

ORIGINAL

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO,**

**Plaintiff-Appellee,**

**v.**

**WILLIAM BERNARD VORE,**

**Defendant-Appellant.**

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**Case No. 2012-1790**

**On Appeal from the Warren  
County Court of Appeals,  
Twelfth Appellate District**

**Court of Appeals Case No.  
CA2011-08-093**

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**STATE OF OHIO'S RESPONSE TO THE DEFENDANT-APPELLANT'S MOTION AND  
MEMORANDUM IN SUPPORT OF JURISDICTION**

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**EXPLANATION OF WHY THIS CASE IS NOT ONE OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION**

The Appellee, State of Ohio, herein responds to Appellant, William Bernard Vore, on the issue of jurisdiction, pursuant to S.Ct.Prac.R.<sup>1</sup> 3.2(A). This is not a case of public or great general interest. The Appellant is not a public figure, nor is this case in the public eye. In addition, this case does not pose any substantial constitutional question that would affect the public. Moreover, this Court should not grant leave to appeal this felony case since the Appellant's proposition of law simply lacks merit.

**STATEMENT OF THE CASE AND FACTS**

On December 20, 2010, the Appellant, William Bernard Vore, was indicted by a Warren County grand jury and charged with Robbery, R.C.<sup>2</sup> 2911.02(A)(3), a felony of the third degree, and Grand Theft, R.C. 2913.02(A)(1), a felony of the fourth degree. Indictment, T.d. 1.

After hearing the evidence, the jury convicted the Appellant of Robbery and Grand Theft. See Verdict, Count One, T.d. 78, and Verdict, Count Two, T.d. 79. The Warren County Court of Common Pleas merged the theft conviction with the robbery conviction as an allied offense and sentenced the Appellant to serve five years in prison. Second Day of Trial, 08/30/2011, T.p., p. 124, & Judgment Entry of Sentence, T.d. The Appellant appealed to the Warren County Court of Appeals, Twelfth Appellate District. The Twelfth District affirmed his conviction but remanded for the trial court to inform the Appellant regarding post-release control. See *State v. Vore*, 12th Dist. No. CA2011-08-093, 2012-Ohio-2431.

On August 2, 2012, the Appellant filed an application seeking to reopen his direct

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<sup>1</sup> Rules of Practice of the Supreme Court of Ohio.

<sup>2</sup> Ohio Revised Code.

appeal. Appellant's Rule 26(B) Application to Reopen Appeal and Memorandum of Law in Support, T.d 35-2011-08-093. In his application, the Appellant argued that his appellate counsel had rendered ineffective assistance of counsel. The Twelfth District denied the Appellant's application. Entry Denying Application to Reopen Appeal, T.d. 46-2011-08-93.

### **ARGUMENT**

**Response To Proposition Of Law I: The Warren County Court of Appeals, Twelfth Appellate District, did not err when it denied the Appellant's application to reopen his direct appeal because the Appellant had failed to demonstrate ineffective assistance of appellate counsel.**

In his first and only proposition of law, the Appellant argues that the Twelfth District erred when it denied his application to reopen his direct appeal. To support his proposition, the Appellant presents multiple allegations of ineffective assistance of appellate counsel. The State will briefly address each allegation in turn.

In the Appellant's proposition, he argues that his trial counsel was ineffective because he failed to object when the State introduced evidence of his silence at the time of his arrest in Kentucky and when the State introduced his mugshot. The Appellant believes his appellate counsel was ineffective for not raising these issues.

At trial, the prosecutor asked Officer Daniel Deaton of the Richmond, Kentucky Police Department whether the Appellant made any statements to the officer prior to the Appellant's arrest in Richmond, Kentucky. Officer Deaton testified that the Appellant made no statements. First Day of Trial, 08/29/2011, T.p., p. 55. While the State elicited testimony that the Appellant made no statements to Officer Deaton, it did not use that testimony as substantive evidence to convict the Appellant. There is no error regarding the testimony. Since there was no error, the Appellant has not demonstrated that his appellate attorney was ineffective.

