND JUDGMENT

Appellant

Decided: January 4, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Kathryn J. T. Sandretto, Assistant Prosecuting Attorney,
for appellee.

Matthew Wyburn, pro se.

* * * * *

PER CURIAM.

{¶ 1} This matter is before the court on a "Motion for Transcript at State's Expense" filed by appellant, Matthew Wyburn, pro se, on October 7, 2010. In support of

his motion, appellant states that "[t]he transcript is needed for preparation of the Appellant's Brief in this Matter."

{¶ 2} A review of the record in this appeal shows that, on March 6, 2006, appellant pled guilty to and was convicted of the crime of escape while serving a term of intermittent confinement, in violation of R.C. 2921.34(A)(1) and (C)(2)(b), a third degree felony. On March 7, 2006, the trial court sentenced appellant to four years of community control. On May 18, 2007, following a hearing, appellant was found guilty of violating the terms of his community control, and was sentenced to serve four years in prison. No direct appeal was taken from the trial court's judgment. Appellant did, however, file motions for judicial release on January 22, and August 8, 2008, and January 20, 2009, all of which were denied by the trial court. On March 12, 2010, appellant, acting pro se, filed a motion in which he asked the trial court to reconsider the denial of his last request for judicial release, which the trial court denied on May 6, 2010.

{¶ 3} On June 7, 2010, appellant filed a motion for jail time credit, which the trial court denied in a judgment entry that was journalized on September 13, 2010. Appellant, again acting pro se, filed a timely appeal from that judgment on October 7, 2010. Along with his notice of appeal, appellant filed a praecipe in which he requested a copy of the transcript from the "Sentencing Hearing of May 2007." That same day appellant filed the motion herein, in which he asked this court "to Order to the below Court to provide the Appellant in this Case with a copy of the requested Transcript[s] at State's Expense" to

assist him in the preparation of his appellate brief. Along with his motion, appellant filed an affidavit in which he states he is indigent.

{¶ 4} We note at the outset that a criminal defendant "has no constitutional right to self-representation in the appellate process on direct appeal." *State v. Ferguson*, 108 Ohio St.3d 451, 2006-Ohio-1502, ¶ 97, citing *Martinez v. California Court of Appeal, Fourth Appellate Dist.* (2000), 528 U.S. 152, 163, 120 S.Ct. 684, 145 L.Ed.2d 597. Therefore, finding that appellant is indigent, it is ordered that Scott Hoffman, 4303 Woodville Road, Northwood, Ohio, 43619, is hereby appointed counsel for appellant for purposes of this appeal only.

{¶ 5} As to appellant's request for a transcript at state expense, Ohio courts have held that "[a]n indigent defendant is entitled to relevant portions of a transcript at public expense if he is entitled to a direct appeal of his conviction or he has presently pending an appeal or some other comparable postconviction action." *State v. Bayles*, 8th Dist. No. 88094, 2007-Ohio-1008, ¶ 9, citing *State ex rel. Nelson v. Fuerst* (1993), 66 Ohio St.3d 47, 49, fn.1. However, only one copy of a transcript need be provided. *State ex rel. Murr v. Thierry*, 34 Ohio St.3d 45, citing *State ex rel. Vitoratos v. Walsh* (1962), 173 Ohio St. 467, appeal dismissed (1962), 371 U.S. 114, 83 S.Ct. 210, 9 L.Ed.2d 168. Further, "the duty to provide a transcript at State expense extends only to providing one transcript for the entire judicial system. It does not extend to sending the transcript to the indigent person in prison." *State ex rel. Mramor v. Court of Common Pleas* (Dec. 31, 1997), 8th

Dist. No. 73406. Accordingly, appellant is entitled to only one copy of the transcript to be included in the record at state expense.

{¶ 6} We further note that, in his praecipe filed on October 7, 2010, appellant asked for the transcript of his May 2007 sentencing hearing to be included in the record on appeal. Our review of the record does not reveal that a transcript was ever prepared. Accordingly, pursuant to App.R. 9(B), we hereby order that the record be supplemented with the requested transcript within 90 days of the date of this decision.

{¶ 7} It is so ordered.

MOTION GRANTED.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, 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:
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