

IN THE OHIO SUPREME COURT

ORIGINAL

STATE OF OHIO

Plaintiff- Appellee

:
: Case No: NO.13AP-16
: (C.P.C. No. 95CR-183)

: 13-0927

VS.

: On Appeal from the Tenth District
: Court of Appeals

TYRONE MARTIN,

Defendant-Appellant

MEMORANDUM IN SUPPORT OF JURISDICTION
OF TYRONE MARTIN

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

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**EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST AND
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case presents issues that only the Ohio Supreme Court may resolve. In the present case the decision of the Tenth District if allowed to stand, would deny all citizens of the General Public the right to Due Process and equal Protections of the Laws that pertain to all Ohio Citizens and or Citizens in the United States for that matter. In the present case, the Tenth District Court of Appeals decision rendered on May 2nd 2013 raises more questions than it resolves. Here is why!

This Ohio Supreme Court does not have to consider the Question presented to the Tenth District Court of Appeals, because the Tenth District Court of Appeals answered the questions Appellant ask to this Ohio Supreme Court. Appellant Tyrone Martin raised Questions as to whether the Trial court Judge in this case, erred in failing to advise Appellant of his Appellate rights. The Tenth District court of appeals decision clearly decided that the Trial court did error in failing to advise Appellant of his appellate Rights.

However, the Tenth District Court of Appeals held, that there was no excuse for the 16 year delay in Appellant filing his Pro Se Brief. Clearly, this case now presents challenging questions for this Ohio Supreme Court as to what to do when the Court of Appeals acknowledge a error such as in the case before this Ohio Supreme Court herein. Ohio Courts has consistently held that when a trial court fails to advise defendant's of appellate rights, the trial court commits plain error and should be reversed.

The Federal (S.D. Ohio 2003) held; in Wolfe v Randle 267 F.Supp 2d 743;

“In order to be properly informed under Crim. R. 32, a defendant must be told of his right to appeal, apprised of procedures and time limits involved in proceeding with that appeal, and the right to assistance of appointed counsel for that appeal. Crim. R.32(B) See Wolfe v Randle

The proper questions before this Honorable Court consist of whether the Tenth District Court of appeals decision ignores the error of the trial court in this case. Clearly, the trial court's failure to advise appellant Tyrone Martin created a manifest injustice and therefore, the Pleas in this case could have been set a side.

Appellant ask this Ohio Supreme Court, in light of the error found by the trial court in this case, **Does this case rise to a manifest injustice that the plea could or should have been set a side?** Also this case ask several question pertaining to the decision of the Ohio Court of Appeals Tenth Appellate District. Appellant Tyrone Martin, now directs this Ohio Supreme Court to the second error of the decision rendered on May 2nd 2013.

Did the trial court lose jurisdiction when a single Judge accepted the plea in this case, outside the legal requirement of R.C.2945.06. Appellant Tyrone Martin asserts that his case should have been herd by a [three judge panel], Significantly, this Ohio Supreme Court does not have to access this case as to whether the trial court erred. The Tenth District in this case, also agreed the trial court erred, However, the tenth district based its decision on the 16 year delay as oppose to the constitutional violation that has occurred. Appellant Tyrone Martin does not deny the 16 year delay.

This case presents constitutional violations for sure, Appellant ask this Ohio Supreme Court to resolve the questions within this case, Appellant's constitutional Rights were violated in several ways in which the Tenth District Court of appeals has totally ignored. Does the 16 year delay in this case, deny appellant his constitutional Rights in this case? Appellant presents several Proposition of Laws for this Honorable Court to resolve and protect his Constitutional Rights.

Did appellant lose his constitutional rights due to the 16 year delay in this case?

Does the Ohio Court of appeals deny appellant his Right to a fair trial by a single Judges review of this case?

STATEMENT OF THE FACTS

On the early evening hours of December 28, 1994 at 2721 Fremont Ave, in the city of Columbus Ohio, Franklin County. A rental Property at the above address owned by the deceased in this case. The deceased name was Vincent Chester Smith, Mr. Smith owned the above property for a while.

The victim was in the process of trying to re rent the property which required some work to be done on it first. The victim was at the above residence at 6:50 pm. And getting ready to paint some of the inside walls, the victim had his brushes and bucket and so forth and was in the process of painting the inside walls, when the Appellant entered the premises.

Information the state of Ohio presented was that Appellant Tyrone Martin was wearing a ski mask and carrying with him a Mack 11 semiautomatic pistol. Some type of confrontation took place within the confines of that home, the State of Ohio stated Appellant was attempting to rob Mr. Smith. The victim was shot twice, once in the ankle and once in the chest which caused almost immediate death.

