

Original copy

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

APPELLEE,

-VS-

JOHN B. STEVENS,

APPELLANT,

06-2199

ON APPEAL FROM THE LUCAS  
COUNTY COURT OF APPEALS,  
SIXTH APPELLATE DISTRICT

COURT OF APPEALS  
CASE NO.: L06-1128

MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT JOHN B. STEVENS

John B. Stevens #469-725  
Appellant, Pro-Se

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**Proposition of Law: Denial of post-conviction motion to withdraw guilty plea based upon newly discovered evidence demonstrating actual innocence and manifest injustice on the grounds that; "Based on the foregoing, this Court finds that appellant's 2006 motion to withdraw his guilty plea was barred by the doctrine of res judicata. All of appellant's claims could have been raised on direct appeal" (Appendix 1, Decision and Judgment entry of Oct. 13 2006, pg. 4, ¶ 10), violate due process under the 14th Amendment of the United States Constitution and the corresponding Article(s) of the Ohio Constitution. State v. Cooperrider, 4 Ohio St,3d 226; State v. Hamed, 577 N.E.2d 1111.**

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**Explanation of why this case is of Public or Great General Interest and Involves a Substantial Constitutional Question.**

The instant case presents issues this Court has dealt with many time in the past and has recognized as of great Constitutional importance; whether the doctrine of res judicata applies to evidence 'outside the record' when 'newly discovered evidence' is properly presented timely within a post-conviction motion to the trial court, and whether the application of the doctrine of res judicata violates due process when used to deny a timely post conviction motion based upon newly discovered evidence.

The Sixth District Court of appeals ruled below that the Appellant's claims of ineffective assistance of counsel and actual innocence were barred by the doctrine of Res Judicata , affirming the trial court's denial of post-conviction relief, and that rulling is directly at odds with this Court's holding in State v. Cooperrider,

4, Ohio St.3d 226, and State v. Hamed 577 N.E.2d 1111, as well as a veritable plethora of other cases.

When this Court determined that post conviction relief motions are the appropriate avenue of redress for constitutional violations in a criminal proceeding when those violations are supported by evidence from 'outside the record', and further that errors appearing 'in the record' were only cognizable through direct appeal, this Court clarified any doubts regarding which legal mechanism a defendant should employ in seeking relief from a criminal conviction.

When an appeals district rules in opposite of This Court's previous holdings, and openly and obviously violates an appellant's rights to due process and equal protection, that appeals district demeans the authority of this Court, the integrity of the judiciary, and undermines the public confidence in This Great State's Court System by setting "Bad Case Precedence". When an appeals district allows clear and obvious constitutional violations to go uncorrected, this Court is DUTY BOUND to correct the constitutional violation and to issue curative instruction to that appellate district.

The Appellant's due process rights were violated by the trial court in this case, not once, but twice. First by denyinh the Appellant any transcripts with which to present his post-conviction petition, and second, by denying the post-conviction petition based upon a wrongful premise.

The district court upheld the trial court's violations of the Appellant's rights, and further violated the Appellant's rights by denying him transcripts, and then again by denying him the right to have the transcripts included in the appeal when the trial court used the transcripts to deny the post conviction petition.

This Court should accept jurisdiction over this case and correct the error(s) of the Sixth Appellate District usurping this Court's authority.

This Appellant filed a motion to withdraw his guilty plea after obtaining much "Newly Discovered Evidence" which conclusively demonstrates that there was police misconduct, prosecutor misconduct, judicial misconduct, and that he was appointed "Constitutionally Ineffective Counsel", all of which rendered his guilty plea in this case in no way "Knowingly, Intelligently, or Voluntarily" entered, resulting in violations of his 4th, 5th, 6th, and 14th Amendment Rights under the United States Constitution and those corresponding Articles of the Ohio Constitution.

The trial court (Lucas County) denied the motion stating that "The claims raised in the motion are barred by 'res judicata' when all of the claims should have been raised on direct appeal." It was impossible for the Appellant to raise any of his claims on direct appeal when the evidence supporting his claims was not discovered until December 28, 2005. The Appellant timely appealed to the 6th District. On November 13, 2006, the 6th District affirmed the trial court's denial, again stating that the Appellant's claims were barred by res judicata and that the claims should have been raised on direct appeal. Contrary to this Court's holding in Cooperrider, supra.

Disregarding this Court's holding in Cooperrider, supra, the trial court and the 6th District Court of Appeals, allowed the violations done this Appellant to stand, usurping this Honorable Court's authority. Basically giving this Honorable Court a "Slap In The Face". This Court should accept jurisdiction and correct the courts below with an order that this Appellant be allowed to withdraw his guilty plea and allow a jury of his peers to determine whether he is guilty of the crimes for which he now stands wrongfully convicted through constitutional violations done him in the trial court.

