

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 111893
	:	
v.	:	
	:	
RODERICK GILCREASE,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: January 5, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-17-620782-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Kristen Hatcher, Assistant Prosecuting Attorney, *for appellee*.

Patituce & Associates, L.L.C., Megan M. Patituce, and Joseph C. Patituce, *for appellant*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant, Roderick Gilcrease (“Gilcrease”), appeals the trial court’s denial of his postconviction application for DNA testing. For the reasons set forth below, including the state’s concession, we reverse and remand for further proceedings consistent with this decision.

Procedural and Factual History

{¶ 2} In *State v. Gilcrease*, 8th Dist. Cuyahoga No. 108148, 2020-Ohio-487,

we accurately and comprehensively set forth the factual and procedural history. For consistency, we adopt the summary and recount as follows:

On October 10, 2017, Gilcrease was charged in a 20-count indictment, arising from four separate incidents on three different dates. The charges pertaining to an incident on May 14, 2017, involve two “house shootings” and include: Count 1 — improperly discharging into habitation in violation of R.C. 2923.161(A)(1) (victim, Orvis Alexander); Count 2 — discharge of firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3); Count 3 — improperly discharging into habitation in violation of R.C. 2923.161(A)(1) (victim, Sondi Robinson); and Count 4 — discharge of firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3). Counts 1, 2, and 4 include one-and three-year firearm specifications.

The charges pertaining to an incident on or about June 2, 2017, involve a shooting at a gas station and include: Counts 5 through 10 — felonious assault in violation of R.C. 2903.11(A)(2) (different victims for each count); Count 11 — discharge of firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3); Count 12 — tampering with evidence in violation of R.C. 2921.12(A)(1); and Count 13 — carrying a concealed weapon in violation of R.C. 2923.12(A)(2). Counts 5 through 10 include one-and three-year firearm specifications.

The charges pertaining to an incident on June 26, 2017, occurring on a public roadway, include: Count 14 — aggravated murder in violation of R.C. 2903.01(A) (victim, Dominique Robinson); Count 15 — murder in violation of R.C. 2903.02(B) (victim, Dominique Robinson); Count 16 — felonious assault in violation of R.C. 2903.11(A)(1) (victim, Dominique Robinson); Count 17 — felonious assault in violation of R.C. 2903.11(A)(2) (victim, Dominique Robinson); Count 18 — felonious assault in violation of R.C. 2903.11(A)(2) (victim, Raheem Overby); Count 19 — discharge of a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3); and Count 20 — carrying a concealed weapon in violation of R.C. 2923.12(A)(2). Counts 14 through 19 include one-, three-, and five-year firearm specifications.

Having waived his right to a jury trial, this matter proceeded to a bench trial on October 22, 2018. At the close of the state’s evidence, the court

granted Gilcrease's Crim.R. 29 motion for dismissal regarding Counts 5 through 11 and Count 14, and the state moved the court to dismiss the five-year firearm specification in Count 19. The court then found Gilcrease guilty on Counts 1 through 4, 12, 13, 19, and 20. The court found Gilcrease not guilty on Counts 15 through 18.

On January 15, 2019, the court imposed the following prison sentence: Count 1-8 years on the underlying offense and 3 years on the firearm specification; Count 2-3 years on the underlying offense and 3 years on the firearm specification; Count 3-7 years; Count 4-3 years on the underlying offense and 3 years on the firearm specification; Count 12-15 months; Count 13-15 months; Count 19-10 years on the underlying offense and 3 years on the firearm specification; and Count 20-15 months. The court merged the firearm specifications in Counts 1 and 2 and ordered them to be served concurrently. The court also ordered the firearm specifications in Counts 4 and 19 to be served consecutively to each other and consecutive to the firearm specifications in Counts 1 and 2, for a total prison term of 9 years on the specifications. The court then ordered the sentences on the underlying offenses in Counts 2 and 4 to be served consecutively and the sentences on the underlying offenses in Counts 1, 3, 12, 13, 19, and 20, to be served concurrently to each other but consecutive to the sentences in Counts 2 and 4, for a total prison term of 16 years on the underlying offenses. Gilcrease's aggregate prison term is 25 years.

Id. at ¶ 2-6.

{¶ 3} On February 13, 2020, we affirmed Gilcrease's convictions, but vacated his sentence for carrying a concealed weapon, as charged in Count 13, because there was no evidence in the sentencing transcript that the trial court imposed a sentence on that count in open court. *Id.* at ¶ 86. Consequently, we remanded the matter for the limited purpose of the trial court imposing sentence on Count 13. *Id.*

{¶ 4} Directly pertinent to this appeal, on July 25, 2022, Gilcrease filed an application for DNA testing, asserting that he had met all the requirements for postconviction DNA testing under R.C. 2953.74. In the application, Gilcrease argued, inter alia, that

- (1) Prior DNA testing was not a “prior definitive test”;
- (2) Biological material was collected from the crime scene, the evidence still exists, and there is no reason to believe it was contaminated;
- (3) The sample is suitable for DNA testing;
- (4) At the trial stage, the perpetrator’s identity was the primary issue and the casings in question were crucial to the state’s attempt to link him to the Maud Avenue and Simon Avenue incidents;
- (5) The results of DNA testing will be outcome determinative under R.C. 2953.71(L); and
- (6) From the chain of custody of the parent sample, there is no reason to believe that the parent sample and the extracted test sample are not the same, or that they have been out of state custody or would have been tampered with or contaminated since they were collected.