STATEMENT OF THE CASE

On January 13, 1995 defendant Tyrone Martini was indicted on [3-Counts of aggravated Murder] with specifications, in violation of O.R.C. § 2903.01; along with (1) Count, aggravated Burglary with specification, in violation of O.R.C. § 2911.11; and (1) Count of aggravated Robbery with specification in violation of O.R.C. § 2911.01.

Subsequently, on February 2, 1996, Appellant Tyrone Martin entered into a plea agreement with the State of Ohio on Count Two of the indictment, to wit: aggravated Murder, a violation of O.R.C. § 2903.01, and guilty to Specification on Two of Count Two. Guilty to Count Four of the indictment to wit; aggravated Burglary, a violation of O.R.C. § 2911.11, And aggravated felony of the First degree, and guilty to Count Five of the indictment, to wit; Aggravated Robbery, a violation of O.R.C. § 2911.01, also a felony of the first degree.

The trial court subsequently moved to immediately sentence Appellant to a term of 30 years to Life, with no adjudication of a firearm specification.

Proposition of Law No. 1 Did the trial court commit plain error pursuant to Crim. R.52(B) in this case by not holding a three judge panel to accept Appellant's Plea pursuant to Crim. R. 11(C) (3)? Did the Tenth District Court of Appeals decision to disregard R.C.2945.06 warrant reversal in this case due to 16 year delay in appealing this case?

This case presents the Ohio Supreme Court with the question of Whether Crim. R. 52(B) precludes an appeal of a jointly recommended sentence when that sentence is in violation of R.C. 2945.06. when the sentence is not authorized by Ohio Law. The Tenth District Court of appeals decision in case, presents a challenging set of question to be resolved by this Ohio Supreme Court.

Appellant Tyrone Martin has a right in addition to any other right to an appeal pursuant to Ohio Revised Code R.C.2953.08 Section (D). In fact, in State v Underwood, this Ohio Supreme Court held that a defendant's right to appeal a sentence is based on specific grounds stated in R.C.2953.08(A). In the present case, the Tenth District Court of Appeals decision to deny Appellant of that right was done in error of Appellant Tyrone Martin's Constitutional Rights. **Here is Why!**

There is no dispute of the trial court's error in this case. In fact, the Tenth District Court of Appeals held that; *"The failure to have a panel of three judges accept the agreed resolution of the case may have been an error."* Here, above statement only demonstrates the Tenth District Court of Appeals has already acknowledge the trial court's error. However, the Tenth District held; *"The error did not take jurisdiction away from the trial court."* This is not so.

If the Tenth District Court of appeals decision were allowed to stand, it ignore Crim.R. 52(B) and disregards the constitutional Rights of Appellant in this case, only due to a 16 year delay. The Tenth District Court of Appeals held, that the 16 year delay prevents Appellant from now raising the issue of his constitutional Right to be herd by a single Judge, as required by R.C.2945.06, because appellant could have been herd on a direct appeal.

Appellant's Sentence is simply Contrary to Ohio Law, in which this Ohio Supreme Court has consistently held; See State v Underwood, Slip Opinion No. 2010-Ohio-1. Which states; ¶ 16 "a sentence that is "contrary to law" is appealable by a defendant.

Appellant asserts that because a sentence is authorized by law only if it comports with all mandatory sentencing provisions, this Ohio Supreme Court must now determine whether the directive in R.C. 2945.06 contains such a provision. Appellant directs this courts attention to the statute provided in R.C.2945.06, In State v Parker, 95 Ohio St. 3d 524, 2002-Ohio-2833, 769 N.E. 2Nd 846 this Ohio Supreme Court held;

“[a] defendant charged with a crime punishable by death who has waived his right to trial by jury must, pursuant to R.C.2945.06 and Crim. R. 11(C)(3), have his case herd by a three-judge panel even if the state agrees that it will not seek the death penalty.”

In the present case, the Ohio Court of Appeals for the Tenth District incorrectly recognized the error of the trial court, by accepting the faulty plea. However, the court of Appeals Tenth District relied on the 16 year delay as dispositive to denied Appellant relief sought. Although, the Ohio Supreme Court held in State v Wilson, 73 Ohio St. 3d 40, 46, 652 N.E. 2Nd 196, “[i]n a death penalty case, a challenge to a conviction based upon a defect in the statutory jury waiver and plea acceptance procedures outlined by statutes may only be had upon direct appeal.

This case is the direct result of Plain Error pursuant to Crim. R. 52(B), Appellant asserts that the decision of the Tenth District Court of Appeals denied Appellant's Constitutional Right to Due process and equal protection of law in Ohio. In State v Underwood, Slip 2010 Slip Opinion Ohio-1 {¶ 30} this court held; Under Crim. R. 52(B) “[p]lain error or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” In Underwood, the Ohio Supreme Court went further to state that even Jointly recommended Sentences were reviewable pursuant to Crim. R.52 (B).