#### STATEMENT OF THE CASE AND FACTS

On May 25, 2003, the Appellant was accosted while driving in a lawful manner down a city of Toledo Ohio street by a large, black, 4 wheel drive pick up truck or full sized sport utility vehicle. This large truck/suv began aggressively threatening to force the Appellant's smaller mid-sized vehicle off the road in what the Appellant perceived as an attack by unknown assailants. The Appellant, exercising his lawful

duty to retreat, continued driving in a lawful manor, yetr refusing to stop for this "unknown assailant vehicle-truck/suv" from fear of bodily harm or worse. The threatening and menacing assault from this truck/suv continued for several blocks, when marked toledo police vehicles got in behind the truck/suv and eventually appeared in front of the Appellant's vehicle as well.

At this point, the Appellant stopped his car and upon exiting his vehicle, he was tackled by policeofficers, handcuffed face down on the ground, then adminis-tered a brutal and unmerciful beating by several police officers, ultimately render-ing him unconscious. Appellant regained consciousness briefly in the back of a police van, lapsing back into unconsciousness only to regain consciousness upon being taken into the lucas county jail.

Later that night, Appellant was taken to and admitted into the hospital for tre-atment of the injuries recieved from the beating. He was treated, prescribed meds, and returned to the jail, where he was continued on the narcotic medication until July 2, 2003, and beyond.

On July 2, 2003, the Appellant, upon erroneous advice of appointed counsel, entered a plea of guilty to the unamended indictment, and was ultimately sentenced to four years in prison.

Through court-ordered discovery in the appellant's civil rights lawsuit filed against the police for the beating of him, the Appellant, on December 28, 2005, received "Newly Discovered Evidence" demonstrating bad faith of the complaining officers in the pursuit, seizure, search, and arrest of him, and for the beating of him by the police upon seizing him. The new evidence demonstrates that the police had no lawful probable cause to inititate the pursuit and seizure in violation of Ohio law (RC § 4549.13, 14, 16). The new evidence also demonstrates the deficiency of the Appellant's appointed counsel, the misconduct of the prosecutor and judge, as well as "Manifest Injustice" through the fact that the Appellant is serving a four year prison sentence when not only was there no lawful order for wich the appellant could have been guilty of "Failing To Comply With", but also that there is reasonable doubt that any "Felony Three Failure to Comply" even occurred.

On January 17, 2006, less than three weeks after obtaining the new evidence, the Appellant filed a motion for a new trial based upon the new evidence, and on Feb. 27, 2006, Appellant amended his motion for a new trial to include a motion to withdraw guilty plea.

On March 14, 2006, the trial court denied the motion(s), claiming that res judicata barred the Appellant's claims; that Appellant should have raised his claims on direct appeal.

The Appellant timely appealed the denial of his postconviction motion(s), and on ~~November 13~~ October 13, 2006, the Sixth District Court of Appeals affirmed the trial court's denial of the Motion(s).

Appellant now timely presents this case to this Court for Review.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

This Court has continuously held that matters not appearing in their record are to be presented in post-conviction proceedings. (see RC § 2953.21, 23 and *Cooperrider*, supra) Matters appearing in the record of the case should be brought on direct appeal (see RC § 2953.01 et. seq.).

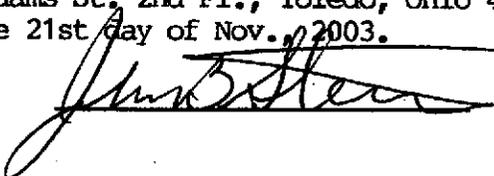
The denial of the trial court of the Appellant's motion base upon new evidence and the subsequent affirmation of the 6th District court of appeals violates the appellant's Due Process Rights under the 14th Amendment to the United States Constitution and those corresponding Articles of the Ohio Constitution..

CONCLUSION

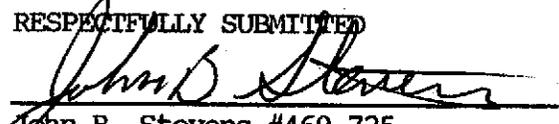
For the reasons discussed above, this Court should accept jurisdiction over this matter, as it presents and involves a matter of great public or great general interest, and involves a substantial constitutional question. This important issue presented should be reviewed.

CERTIFICATE OF SERVICE

I certify that a copy of this was sent via U.S. Mail, to Counsel for the Appellee at; 711 Adams St. 2nd Fl., Toledo, Ohio 43624, on the 21st day of Nov., 2003.



RESPECTFULLY SUBMITTED

  
John B. Stevens #469-725  
N.C.C.I.

P.O. BOX 1812  
Marion, Ohio 43301-1812

FILED  
COURT OF APPEALS

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COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

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

State of Ohio

Court of Appeals No. L-06-1128

Appellee

Trial Court No. CR03-2268

v.

John B. Stevens

**DECISION AND JUDGMENT ENTRY**

Appellant

Decided: **OCT 13 2006**

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

John B. Stevens, pro se

\* \* \* \* \*

PARISH, J.

