

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

-vs-

JAMES LEASURE,

Defendant-Appellant.

*

S.C. No. 2007-0246

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On Appeal from the
Lucas County Court
of Appeals, Sixth Appellate
District

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Court of Appeals
Case No. L-05-1260

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APPELLEE'S MEMORANDUM IN RESPONSE

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LUCAS COUNTY, OHIO

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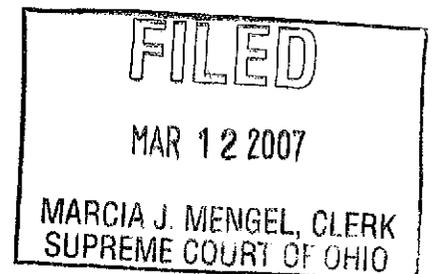


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EXPLANATION OF WHY THIS CASE IS NEITHER A CASE OF PUBLIC OR GREAT GENERAL INTEREST, NOR INVOLVES ANY SUBSTANTIAL CONSTITUTIONAL QUESTION.

Ohio Supreme Court Rule 3, Section 1 requires an appellant asking this Court to entertain a discretionary appeal to provide “a thorough explanation of why a substantial constitutional question is involved.” Alternatively, an appellant must demonstrate “why the case is of public or great general interest.” Because Appellant has failed to meet this high burden, the State of Ohio respectfully asks this Court to deny Appellant’s request to assert jurisdiction.

Appellant offers no support for the bare assertion, thrice repeated, that “this case presents a substantial constitutional question.” Appellant pled guilty in the trial court pursuant to *North Carolina v. Alford* (1971), 400 U.S. 25. The Sixth District Court of Appeals ruled that the *Alford* plea terminated Appellant’s right to assert the ineffective assistance of counsel and to relitigate his failed motion to suppress. Appellant cannot explain which part of the Ohio Constitution dictates otherwise. Similarly, while this case is obviously of great *personal* interest to Appellant, he has not demonstrated that the case presents anything approaching “great general interest.”

As such, the State of Ohio hereby requests that this Court decline Appellant’s invitation to assert jurisdiction in this case.

COUNTER-ASSIGNMENT OF ERROR:

BECAUSE HIS GUILTY PLEA WAIVES ALL ERRORS EXCEPT THOSE AFFECTING THE VOLUNTARINESS OF THE PLEA, AND APPELLANT HAS NOT CLAIMED THAT HIS GUILTY PLEA WAS INVOLUNTARY, APPELLANT CANNOT CHALLENGE THE TRIAL COURT'S RULING ON HIS MOTION TO SUPPRESS, NOR CAN HE ASSERT THE INEFFECTIVE ASSISTANCE OF COUNSEL.

Although Appellant has repackaged the alleged assignments of error from what was asserted in the lower court, his argument remains centered on two issues, both of which he is foreclosed from challenging in light of his guilty plea: the denial of his motion to suppress, and the claim that his trial counsel was ineffective.

Appellant asserts that evidence obtained during his encounter with the police was unconstitutionally obtained and should have been suppressed. The trial court disagreed, however, and Appellant's subsequent guilty plea waives his right to appeal the ruling.

As the Sixth District Court of Appeals held in *State v. Pringle*, "a plea of guilty waives any errors, including alleged errors by the trial court in failing to suppress evidence, that may have occurred at the trial level unless such errors are shown to have precluded the defendant from entering a knowing and voluntary guilty plea." 1999 Ohio App. Lexis 3013, p. 11. The same holds true for *Alford* pleas: "A guilty plea entered pursuant to *Alford* is procedurally indistinguishable from a guilty plea in that it severely limits claimed errors to those which affected the voluntariness of the plea." *Id.* As such, the *Pringle* Court held there was no need to reach the merits of Appellant's argument concerning the denial of his motion to suppress. *Id.* at 12.

Similarly Appellant claims he was subject to ineffective assistance of counsel because his trial attorney didn't call certain eyewitnesses who would purportedly corroborate his testimony.

Again, however, Appellant's guilty plea waives all appealable errors except for those precluding a knowing, intelligent, and voluntary plea. *Id.* at 13. In the wake of a guilty plea, therefore, Appellant cannot even assert the ineffective assistance of counsel without demonstrating that trial counsel's deficiencies impaired the voluntariness of his plea. *Id.* at 13-14. Because Appellant does not claim that his guilty plea was in any way involuntary—due to deficient performance by counsel or otherwise—Appellant has waived the right to assert this error.

CONCLUSION

Because Appellant's guilty plea waived his right to assert the alleged errors, and because his case presents neither a substantial constitutional question nor a matter of great public interest, the State of Ohio respectfully urges this Court to deny jurisdiction.

Respectfully submitted,

JULIA R. BATES, PROSECUTING ATTORNEY
LUCAS COUNTY, OHIO

By: Brad A. Smith by [Signature]
Brad A. Smith, #0080449
Assistant Prosecuting Attorney

CERTIFICATION

This is to certify that a copy of the foregoing was sent via ordinary U.S. Mail this 9th day of March, 2007, to James R. Leasure, #498-554, Lebanon Correctional Institution, P. O. Box 56, Lebanon, Ohio 45036-0056.

Brad A. Smith by [Signature]
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