

ORIGINAL

IN THE SUPREME COURT OF OHIO

FRANK RAY SHOOP	:	CASE NO. 2014 -0199
Appellant,	:	On Appeal From the
v.	:	Hancock County Court
STATE OF OHIO,	:	of Appeals, Third
Appellee.	:	Appellate District
	:	Court of Appeals
	:	Case No. 5-13-19

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APPELLEE STATE OF OHIO'S MEMORANDUM IN RESPONSE  
OPPOSING JURISDICTION

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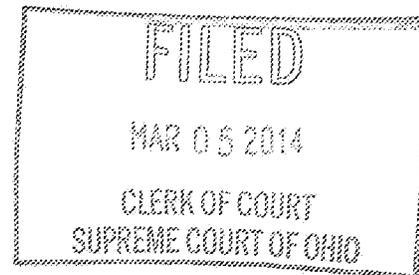


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EXPLANATION OF WHY THIS CASE IS A CASE NOT OF PUBLIC  
OR GREAT GENERAL INTEREST AND INVOLVES  
A SUBSTANTIAL CONSTITUTIONAL QUESTION

The Court should not accept this discretionary appeal for review. Appellant alleges this case involves a substantial constitutional question and concerns an issue of great public or general interest. Appellant is incorrect. There are no issues of statewide importance. The rules of law in this case are well settled. The trial court was entitled to employ its discretion in denying appellant's post-conviction request for a finding that he had a justiciable claim entitling him to obtain various public records. The court of appeal's decision followed this Court's well established legal precedent. Appellant presents no new issue for consideration. This Court should decline to accept jurisdiction.

Appellant asserts in his memorandum that there is a substantial constitutional question raised by his appeal. However, appellant's argument is nothing more than a rambling list of complaints against his original trial counsel, the prosecutor, the trial court and court of appeals. For example, he contends the trial court and prosecution are using "sham legal process" to deny his repeated frivolous motions. In addition, he contends the court of appeals violated his constitutional rights by not permitting him to attend oral arguments and speak on his own behalf. He also complains the appellate court violated his rights by not providing him with a transcript of the oral arguments.

Appellant also makes claims against various members of the judiciary. For example, he insinuates a lack of impartiality on the part of Judge Steven Shaw of the Third District Court of Appeals by claiming, incorrectly, that the judge is from Hancock

County where appellant was tried and convicted. He also casts aspersions on Judge Robert Fry of the Findlay Municipal Court who was the prosecuting attorney who tried his case back in 1992 and on Judge Vernon Preston of the Third District Court of Appeals who previously served as a judge of the Findlay Municipal Court where Judge Fry now presides. Further, appellant tries to question the integrity of a magistrate for the Third District Court of Appeals simply because he shares the same surname as the current Hancock County Prosecutor.

A review of appellant's memorandum is difficult do to the rambling nature of his complaints. This was also true with his appellate brief where he failed to assert an assignment of error forcing the court of appeals to interpret his arguments and generate an assignment of error on appellant's behalf. When the irrelevant matters are stripped away, it is evident the issue appellant tries to assert regarding his request for records is meritless. This appeal should not be considered by this Court. It is not a case of public or great general interest warranting this Court to exercise its discretionary jurisdiction.

## STATEMENT OF THE CASE AND FACTS

On March 19, 1991, Frank R. Shoop, appellant was indicted by the Hancock County Grand Jury for one count of felonious sexual penetration, in violation of former R.C. 2907.12(A)(1)(b), an aggravated felony of the first degree. Appellant was accused of sexually penetrating the vagina of his two year old stepdaughter. The matter was tried to a jury, which returned a guilty verdict on February 8, 1992. He was sentenced to an indeterminate prison term of not less than ten nor more than twenty-five years of incarceration. Appellant appealed and his conviction and sentence were affirmed in *State v. Shoop* (1993), 87 Ohio App.3d 462. A motion for leave to appeal to the Supreme Court of Ohio was overruled in *State v. Shoop* (1993), 67 Ohio St.3d 1478.