As for the mugshot, the State introduced the Appellant's mugshot during the testimony of Detective Barnes of the Warren County Sheriff's Office. *Id.* at 143-144. The detective testified that he interviewed the Appellant in December 2010 and that he did not appear the same as he did at trial. *Id.* The detective testified that, in December 2010, the Appellant had a mustache and was not wearing glasses, which was different from his appearance at trial where he was clean shaven and wore glasses. *Id.* Prior to introduction of the mugshot which showed the Appellant without glasses and with a mustache, the Appellant's trial counsel asked for a bench conference to object to the introduction of the mugshot. *Id.* at 144. The Appellant's trial counsel objected to the mugshot. Further, it was admissible to show the Appellant's identity. So the Appellant has failed to demonstrate ineffective assistance of counsel.

The Appellant argues that his trial counsel was ineffective for not objecting to the opinions of Ryan Goodman, Alexey Bogatyrev, and Det. Barnes that he, the Appellant, was the bank robber. Appellant insists that his appellate counsel was ineffective when he failed to argue that his trial counsel was ineffective regarding this identification issue.

The Appellant forgets that his appellate counsel argued before the Twelfth District that there was error regarding Mr. Goodman's, Mr. Bogatyrev's, and Det. Barnes' testimony in which each of these witnesses identified the Appellant as the bank robber. The Appellant's relabeling of the witnesses' testimony as opinion does not create ineffective assistance of appellate counsel. His appellate counsel made the argument about which he now complains. So the Appellant has not shown ineffective assistance of appellate counsel.

The Appellant argues that his trial counsel was ineffective because he failed to object to a photograph that showed money and a pellet gun that were recovered from the Appellant's car when he was arrested in Richmond, Kentucky. The Appellant argues

that this photograph was evidence of another robbery. The Appellant argues that his appellate counsel was ineffective for not arguing his trial counsel was ineffective.

Like Officer Deaton's testimony at trial, this photograph was not used by the jury as evidence to convict the Appellant based on the theory that he was a bad person or had a propensity for crime. So the Appellant was not prejudiced by the introduction of this photograph. The Appellant has failed to establish ineffective assistance because he has failed to show that the outcome of his direct appeal would have been different had his appellate attorney argued that his trial counsel was ineffective for not objecting to this photograph.

In his proposition, the Appellant argues that his trial counsel was ineffective for not objecting when the State called the Appellant's handwriting expert to the stand.

At trial, the Appellant's handwriting expert, Mr. Kramer testified that he obtained the demand note, personally obtained six pages of hand printing from the Appellant, and obtained the Appellant's handwriting exemplars that were used by BCI to conduct his handwriting analysis. Second Day of Trial, 08/30/2011, T.p., pp. 17-2 & 25-26. In conducting his analysis, Mr. Kramer did not disclose or rely on any confidential communications between the Appellant and his trial attorney. So the State's use of Mr. Kramer's testimony did not violate the attorney-client privilege. See *State v. Richey*, 64 Ohio St. 3d 353, 360, 595 N.E.2d 915 (1992).

While it is possible that Mr. Kramer's trial testimony may have violated the work product doctrine, the use of his testimony was not prejudicial to the Appellant. Mr. Kramer was only one of two handwriting experts to testify for the State. Ms. Toms testified that the Appellant had written the demand note, thus, proving that the Appellant had committed the robbery. Further, Mr. Bogatyrev identified the Appellant as the bank robber. The testimony of Ms. Toms and Mr. Bogatyrev provided independent support for

the Appellant's conviction. See *State v. Delaney*, 10th Dist. No. 92AP-1408, 1993 Ohio App. LEXIS 4310, pp. \*10-\*14 (September 2, 1993). Thus, the State's use of Mr. Kramer's testimony did not prejudice the Appellant, and the Appellant has failed to establish ineffective assistance.

