

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

LARRY JOHNSON,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY **Case No. 21 MA 0106**

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 14CR20

BEFORE:

Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed.

Atty. Paul J. Gains, Mahoning County Prosecutor and *Atty. Edward A. Czopur*, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee

Larry Johnson, #670089, *Pro se*, Allen Correctional Institution, P.O. Box 4501, Lima, Ohio 45802, Defendant-Appellant.

Dated: December 29, 2022

WAITE, J.

{¶1} Appellant Larry Johnson appeals a November 4, 2021 Mahoning County Court of Common Pleas judgment entry which overruled his motion challenging the trial court’s subject matter jurisdiction. Appellant argues that the court did not have subject matter jurisdiction as the docket contains no specific order transferring his case from one judge to another. For the reasons that follow, Appellant’s arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} Because Appellant did not file a direct appeal of the underlying conviction and sentence, this Court has limited information available for review. The record reveals that Appellant was indicted on one count of murder, an unclassified felony in violation of R.C. 2903.02(A), (D); one count of aggravated murder, an unclassified felony in violation of R.C. 2903.01(B), (F); and one count of robbery, a felony of the second degree in violation of R.C. 2911.02(A)(1), (B).

{¶3} On March 26, 2015, Appellant pleaded guilty to the first count of murder. The state agreed to dismiss the remaining charges. On that same date, the trial court sentenced Appellant to a period of incarceration of fifteen years to life with credit for 425 days of time served. Again, Appellant failed to undertake a direct appeal of his conviction or sentence.

{¶4} On January 13, 2021 and February 9, 2021, Appellant filed motions seeking public records. On May 10, 2021, he filed a “MOTION CHALLENGING SUBJECT MATTER JURISDICTION OF TRIAL JUDGE.” On June 22, 2021, Appellant filed an “Affidavit of Disqualification Pursuant to R.C. 2701.03 and R.C. 2101.39.”

{¶15} On June 24, 2021, the Chief Justice of the Ohio Supreme Court overruled the affidavit of disqualification, as the judge against whom it was filed, Judge Christian, no longer served on the bench. On November 4, 2021, the trial court overruled Appellant’s motion challenging subject matter jurisdiction finding that the case was properly assigned to the court in a January 22, 2014 judgment entry. It is from this entry that Appellant timely appeals.

{¶16} We note that Appellant filed a petition for a writ of procedendo and/or mandamus seeking to compel the trial court to rule on his May 10, 2021 motion. Because the court had already ruled on the motion, we denied the writ in *State ex rel. Johnson v. D’Apolito*, 7th Dist. Mahoning No. 21 MA 0095, 2022-Ohio-2341.

ASSIGNMENT OF ERROR

The trial court abuse [sic] its discretion dismissing Defendant-Appellant’s motion Challenging subject matter jurisdiction of trial judge pursuant to SUP.R. 4, 36 Violating Defendant-Appellant’s Due process guaranteed by section 16, Article 1 of the Ohio Constitution and the 14th Amendment of the United States Constitution.

{¶17} Appellant argues that his case was not properly assigned to Judge Shirley Christian in accordance with Sup.R. 4.01(C) and Sup.R. 36.011(B)(4). We note that throughout Appellant’s appellate brief, he interchangeably uses the terms “subject matter jurisdiction” and “personal jurisdiction.” It appears from the substance of his arguments that he is challenging the court’s subject matter jurisdiction based on the substance of his motion, however, we will address both types of jurisdiction.

{¶8} In response, the state argues that Appellant’s case was properly assigned to courtroom 1 through a January 22, 2014 judgment entry signed by the administrative judge and filed on the docket. As to personal jurisdiction, the state argues that this argument has been waived. Even so, Appellant submitted to the jurisdiction of the court by virtue of his appearances in this matter.

{¶9} “Subject-matter jurisdiction involves a court's power to hear a case, and as such the issue can never be waived and may be raised at any time.” *State v. J.C.*, 7th Dist. Mahoning No. 21 MA 0028, 2021-Ohio-4556, ¶ 11, citing *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 10. Lack of subject-matter jurisdiction renders a judgment void. *Id.*, citing *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, ¶ 10.

{¶10} Pursuant to Sup.R. 4.01(C), “An administrative judge of a court or a division of a court shall do all of the following: * * * (C) Pursuant to Sup.R. 36, assign cases to individual judges of the court or division.”

{¶11} Pursuant to Sup.R. 36.011(B)(4), “Cases shall be assigned pursuant to the individual assignment system as follows: * * * (4) In a criminal case in a court of common pleas, no later than upon arraignment.”

{¶12} As acknowledged by the trial court, the case was assigned to “courtroom 1.” (1/22/14 J.E.) The administrative judge signed the entry and it was filed on the docket on January 22, 2014, the day Appellant was arraigned. At that time, Judge James Evans presided over courtroom 1. It appears that Appellant is somewhat confused about recent changes that occurred due to the retirement of Judge Evans. While Appellant’s case was pending, Judge Evans retired. He was replaced by Judge Christian, who presided over courtroom 1 and the remainder of Appellant’s case. The record shows this matter was

properly assigned to Judge Evans by virtue of the January 22, 2014 judgment entry. Judge Christian retained the case when she replaced Judge Evans in courtroom 1. There is no authority that requires a case to be reassigned through a separate judgment entry in the event of a judicial retirement. As such, the court clearly had subject matter jurisdiction in this matter.

{¶13} Appellant also makes reference to the court’s personal jurisdiction over him. However, “[c]ontrary to subject-matter jurisdiction, personal jurisdiction can be waived. Civ.R. 12(H). Personal jurisdiction may be acquired either by service of process upon the defendant or the voluntary appearance and submission of the defendant to the jurisdiction of the court.” (Internal citations omitted) *State v. J.C.* at ¶ 12, citing *Maryhew v. Yova*, 11 Ohio St.3d 154, 156, 464 N.E.2d 538 (1984).

{¶14} Appellant did not contest personal jurisdiction at any time during the pendency of his case and appeared at various hearings throughout the process. Thus, he has waived the issue.

{¶15} Accordingly, Appellant’s sole assignment of error is without merit and is overruled.

Conclusion

{¶16} Appellant argues that the trial court did not have subject matter jurisdiction as no judgment entry transferred the case to the specific judge who eventually presided over the matter. Appellant’s arguments are without merit and the judgment of the trial court is affirmed.

Donofrio, P.J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.