Appellant subsequently pursued a number of post-conviction motions that have also been unsuccessful. For example, appellant filed a motion to dismiss his indictment on constitutional speedy trial grounds which was denied and appealed. See *State v. Shoop* (June 8, 2004), 3<sup>rd</sup> Dist. No. 05-04-25, unreported (June 8, 2004). He filed a motion requesting DNA testing on evidence that no longer exists. This motion was denied and he appealed. See *State v. Shoop*, 3<sup>rd</sup> Dist. No. 05-05-11, unreported (Aug. 16, 2005). He next filed a motion and subsequent appeal relating to his classification as a sexual predator. See *State v. Shoop*, 3<sup>rd</sup> Dist. App. 05-06-16, unreported (April 26, 2006). He also filed motions claiming his conviction was void, challenging the trial court's original jurisdiction and requesting an exchange of exculpatory evidence. See *State v. Shoop*, 3<sup>rd</sup> Dist. No. 05-10-33, unreported (Nov. 23, 2010). Then he attempted to renew his challenge to the trial court's jurisdiction which was denied and appealed. See *State v. Shoop*, 3<sup>rd</sup> Dist. No. 05-11-09,

unreported (April 12, 2011). He again filed a motion for "an exchange of exculpatory evidence." The trial court denied the motion. His subsequent appeal also failed. See *State v. Shoop*, 3<sup>rd</sup> Dist. No. 5-12-24, unreported (Aug. 14, 2012).

Most recently, in 2012 he made a public records request of the Hancock County Prosecutor's Office. This request was denied as appellant failed to obtain a finding from the trial court that his request was necessary to support of justiciable claim for relief as required by R.C. 149.43(B)(8). Appellant then filed a motion with the trial court seeking an order finding he has a justiciable claim and was entitled to the requested documents. This request was denied and appellant appealed. The court of appeals affirmed the trial court's action. It is from this decision that appellant takes the instant appeal.

ARGUMENT IN RESPONSE TO THE PROPOSITION OF LAW

**PROPOSITION OF LAW**

The courts failed and violated Appellant's constitutional rights by denying the right to public information, especially when Appellant has never had any discovery for case number 91-CR-09859.

Appellant is an inmate at the Marion Correctional Institute. He sought to obtain records he alleged were public records maintained by the Hancock County Prosecutor's Office. In order to obtain the records he was required to comply with R.C. 149.43(B)(8) which states:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

This statute indicates that a public office or person responsible for public records is not required to provide a person who is incarcerated with a copy of any records concerning a criminal investigation or prosecution unless: 1) the request is to obtain records that are subject to release as a public record and 2) the judge who imposed the sentence, or that judge's successor in office, finds that the information sought is necessary to support a justiciable claim by the requestor. *State v. Reid*, 2d Dist. Montgomery No. 24672, 2012-Ohio-1659; *State ex rel. Fernbach v. Brush*, 133 Ohio St.3d 151, 2012-Ohio-4214, 976 N.E.2d 889; *State ex rel. Russell v. Bican*,

112 Ohio St.3d 559, 2007-Ohio-813, 862 N.E.2d 102.

In *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 856 N.E.2d 966, 2006–Ohio–5858 ¶14 this Court explained the purpose of this legislative requirement.

R.C. 149.43(B)(4)<sup>1</sup> clearly sets forth heightened requirements for inmates seeking public records. The General Assembly's broad language clearly includes offense and incident reports as documents that are subject to the additional requirement to be met by inmates seeking records concerning a criminal investigation or prosecution. The General Assembly clearly evidenced a public-policy decision to restrict a convicted inmate's unlimited access to public records in order to conserve law enforcement resources.

A justiciable claim is one that is susceptible of judicial decision. It is a matter that is appropriate for court review. Black's Law Dictionary 9th Ed., 944. A justiciable claim is one in which there exists a real controversy presenting issues that are ripe for judicial resolution and which will have a direct and immediate impact on the parties. *Hirsch v TRW*, 8<sup>th</sup> Dist. Cuyahoga No. 83204, 2004-Ohio-1125, ¶10; citing *Burger Brewing Co. v. Liquor Control Comm.* (1973), 34 Ohio St.2d 93, 97-98, 296 N.E.2d 261. Establishing a justiciable claim involves identifying a pending proceeding with respect to which the requested documents would be material. *Reid, supra*.