The Question before this Honorable Court consist of: **Does the 16 Year delay permit the Tenth district Court of Appeals to ignore the Plain Error Committed pursuant to 52(B) in this case, when the trial court erroneous accepted appellant's plea in violation of R.C.2945.06 with a single judge?**

Proposition of Law No.11 Did the Tenth District Court of Appeals decision to acknowledge the error in this case, yet failed to reverse and remand due to the 16 year delay create a miscarriage of Justice for the Appellant in this case?

In the present case, the Tenth District Court of Appeals acknowledge the error of the trial court in this case by stating its decision dated May 2nd 2013. “The failure to have a panel of three judges accept the agreed resolution of the case may have been an error, but did not take jurisdiction away from the trial court.”

The Ohio Court of Appeals for the Tenth District cited the authority of State v Pless, 74 Ohio St. 3d 333 (1996). Appellant ask this Ohio Supreme Court the constitutional question in direct conflict with the decision by the Tenth District Court of Appeals decision. **“Did the Decision of the Tenth District create a miscarriage of Justice and deny appellant right to appeal 16 years later?”** This court does not have to rule whether the trial court failed in this case, as the Tenth District Court of Appeals have already acknowledge that issue, and furthermore, the Tenth district Agreed with Appellant that the trial court error in not accepting appellant's plea with a three-judge panel as required by R.C.2945.06.

The question to the Ohio Supreme Court does not consist of did the trial court error, cause the Ohio Court of Appeals answered and agreed with that portion of Appellant's argument. The Question now before the Ohio Supreme Court consist of: **Did the Error of the trial court to accept Appellant's Plea with only a single Judge, amount to the trial court not ever having Jurisdiction in this case?**

Appellant ask this Ohio Supreme Court; **Does the case, entitle appellant to a reversal of his conviction based on the trial court's error in not convening a three-judge panel to hear his non jury trial when the capital specification was not dismissed?** The question of Law in this case, now consist of a defendant charged with a crime punishable by death who has waived his right to trial by jury **Must** pursuant to R.C.2945.06 and Crim. R.11(C)(3), have his case heard and decided by a three judge panel even if the state agrees that it will not seek the death penalty.” **Did the Tenth District Court of Appeals decision deny Appellant his Right to appeal 16 years later?**

Proposition of Law No.111 Did the Tenth District Court of Appeals decision that allowed the trial court's failure to advise Appellant of his Appellant Rights constitute Reversible error in this case?

The Tenth District Court of Appeals created conflict within its own decision in this case. The court again acknowledged that the trial court who accepted the plea in this case, failed to properly advise Appellant of his right to appeal.

This Ohio Supreme Court has the Authority to reverse and remand the Decision of the Tenth District Court of Appeals in direct authority of “Wolfe v Randle 267 F. Supp. 2nd 743 (S.D. Ohio 2003) which held; “Failure to inform indigent defendant of his appellate rights violates due process. U.S.C.A Const. Amends 5, 14. This case, presents great challenges for this Ohio Supreme Court, The decision of the Ohio Court of Appeals Tenth District Clearly ignores the Federal requirements that courts must notify defendant's of his appellant rights after accepting a plea.

In Wolfe v Randle 267 F. Supp. 2nd 743 (S.D Ohio 3003) 3. Constitutional Law Key 271 States; *“Due process is offended when defendant who pled guilty is kept completely ignorant of his appellate rights.”* Again in this case there is no dispute of the error of the trial court in failing to advise Appellant in this case of his appellant Rights. The Question of Law consist of: **Did the Failure in this case to properly advise Appellant of his Right to Appeal violate Appellant's Due Process and Constitutional right to present his case on appeal?**

The Ohio Court of Appeals chose to ignore the constitutional Rights in this case, Particularly the right to appeal. **When the trial court fail to advise Appellant of his Constitutional Rights to appeal his case, Does the 16 Year delay allow the court's to not consider why Appellant failed to appeal?**

The parties in this case, both agree appellant was not advise of his appellate rights, The Courts can not now come 16 Years later, and ask Appellant why he did not appeal his case, when it was the error of the trial court to properly advise appellant of his right to appeal a timely appeal. This case should be accepted to resolve the conflict created by the Tenth District Court of Appeals decision in this case.

CONCLUSION

This case before the Ohio Supreme Court present a critical issues to be resolved, in the present case the Tenth District Court of Appeals decision clearly admits that the lower court (Trial Court) erred as to two of Appellant's issues in this case. However, the Tenth District Court of Appeals decision creates a miscarriage of Justice. **Here is How!**

Ohio Court's has consistently held that when a court fails to advise defendant's of their right to appeal, creates Plain Error and should be reversible. Notably: the Tenth District in this case, now would implicate that even when a trial court so error's in cases such as the case before the Ohio Supreme court herein, that error is allowed if the Defendant whom, was not informed of his appellate rights takes to long to find that he had a right to appeal, such as in this case it was 16 years. Then the defendant loses his right to be herd.

