

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JAMES K. BISHOP,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 18 JE 0005

Delayed Applications for Reconsideration

BEFORE:

Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:

Overruled.

Atty. Jane M. Hanlin, Jefferson County Prosecutor, Jefferson County Justice Center,
16001 State Route 7, Steubenville, Ohio 43952, for Plaintiff-Appellee.

James K. Bishop, *Pro se* Defendant-Appellant

Dated: December 7, 2023

PER CURIAM.

{¶1} Appellant James K. Bishop has filed two separate actions regarding his criminal conviction and original appeal in *State v. Bishop*, 7th Dist. Jefferson No. 18 JE 0005, 2019-Ohio-2720 (“*Bishop I*”). Appellant has styled both as Applications for Reconsideration. As both of Appellant’s filings are untimely without grounds for good cause, or contain requests for relief this Court cannot provide, they are overruled.

Factual and Procedural History

{¶2} This matter stems from Appellant’s burglary conviction in 2018. In 2019, we denied Appellant’s direct appeal in *Bishop I*. The Ohio Supreme Court declined jurisdiction in *State v. Bishop*, 158 Ohio St.3d 1435, 2020-Ohio-877, 141 N.E.3d 245. Since then, Appellant has continuously attempted to overturn his conviction and/or sentence, filing various requests for relief to this Court, including: an application to reopen his appeal (*State v. Bishop*, 7th Dist. Jefferson No. 18 JE 0005, 2019-Ohio-4963), an appeal from the denial of a motion to correct jail-time credit (*State v. Bishop*, 2021-Ohio-2356, 174 N.E.3d 1247 (7th Dist.)), and a consolidated appeal involving a motion contesting speedy trial and a motion to dismiss (*State v. Bishop*, 7th Dist. Jefferson No. 21 JE 0018, 2022-Ohio-1565). This is not an exhaustive list of Appellant’s filings to this Court. Appellant has also filed at least two appeals in the Ohio Supreme Court and multiple actions in federal court.

{¶3} There are two actions currently before us, both filed under Case No. 18JE0005. While Appellant filed these actions using the case number of his original direct appeal, it appears from the substance of his somewhat incoherent arguments that he is also attempting to attack aspects of his other appeals. Appellant has filed these as

applications for reconsideration, apparently of our original decision in *Bishop I*. We note that Appellant failed to serve these actions on the Jefferson County Prosecutor's Office.

{¶4} The first of these was filed June 7, 2023. It appears to request reconsideration of our original 2019 Opinion, as in the body Appellant takes issue with several aspects of that decision. He also contends this Court failed to find he satisfied the requirement to provide a sworn basis for his earlier reconsideration attempt and failed to address the alleged inadequacy of his appellate counsel. He also complains that following direct appeal, the Court failed to consider his inability to identify errors within the timeframe allotted for a motion for reconsideration, ignored the failure of his counsel to investigate whether newly discovered evidence exists, and failed to consider that he was unable to follow appellate rules without the assistance of counsel.

{¶5} In his second action, filed October 2, 2023, he seeks resentencing pursuant to *State v. Gwynne*, -- Ohio St.3d --, 2022-Ohio-4607, -- N.E.3d --. He also argues that at his original sentencing the trial court erroneously found he had served multiple terms of felony probation, the victim had suffered harm, and that the court erred when determining the age of the victim.

{¶6} At the outset of our review, we note that in both of these filings Appellant has set out a jumbled web of factual and procedural arguments that are difficult, at best, to construe. He seeks redress from several different appellate decisions regarding not just his underlying direct appeal, but from various later filings and requests for reconsideration and/or reopening. He also asks this Court to resentence him, without first making this request to the trial court. In so doing he disregards our role, here. We are a

court of review, and have no jurisdiction to simply resentence him. However, as Appellant has styled his actions as motions for reconsideration, we will address them accordingly.

The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been.

Columbus v. Hodge, 37 Ohio App.3d 68, 523 N.E.2d 515 (10th Dist.1987), paragraph one of the syllabus.

{¶17} App.R. 26(A)(1)(a) states, in relevant part: “[a]pplication for reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App. R. 30(A).”

{¶18} Appellant's judgment in his direct appeal was mailed to his counsel and a note relevant to this mailing was placed on the docket on June 28, 2019. His instant applications were filed on June 7, 2023 and October 2, 2023, more than four years after the deadline to file a timely application had passed. We also note there is no later decision of this Court involving Appellant from which to find any aspect of Appellant's actions even remotely timely.

{¶19} Appellant did not file a motion for an enlargement of time nor has he attempted to explain his delay of more than four years in filing these actions, other than generally complaining of the normal constraints of a *pro se* filing. Additionally, Appellant

seeks relief this Court has no jurisdiction to provide. As such, Appellant’s delayed applications for “reconsideration” are overruled.

Conclusion

{¶10} As Appellant’s applications are untimely without grounds for good cause, they are overruled.

JUDGE CHERYL L. WAITE

JUDGE CAROL ANN ROBB

JUDGE MARK A. HANNI

NOTICE TO COUNSEL

This document constitutes a final judgment entry.