The trial court did not abuse its discretion in denying appellant's request for a finding that he needed the records to support a justiciable claim. The trial court specifically found that appellant failed to establish he had a pending proceeding where the requested documents would be material. The court noted that appellant has filed numerous motions, post-conviction actions, and appeals over the years

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<sup>1</sup> The pertinent section of the Revised Code was previously numbered R.C. 149.43(B)(4) which is analogous to the current code section, R.C. 149.43(B)(8).

since he was convicted. Appellant has exhausted his available remedies and his conviction has become final. Any action appellant may file at this point would be barred by res judicata. Consequently, he has no justiciable claim to pursue.

The frivolous nature of appellant's document request and this appeal is demonstrated by a review of some of the documents he sought. Appellant contended in his appellate brief that he was not asking the trial court for "anything extra," just what he is entitled to by law. However, among the list of documents appellant requested were items such as a copy of his presentence report, grand jury transcripts and juror information. Even if appellant had a justiciable claim, he would still not be entitled to these documents. A presentence investigation report is not a public record under R.C. 149.43(A)(1). R.C. 2951.03(D)(1) specifically indicates the contents of presentence investigation report are confidential and not a public record. Moreover, pursuant to R.C. 2951.03, a defendant has no right to review a presentence investigation report after sentencing. *State ex rel. Sharpless v. Gierke* (2000), 137 Ohio App.3d 821, 739 N.E.2d 1231.

The defendant also requested grand jury transcripts. It is well settled that "[g]rand jury proceedings are secret, and an accused is not entitled to inspect grand jury transcripts either before or during trial unless the ends of justice require it and there is a showing by the defense that a particularized need for disclosure exists which outweighs the need for secrecy." *State v. Greer* (1981), 66 Ohio St.2d 139, 420 N.E.2d 982, at paragraph two of the syllabus; see, also, Crim.R. 6(E). A "particularized need" exists "when the circumstances reveal a probability that the failure to provide the grand jury testimony will deny the defendant a fair trial \* \* \*." *State v. Sellards* (1985), 17 Ohio St.3d 169, 173, 478 N.E.2d 781; *State v. Davis*

(1988), 38 Ohio St.3d 361, 365, 528 N.E.2d 925.

Similarly, the name and address of jurors who heard the testimony and considered the evidence against appellant are not matters to which appellant is entitled. To protect the privacy of jurors the trial court adopted local rule 1.19 which requires all juror information be returned to the court at the conclusion of the trial.

Additionally, some of the documents requested by appellant do not exist. For example, there are no results of any DNA testing. The defendant is fully aware of this as he has previously litigated this issue in both the trial court and the court of appeals.

## CONCLUSION

After his conviction appellant filed, and lost, a direct appeal. This Court declined further review. In the subsequent years he filed numerous post-conviction motions, petitions and appeals all seeking to undo his conviction. His case has been prosecuted to finality. He has exhausted all available remedies. Any claim he could present is barred by res judicata and thus not justiciable. Appellant had no pending proceeding to which the requested documents would be material. Thus, the trial court did not abuse its discretion in denying appellant's request for a finding of a justiciable claim. The judgment of the Hancock County Court of Common Pleas was properly affirmed by the court of appeals. This Court should not extend its jurisdiction in this case.

Respectfully submitted,

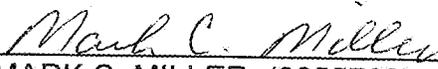
*Mark C. Miller*

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STATE OF OHIO

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby acknowledge that a true and correct copy of the foregoing Appellee State of Ohio's Memorandum in Response Opposing Jurisdiction has on this 5<sup>th</sup> day of March, 2014, been served upon Frank Ray Shoop, Appellant, Pro se, Inmate No. 253-298 at Marion Correctional Institution, P.O. Box 57, Marion, Ohio 43301-0057 by regular U.S. mail, postage pre-paid.

  
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