{¶ 5} Therefore, Gilcrease requested that the trial court

(1) order the DNA profiles obtained from the twenty .40 caliber casings to be uploaded to the Combined Index DNA System (“CODIS”), (2) if the DNA profile at issue is uploaded or searched in the CODIS database and results in the identification of an alternative perpetrator(s), then the trial court should immediately release him from prison, declare him innocent as to Counts 1-4 in the indictment, void his convictions, and remand for a new trial on the remaining counts, those being Counts 12, 13, 19, 20, (3) order the State to produce all DNA test results, (4) order the state to conduct a thorough search for and submit a written report regarding remaining biological material that was collected during the investigation and prosecution of the case * **, (5) order the state to produce all chain-of-custody documents and contemporaneous business records from all agencies and entities that once possessed the biological material at issue * **.

{¶ 6} On August 4, 2022, the trial court denied Gilcrease’s application. The journal entry stated in its entirety, “Application for DNA testing is denied. Case is closed.”

{¶ 7} Gilcrease now appeals and assigns the following sole error for review:

Assignment of Error

The trial court abused its discretion in denying Mr. Gilcrease's application for DNA testing.

Law and Analysis

{¶ 8} In the sole assignment of error, Gilcrease argues the trial court abused its discretion when it summarily denied his application for DNA testing. The state filed a notice of conceded error pursuant to Loc.App.R. 16(B).

{¶ 9} Generally, we review a trial court's decision to accept or reject an eligible inmate's application for DNA testing for an abuse of discretion. R.C. 2953.74(A); *State v. Bronczyk*, 8th Dist. Cuyahoga No. 102317, 2015-Ohio-2765 ¶ 10, citing *State v. Ayers*, 185 Ohio App.3d 168, 2009-Ohio-6096, 923 N.E.2d 654, ¶ 13 (8th Dist.). An abuse of discretion is "more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams*, 62 Ohio St.2d 151, 404 N.E.2d 144 (1980).

{¶ 10} R.C. 2953.71 through 2953.83 govern postconviction DNA testing for eligible inmates. R.C. 2953.73(D) provides as follows:

If an eligible offender submits an application for DNA testing under division (A) of this section, the court shall make the determination as to whether the application should be accepted or rejected. * * * The court shall make the determination in accordance with the criteria and procedures set forth in sections 2953.74 to 2953.81 of the Revised Code and, in making the determination, shall consider the application, the supporting affidavits, and the documentary evidence and, in addition to those materials, shall consider all the files and records pertaining to the proceedings against the applicant, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript and all responses to the application filed under division (C) of this section by a prosecuting attorney or the attorney general, unless the application and

the files and records show the applicant is not entitled to DNA testing, in which case the application may be denied. * * * Upon making its determination, the court shall enter a judgment and order that either accepts or rejects the application and that includes within the judgment and order the reasons for the acceptance or rejection as applied to the criteria and procedures set forth in sections 2953.71 to 2953.81 of the Revised Code.

{¶ 11} Both Gilcrease and the state aptly rely on our pronouncement in *State v. Conner*, 8th Dist. Cuyahoga No. 108885, 2020-Ohio-4310. In *Conner*, we underscored that we have repeatedly held that the failure to provide an explanation for rejecting a defendant’s application under R.C. 2953.73(D) is contrary to law and constitutes an abuse of discretion. *Id.* at ¶ 14, citing *State v. Rawls*, 2016-Ohio-7962, 76 N.E.3d 674, ¶ 25 (8th Dist.) (remanding to the trial court to provide its reasons for reaching its conclusion that DNA testing would not be outcome determinative where the court stated in its journal entry, “without further explanation, that even if the evidence were to exist, the results of DNA testing would not be outcome determinative under R.C. 2953.74(C)(5)”); *State v. Richard*, 8th Dist. Cuyahoga No. 99449, 2013-Ohio-3918, ¶ 5 (remanding to the trial court to state its reasons for finding that DNA testing would not be outcome determinative where the court’s journal entry stated, “Defendant’s application for DNA testing * * * is denied, as it does not fulfill the requirement of the statute as to being ‘outcome determinative’”).

{¶ 12} In this matter, as noted above, the trial court summarily denied the application for DNA testing by stating only that “application for DNA testing is denied. Case is closed.” It is clear that the trial court failed to provide any reasons for its denial of Gilcrease’s application.

{¶ 13} Here, as in *Conner*, the trial court's judgment entry provides no basis for this court to review the decision, since it provided neither analysis nor conclusion.

{¶ 14} Accordingly, we sustain the sole assignment of error.

{¶ 15} Judgment reversed and remanded for further proceedings consistent with this decision.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EMANUELLA D. GROVES, JUDGE

ANITA LASTER MAYS, A.J., and
MICHELLE J. SHEEHAN, J., CONCUR