Clearly, that is a unjust and unfair solution to a error that originated with the trial court in the first place, Appellant ask this Honorable Court to set laws that would allow defendant's who were denied that right at trial, to be able to once they find out they do have a right to appeal, to be able to correct the error made by the trial court. In this case, the Tenth District court of appeals decision, states even thought the trial court failed to advise the defendant of his right to appeal, he loses the right due to the 16 year delay in his finding out about his rights that is totally unfair in theses types of cases, and Defendant ask this Ohio Supreme Court to change the Law pertaining to trial court's failure to advise defendant's at trial of their appellate rights.... As in State v Hunter 2010 WL 660364 8th District 2/25 2010.

Ohio Court of Appeals seem to now allow defendant's that right to appeal after 16 years of not knowing they even had a right to appeal, this is totally a conflict of what the law requires and this Ohio Supreme Court's guidance is needed to resolve this issue herein.

CERTIFICATE OF SERVICE

I do hereby certify that a copy of Memorandum in Support has been filed with the Clerk Court to the Prosecutor's Office at 373 S. High St. 14th Floor Columbus Ohio 43215 on this 20th day of May 2013, by Regular U.S. Mail.

RESPECTFULLY, SUBMITTED

Tyrone Martin #326-571

TYRONE MARTIN #326-571

PO.BOX 57

MARION OHIO

43301

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 13AP-16
 : (C.P.C. No. 95CR-183)
 Tyrone Martin, :
 : (ACCELERATED CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on May 2, 2013

Ron O'Brien, Prosecuting Attorney, and *Valerie Swanson*, for
appellee.

Tyrone Martin, pro se.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Tyrone Martin is appealing from the trial court's refusal to allow him to withdraw his guilty plea after sentencing had occurred. He assigns three errors for our consideration:

Assignment of Error No: 1 Appellant argues his Sentence and Conviction was Contrary to Ohio Law pursuant to R.C. 2945.06 and Crim. R. 11(C)(3) this case should have been heard [sic] by a three-judge panel even if the state agreed that it would not seek the death penalty.

Assignment of Error No: [2] The trial court lacked jurisdiction to accept appellant's pleas because only a single

judge accepted the pleas in violation of R.C. 2945.06. Appellant's plea was not made voluntarily, knowingly, or intelligently pursuant to Crim. R. 11(C)(3).

Assignment of Error No: [3] The trial court failed to inform Appellant of his appellate rights at sentencing pursuant to Crim. R. 11.

{¶ 2} Martin was indicted on three counts of aggravated murder, with specification, one count of aggravated burglary and one count of aggravated robbery. In February 1996, he entered into a plea bargain under the terms of which he pled guilty to a single charge of aggravated murder with a specification, the aggravated burglary charge and the aggravated robbery charge. The parties agreed to a sentence of life imprisonment with eligibility for parole after 30 years of incarceration. The trial court judge gave the jointly recommended sentence.

{¶ 3} Over 16 years later, Martin filed a motion seeking to set aside his guilty pleas, primarily on the grounds that a single judge accepted the plea bargain, as opposed to a three-judge panel accepting the pleas and the jointly recommended sentence.

{¶ 4} The trial court judge assigned to the case did not find that a manifest injustice had occurred such that the pleas could be set aside. See Crim.R. 32.1, which reads:

A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.

{¶ 5} Further, the trial court found the 16-year delay in filing the motion to be a problem.

{¶ 6} The trial court did not err in its assessment of the case. Clearly, the common pleas court had jurisdiction to hear the case. The failure to have a panel of three judges accept the agreed resolution of the case may have been an error, but it did not take jurisdiction away from the trial court. The mistake could have been addressed via a direct appeal, but was not. We follow the decision of the Supreme Court of Ohio in *State v. Pless*, 74 Ohio St.3d 333 (1996) in this regard.

{¶ 7} Further, the failure of the judge who accepted the pleas to advise Martin of his right to appeal from his agreed sentence did not justify a delay of over 16 years in questioning of the trial court proceedings.

{¶ 8} The three assignments of error are overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

DORRIAN and McCORMAC, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
Plaintiff-Appellee, :
v. : No. 13AP-16
Tyrone Martin, : (C.P.C. No. 95CR-183)
Defendant-Appellant. : (ACCELERATED CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on May 2, 2013, appellant's assignments of error are overruled. Therefore, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

TYACK, DORRIAN & McCORMAC, JJ.

/S/JUDGE