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IN THE COURT OF COMMON PLEAS OF HARDIN COUNTY, OHIO

HARDIN COUNTY PROSECUTING
ATTORNEY,

PLAINTIFF,

CASE NO. 20171069 CVH

vs.

JOURNAL ENTRY

MARK A. STOUT,

DEFENDANT.

This matter comes on before the Court upon the motion for summary judgment filed by Plaintiff Hardin County Prosecuting Attorney on June 13, 2017. A response was filed by Defendant Mark A. Stout on June 22, 2017.

This matter commenced on April 26, 2017, with the filing of a "Complaint Seeking Enforcement of Ohio Revised Code §2323.52." This was served on Defendant, by serving the agent of the institution in which he is located on April 28, 2017.¹

A response to the complaint was filed by Defendant on May 18, 2017.

Plaintiff asks that Defendant be declared a vexatious litigator pursuant to ORC. §2323.52. Defendant denies that he can be legally designated as such.

A vexatious litigator is defined in §2323.52 as:

"Vexatious litigator" means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct

¹ Defendant Stout is currently serving a term of imprisonment of life in prison plus 10 years.

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in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions.

A further requirement is:

“Vexatious conduct” means conduct of a party in a civil action that satisfies any of the following:

- a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.
- b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.
- c) The conduct is imposed solely for delay.

A review of the Hardin County, Ohio docket concerning Defendant Stout reveals the following filings:

Date	Type of Pleading	Issue	Resolution	Date
11/5/2010	JE	Sentence		
11/9/2010	Direct Appeal		Affirmed	7/18/2011
10/19/2011	Appeal to SC		Dismissed by SC	12/19/2011
10/11/2012	Motion	To Vacate Void Sentence	Overruled	10/26/2012

1/13/2014	Motion	To Stay or Arrange Payment Plan	Overruled	1/17/2014
3/9/2015	Motion	For Re-Sentence	Overruled	4/24/2015
6/25/2015	Motion	Set Aside & Correct Void Sentence	Overruled	8/5/2015
8/31/2015	Appeal to Third District		Overruled	11/11/2016
1/14/2016	Motion	For Leave for Modification of Sentence	Overruled	2/3/2016
2/10/2016	Petition	To Correct Invalid Sentence	Overruled	
3/24/2016	Appeal to Third District		Overruled- Denied	7/25/2016
11/2/2016	Motion	To Vacate Void Judgment where Sentence is Contrary to Ohio Law	Overruled	12-022016
11/28/2016	Motion	To Vacate Void Judgment Where Sentence is Contrary to Ohio Law	Overruled	12/2/2016

1/17/2017	Motion	To Set Aside and Correct Sentence	Overruled	3/16/2017
3/29/2017	Appeal to Third District		Denied	7/10/2017

The first issue to determine is whether any of the actions taken by Mr. Stout are considered “civil actions.” There is no question that the initial appeal to Defendant’s conviction and sentencing is not considered a civil action. Such an appeal, and the resultant appeal to the Supreme Court were Defendant’s right.

But having exercised that right, the results of which were a denial of his assignments of error in the Court of Appeals, and a refusal of certification into the Supreme Court, we now determine if the actions taken by Defendant are technically civil in nature.

The controlling law on that issue is set forth in *State v. Milanovich*, 42 Ohio State 2d 46, 49, which states:

Post-conviction relief proceedings in Ohio have historically been cognizable as quasi-civil.

The Court goes on to state:

“...the dictates of judicial economy as well as the need for viable and consistent application, make it necessary that a uniform procedural framework be adopted. As indicated, this framework is civil, not criminal..” (emphasis added)

The Court has considered the very recent case of *Watkins vs. Pough*, 2016-T-0100, Trumbull County, decided July 31, 2017, in which the Court of Appeals dealt with the issue of a vexatious litigator. The Court of Appeals of Trumbull County specifically found that “a post conviction proceeding is not an appeal of a criminal conviction but, rather, a collateral attack on the judgment.” Quoting *State vs. Calhoun*, 86 Ohio St. 3rd 279 at 281.)

Further, “motions filed after conviction and sentencing seeking to render a judgment void, such as those to resentence have been repeatedly construed as post conviction petitions.”

As such, these pleadings are considered civil in nature as regards §2323.52.

We therefore find that the vast majority, if not all, of the multitude of approximately nine (9) motions/petitions filed by Defendant, and the three (3) resultant appeals are civil in nature (all of which were overruled and denied), and therefore potentially subject to the vexatious litigator law. (ORC §2323.52)

The Court must determine whether Defendant’s conduct in filing such pleadings is, in fact, vexatious.

It is obvious that the filing of multiple motions/petitions/appeals concerning the same issue (i.e. Defendant’s sentence) re-hashes the same issue when such reconsideration is “not warranted under existing law, and cannot be supported by a good faith argument for an extension modification, or reversal of existing law.”

Also, while the issue of whether Defendant continues to file said motions is with purpose “to harass” the prosecutor, such conclusion can certainly be reasonably drawn.

Therefore the Court finds that Defendant’s conduct as alleged by the State is, in fact, vexatious.

Therefore, after a careful review of the pleadings filed by Defendant and the denial of the three appeals to the Third District Court of Appeals, the Court hereby finds Mark A. Stout to be a vexatious litigator as defined in ORC §2323.52(A)(3).

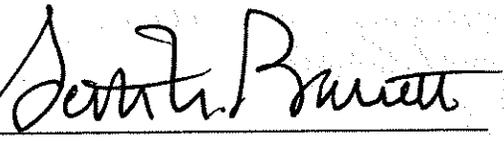
It is therefore the Order of the Court that Mark A. Stout, DOB: 05-19-1972, is prohibited from doing any of the following:

- A) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

- B) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified above prior to the entry of the order;
- C) Making any application, other than an application for leave to proceed under division (F)(1) of ORC §2323.52, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (a) above.
- D) Instituting any legal proceedings in a court of appeals, or continuing any legal proceedings that he may have instituted prior to the date of this order except as set forth in ORC §2323.52(F)(2), without first obtaining leave of court thereof.

Costs to Defendant for which judgment is entered and execution may issue.

It is so Ordered.



Scott N. Barrett, Judge

To the Clerk:

Please issue a certified copy of this order to the Supreme Court of Ohio for publication in a manner determined by that court to be appropriate to assist all courts in complying with the terms of this order.

CC: Hardin County Prosecuting Attorney
Mark A. Stout, Defendant

THE CLERK IS DIRECTED TO ENTER JUDGMENT UPON THE JOURNAL AND SERVE ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THE JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL. THIS IS A FINAL APPEALABLE ORDER. THERE IS NO JUST REASON FOR DELAY.