The Appellant argues that his trial counsel was ineffective for not asking for the trial court to include an instruction on Theft as a lesser included offense of Robbery. The Appellant argues that his appellate counsel was ineffective for not arguing his trial counsel was ineffective.

The Appellant forgets that his appellate counsel argued on direct appeal that the trial court abused its discretion when it did not instruct the jury on Theft as a lesser included offense of Robbery. The Twelfth District held that the Appellant was not entitled to such an instruction because the evidence did not support it. Had the Appellant's appellate counsel made this argument in the context of ineffective assistance of trial counsel, the Twelfth District's analysis would not have changed, and the outcome of the Appellant's direct appeal would have remained the same. Thus, the Appellant has failed to establish ineffective assistance of appellate counsel.

The Appellant argues that his appellate counsel was ineffective by failing to challenge the sufficiency of the evidence. The State, however, as this Court knows from the record, presented sufficient evidence to convict the Appellant of Robbery and Theft. Since there was sufficient evidence, the Appellant has failed to demonstrate that his appellate counsel was ineffective for not arguing sufficiency of the evidence.

At trial, Jeffery Lay, an assistant store manager at Bigg's, testified for the State. First Day of Trial, 08/29/2011, T.p., pp. 118-130. Mr. Lay testified that video surveillance footage from Bigg's showed the Appellant enter Bigg's, walk around the store in a loop, walk in front of First National Bank inside the store, and take a withdrawal slip

from the bank. *Id.* at 127-128. Mr. Lay testified that that video footage at trial did not show the Appellant taking the withdrawal slip because that portion of the footage did not make it onto the disc played in court. *Id.* at 129. The Appellant's trial counsel objected, and the trial court admonished the jury to disregard any testimony that the video depicted something that the jury had not seen. *Id.* at 130.

In his proposition, the Appellant argues that his trial counsel was ineffective for not objecting to his evidence. However, the record shows that the Appellant's trial counsel did object and that the trial court admonished the jury to disregard Mr. Lay's testimony. Thus, there was no error regarding the lost footage. Since there was no error, the Appellant has failed to establish that his appellate counsel was ineffective.

In his proposition, the Appellant argues that his appellate counsel was ineffective because he failed to argue that the Appellant should have received jail time credit from March 10, 2011 to May 17, 2011. However, the Appellant was serving a federal sentence from March 10, 2011 to May 17, 2011, so he was not entitled to jail time credit. Further, this issue is the subject of the Appellant's third direct appeal, *State v. Vore*, 12th Dist. No. CA2012-07-065.

The Appellant also argues that his appellate counsel was ineffective because he failed to raise the arguments that Appellant raised in his *pro se* petition for postconviction relief. However, the Appellant does not set forth those arguments in his memorandum, so he has failed to demonstrate ineffective assistance of counsel. Further, the denial of his PCR petition is the subject matter of the Appellant's second direct appeal, *State v. Vore*, 12th Dist. No. CA2012-06-049.

The Appellant has utterly failed to demonstrate ineffective assistance of appellate counsel. Consequently, the Appellant's first proposition of law is without merit and this Court should not accept jurisdiction regarding it.

**CONCLUSION**

For the foregoing reasons, this Court should affirm the decision of the Warren County Court of Appeals, Twelfth Appellate District, and neither accept jurisdiction nor grant leave for the appeal of William Bernard Vore since his proposition of law lacks merit. Moreover, this Court should not accept jurisdiction over this appeal because the Appellant has neither raised a substantial constitutional question nor presented an issue of public or great general interest.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, hereby certify that a copy of the foregoing was mailed by Ordinary mail to William Bernard Vore, Inmate No. A612862, c/o London Correctional Institution, P.O. Box 69, 1580 State Route 56 London, Ohio 43140 on this 5<sup>th</sup> day of November, 2012.



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**MICHAEL GREER, #0084352**  
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