{¶ 1} This is a pro se appeal from a judgment of the Lucas County Court of  
Common Pleas that denied appellant's motion to withdraw his pleas. For the following  
reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth the following assignment of error:

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{¶ 3} "The trial court erred and abused its discretion by failing to consider the appellant's post-conviction petitions on the merits and by denying the petitions without any evidentiary hearing when all requirements had been met in the petitions for necessitating an evidentiary hearing to establish materiality of new evidence and a determination whether the manifest weight and the sufficiency of the evidence in this case was sufficient to sustain any conviction in this case."

{¶ 4} On July 2, 2003, appellant pled guilty to one count of possession of cocaine, in violation of R.C. 2925.11(A) and (C)(4)(a), a fifth-degree felony, and one count of failure to comply with the signal of a police officer, in violation of R.C. 2921.331(B) and (C)(5)(a)(ii), a third-degree felony. The trial court found appellant guilty of both offenses and sentenced him to serve four years of community control. Appellant was informed that if he violated any of the terms of his community control he could be ordered to serve a maximum sentence of 12 months as to the first count and five years as to the second count.

{¶ 5} On May 17, 2004, appellant's community control was revoked. He was ordered to serve 11 months as to the conviction for possession of cocaine and four years as to the conviction for failure to comply with a signal of a police officer. Since that time, appellant has filed numerous postconviction motions. The motion which is the subject of this appeal was filed February 27, 2006. On March 14, 2006, the trial court found that on July 11, 2005, appellant had filed another motion to withdraw his guilty pleas, which the court denied on August 2, 2005. In its March 14, 2006 entry, the trial

court stated that it was denying the most recent motion to withdraw his pleas for the reasons set forth in its August 2005 order.

{¶ 6} In the August 2005 order, the trial court noted that appellant sought to withdraw his guilty pleas on the basis that they were not knowingly, intelligently or voluntarily made. In support of his motion, appellant had submitted his sworn affidavit in which he stated he was on "narcotic medication" at the time his pleas were entered. In denying that original motion, the trial court examined the transcript of the plea hearing and found that there was nothing to corroborate appellant's position. In its judgment entry, the trial court quoted a portion of the hearing transcript in which appellant stated he was "not under the influence of anything." The trial court found that appellant was "aware of the purpose of the proceedings, the details of the events that gave rise to the charges to which entered pleas of guilty, and that his pleas were knowingly, intelligently and voluntarily made."

{¶ 7} Appellant again seeks to withdraw his guilty pleas on the basis that they were not knowingly, intelligently or voluntarily made. He also argues that his conviction was the result of police, prosecutorial and judicial misconduct, as well as ineffective assistance of counsel. He claims "evidentiary inconsistencies " and argues his conviction is against the weight and sufficiency of the evidence.

{¶ 8} Crim.R. 32.1 provides that a trial court may grant a post-sentence motion to withdraw a guilty plea upon a showing of manifest injustice. *State v. Smith* (1977), 49 Ohio St.2d 261. This court finds that although appellant's claims are the proper subject

for a motion to withdraw a plea pursuant to Crim.R. 32.1, his claims are barred by the doctrine of res judicata.

{¶ 9} Under the doctrine of res judicata, a convicted defendant who was represented by counsel is barred from raising and litigating in any proceeding, except on appeal, any defense or claimed lack of due process that he raised or could have raised at trial. *State v. Szefcyk* (1996), 77 Ohio St.3d 93, 1996 Ohio 337, syllabus. Furthermore, a defendant's failure to appeal a judgment of conviction bars as res judicata any subsequent attempt to litigate issues that could have been raised on a direct appeal. *State v. Dick* (2000), 137 Ohio App.3d 260, 2000 Ohio 1685, citing *State v. Harmon* (1995), 103 Ohio App.3d 595, 598. "The fact that Defendant did not undertake a direct appeal from [his] \* \* \* conviction and sentence does not change the application of the res judicata doctrine." *State v. Quiles* (Jan. 2, 1997), 9th Dist. No. 96CA006312.

{¶ 10} Based on the foregoing, this court finds that appellant's 2006 motion to withdraw his guilty pleas was barred by the doctrine of res judicata. All of appellant's claims could have been raised at the time of trial or on direct appeal. Further, appellant has already filed a motion to withdraw his guilty pleas which was denied by the trial court in August 2005. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 11} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant

to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
See, also, 6th Dist.Loc.App.R. 4.

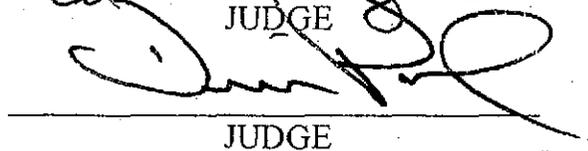
Mark L. Pietrykowski, J.

Arlene Singer, P.J.

Dennis M. Parish, J.  
CONCUR.

  
JUDGE

  
JUDGE

  
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:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.