

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio, : S.Ct. Case No. 10-1145
Appellee : C.A. Case No. E-01-047
v. :
Alphonso Darden :
Appellant :
:
--oooOooo--

APPELLEE'S MEMORANDUM IN OPPOSITION

Counsel for Appellee:

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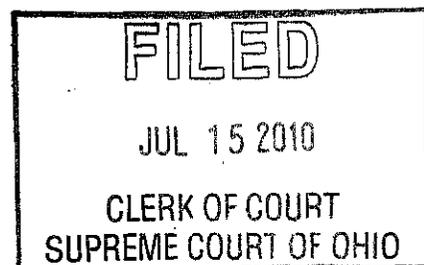
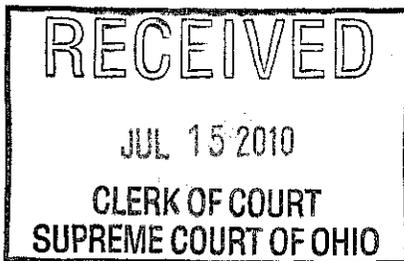


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WHY LEAVE TO APPEAL SHOULD BE DENIED

Appellant has failed to demonstrate in his Memorandum in Support of Jurisdiction that this case involves a substantial constitutional question or that this case is one of public or great general interest. The Sixth District Court of Appeals correctly denied appellant's motion for reconsideration.

On February 11, 2010, appellant filed a "discretionary appeal" in the Sixth District Court of Appeals. As evidenced by entry filed on April 5, 2010, the appellate court properly dismissed appellant's "appeal" finding that it was a petition for post conviction relief and must be filed in the trial court.

Appellant then filed a motion for reconsideration in the Sixth District Court of Appeals on the judgment entry filed April 5, 2010. The appellate court denied appellant's motion for reconsideration as untimely filed as evidenced by entry filed May 13, 2010.

Appellant filed a second motion for reconsideration asking the court to reconsider its denial of appellant's first motion to reconsider. The Sixth District Court of Appeals properly held that there was no provision in the Rules of Appellate Procedure allowing the court to revisit such a denial. **State v. Darden**, 2010 WL 53482, 2010-Ohio-26 (Ohio App. 6 Dist.).

In appellant's jurisdictional memorandum, appellant does not argue the issue as to why the reviewing court was in error

in denying appellant's motion for reconsideration. Instead, appellant argues issues which were not addressed by the Sixth District Court of Appeals. Therefore, appellant's jurisdictional argument is not properly before this Court because there is no final appealable order addressing appellant's issues as presented in the jurisdictional statement. Consequently, appellant has failed to demonstrate that this case involves a substantial constitutional question or that this case is one of public or great general interest.

STATEMENT OF THE CASE AND FACTS

Appellant was indicted by the Erie County Grand Jury on June 19, 2000, for the offense of robbery in violation of the Ohio Revised Code Ann. §2911.02(A)(2) (hereinafter "O.R.C.") under Count Nos. One and Two of the indictment; for the offense of receiving stolen property in violation of O.R.C. §2913.51(A) under Count No. Three; for the offense of intimidation of a crime victim in violation of O.R.C. §2921.04(B) under Count No. Four; for the offense of aggravated robbery in violation of O.R.C. §2911.01(A)(1) under Count Nos. Five, Nine and Eleven; for the offense of tampering with evidence in violation of O.R.C. §2921.12(A)(1) under Count No. Six; for the offense of theft in violation of O.R.C. §2913.02(A)(1) under Count Nos. Seven and Eight; for the offense of felonious assault in violation of O.R.C. §2903.11(A)(1) under Count No. Ten; and for

the offense of aggravated robbery in violation of O.R.C. §2911.01(A)(3) under Count No. Twelve. Count Nos. 1, 2, 5, 9, 10, 11 and 12 further contained the specification that appellant did cause or threaten to cause physical harm during the commission of the offense. Counts 4, 5, 9, 10, 11 and 12 further contained a firearm specification.

Following a jury trial, appellant was found guilty of receiving stolen property under Count No. Three, tampering with evidence under Count No. Six, theft under Count No. Seven. and aggravated robbery under Count No. Eleven with a firearm specification.

As evidenced by the judgment entry filed October 20, 2000, appellant was sentenced to a term of eleven months incarceration for receiving stolen property, to a term of four years for tampering with evidence, to a term of six months in the Erie County Jail for theft, and for aggravated robbery with a firearm specification, to a term of nine years and three years actual incarceration as to the firearm specification. The sentence imposed as to the firearm specification was imposed to be served prior to and consecutive to the sentence for aggravated robbery. All other sentences were imposed to run concurrently.

At sentencing, appellant was advised of his right to appeal his conviction, and Willa Hemmons was appointed as appellate counsel. On February 27, 2001, appellant notified trial counsel

that Willa Hemmons was not able to take the appellate case and that Geoffrey Oglesby had agreed to file the appeal. Soon after, Geoffrey Oglesby's license to practice law was suspended and an appeal was never filed.

On March 30, 2001, appellant filed a post conviction petition moving the trial court to vacate and re-enter his judgment of conviction with the effect of restarting the time within which he could file his notice of appeal. On October 19, 2001, appellant's judgment was re-entered. Appellant filed a notice of appeal in the Sixth District Court of Appeals on the judgment entry filed October 19, 2001.

The Sixth District Court of Appeals affirmed the judgment of the trial court. See State v. Darden, 2002 WL 31521579, 2002-Ohio-6184, (Ohio App. 6 Dist.).

On December 1, 2008, petitioner filed a second pro se petition to vacate or set aside judgment of conviction or sentence. The trial court denied petitioner's motion by entry filed January 23, 2009.

On April 1, 2009, appellant filed a third pro se petition to vacate or set aside judgment of conviction or sentence. As evidenced by entry filed on April 29, 2009, the trial court again denied appellant's petition.

On February 11, 2010, appellant filed a "discretionary appeal" in the Sixth District Court of Appeals. As evidenced by

entry filed on April 5, 2010, the appellate court dismissed appellant's "appeal" finding that it was a petition for post conviction relief and must be filed in the trial court.

On April 22, 2010, appellant filed a motion for reconsideration in the court of appeals on the entry filed April 5, 2010. The appellate court denied appellant's motion for reconsideration as untimely as evidenced by entry filed May 13, 2010.

Appellant filed a second motion for reconsideration in the Sixth District Court of Appeals, asking the court to reconsider its denial of appellant's first motion to reconsider. The court held that there was no provision in the Rules of Appellate Procedure allowing the court to revisit such a denial. State v. Darden, 2010 WL 53482, 2010-Ohio-26 (Ohio App. 6 Dist.).

On June 30, 2010, appellant filed a notice of appeal and jurisdictional memorandum in the Ohio Supreme Court on the court of appeals judgment entry dated June 2, 2010.

ARGUMENT

PROPOSITION OF LAW NO. ONE: A REVIEWING COURT IS WITHOUT JURISDICTION TO ADDRESS ANY ARGUMENT THAT DOES NOT RELATE TO THE JUDGMENT ENTRY WHICH IS BEING APPEALED. Rules of Practice of the Supreme Court of Ohio Rule II Section 2.

This appeal is not properly before this Honorable Court. In appellant's jurisdictional memorandum, appellant fails to challenge the appellate court's decision of June 2, 2010, which

is the basis for this appeal. Thus, this Court is without jurisdiction to address appellant's proposition of law because it does not relate to the entry from which he appealed. See Rules of Practice of the Supreme Court of Ohio, Rule II, Section 2. See, also In re Stevenson, 2006 WL 319240, 2006-Ohio-607, (Ohio App. 3 Dist.); State v. Holt, 2005 WL 737000, 2005-Ohio-1554, (Ohio App. 6 Dist.), rev. on other grounds by In re Ohio Criminal Sentencing Statutes Cases, 109 Ohio St.3d 313; Hughes v. Green Tree Financial Servicing Corp, 2002 WL 1998440, 2002-Ohio-4465, (Ohio App. 2 Dist.). Moreover, this Court does not consider issues which were not raised, addressed, or decided in the lower court. Martin v. Cleveland (1993), 67 Ohio St. 3d 155; State v. Williams (1977), 51 Ohio St. 112; City of Toledo v. Reasonover (1965), 5 Ohio St. 2d 22.

In the case at bar, in appellant's first appeal as of right, the Sixth District Court of Appeals affirmed the judgment of the trial court. Seven years later, appellant filed a "discretionary appeal". As evidenced by entry filed on April 5, 2010, the appellate court dismissed appellant's "appeal" finding that it was a petition for post conviction relief and must be filed in the trial court.

On April 22, 2010, appellant filed a motion for reconsideration in the court of appeals on the entry filed April 5, 2010. The appellate court denied appellant's motion for

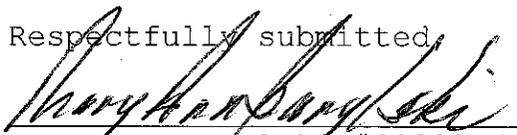
reconsideration as untimely as evidenced by entry filed May 13, 2010. Appellant filed a second motion for reconsideration asking the court to reconsider its denial of appellant's first motion to reconsider. The court properly held that there was no provision in the Rules of Appellate Procedure allowing the court to revisit such a denial.

In appellant's jurisdictional memorandum, appellant argues jury verdict, verdict forms, and sentencing. Appellant fails to raise any issue regarding the appellate courts denial of his second motion for reconsideration. Further, the issues appellant now raises were not previously before the Sixth District Court of Appeals in appellant's first appeal of right. Thus, any arguments regarding the merits of the case are not properly before this Court.

CONCLUSION

Because appellant has failed to demonstrate that this Court has original or appellate jurisdiction or why this case involves a substantial constitutional question or that this case is one of public or great general interest, appellee respectfully requests that appellant's memorandum in support of jurisdiction be dismissed.

Respectfully submitted,



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CERTIFICATION

This is to certify that a copy of appellee's Memorandum in Opposition has been sent to Alphonso Darden, 2338 North West Street, P.O. Box 4501, Lima, Ohio 45802-4501, this 14th day of July, 2010, by regular U.S. Mail.



Mary Ann Barylski #0038856
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