

IN THE OHIO SUPREME COURT

ORIGINAL

14-1400

STATE OF OHIO,

: Case Number

Appellee,

:

vs.

: On Appeal from the Sixth District

: Court of Appeals Case Number

: L-13-1155

James Galloway,

:

Appellant,

:

MEMORANDUM OF SUPPORT OF JURISDICTION FOR APPELLANT JAMES GALLOWAY

Julia R. Bates, Lucas County Prosecutor

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Trial and appellate courts err in not addressing this or any appellant's direct jurisdictional challenge based upon the lack of a proper valid criminal complaint which violates this appellant's rights under the 5th and 14th amendments of the US Constitution and the equivalent articles and sections of the Ohio Constitution.

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

Several substantial reasons exist why all Ohioians have a profound interest in this honorable court accepting jurisdiction of this case to answer the questions posed herein and to ensure that no further citizens who come before Ohio Courts and are wrongfully convicted will languish in prison without redress. It should be undisputed that the penultimate objective of any court's actions, is the determination of guilt or innocence. Also that the guilty are punished but the innocent protected. No greater miscarriage of justice exists in law, with the only possible exception of the death penalty, than the incarceration of an innocent man as in this case for over 25 years for a crime he did not commit, with no realistic end in sight.

In the case at bar the state argued that this petitioner had in his pleadings, attached no evidence of his actual innocence to excuse his late filing. In response to that allegation, this appellant immediately attached substantial evidence of his actual innocence to his supplemental brief including absolute proof that the state knowingly used a phony doctor as an expert witness to convict him in this case and at least 50 other cases. One defendant having been wrongfully convicted on this improper basis, killed himself before he could be sent to prison due to the shock and despair he felt from being wrongfully convicted and sentenced to two life terms for crimes he did not commit yet was convicted of because the state used a phony witness to obtain the conviction.

Can this honorable court allow the state to obtain any of it's convictions using this type of fraud To compound the miscaariage of justice which occurs by this improper tactic, the court of appeals simply struck all the evidence of actual innocence and known perjury used by the state despite the fact the proffered evidence was itself requested for presentation by the state. Will this court stand for that as well?

To illistrate for this court the fraud complained of by this appellant which was done by the Lucas county prosecutor to obtain this conviction as well as at least 50 others admitted by the alleged Dr. Ferrer, the state proffered this man know as Dr. Ernesto Ferrer as an expert witness. The alleged doctor told the court, as the state's witness, his credentials training, number of previous testimonies given as well as place of current employment. Based on that testimony, solicited by the state purposely, the court certified the alleged doctor Ferrer as an expert witness.

Attached to the appellant's brief in this case as a supplemental filing, along with other evidence of actual innocence, this appellant also attached a letter from the Ohio State Medical Board who stated that Dr. Feerrer was not even a licenced as a doctor in the state of Ohio an obvious requirm,ent to practice medicine in this state.. Also this appellant attached a letter from the Medical College where alleged doctor Ferrer claimed he worked as a physician but the place wrote back that they have no record of him having ever worked there. In addition, the medical school in Guatamaela the alleged doctor claims he was trained at, stated someone with a similar name had attended that school but that he received no specialized training

as he claimed under oath A later letter to the school stated their information on the alleged doctor was that he was deceased. It is only logical to conclude that the state was aware of all of this because they used his alleged expert testimony in over 50 other cases.

This type of fraud by the state cannot be allowed to occur in the state of Ohio or anywhere else in these United States. Such improper actions by the state to obtain a conviction, much less over 50, must be stopped no matter how long ago these improper actions occurred. Direct intervention by this honorable court is mandated.

It is this appellant's position that the reason the state wh went to this great length to obtain this conviction is because they knew they lacked basic subject matter jurisdiction ab initio and used this perjured testimony to cover up that fact as well as stir up the passions of the judge and jury against this appellant making a conviction a shoo in which is helpful for election and re-election purposes. It is now painfully obvious that their ploy worked as this appellant has spent over 25 years in prison wrongfully convicted and a fundamental miscarriage of justice has occurred.

The other important question raised in this case is, Can a trial court in a criminal case have subject matter jurisdiction over the case without a valid criminal complaint having been filed to support the allegations? Also, without such a valid complaint, how does a case go to the grand jury? On what basis would a grand jury return an indictment without a valid criminal complaint?

It is the opinion of this appellant that it was and still is the state simply pulling the strings in this case like a puppeteer. The state obtained an indictment without a proper, valid criminal complaint and perhaps nothing. Perhaps even more false testimony like they used at trial with the known and now proven perjury of Dr. Ferrer. This honorable court must accept jurisdiction of this case and answer the questions posed herein so that no other American citizen, who comes before an Ohio court, does so without having a valid criminal complaint having been submitted to a grand jury and after indictment, no citizen shall be convicted wrongfully of any crime in Ohio by an overzealous prosecutor who is willing to use a phony doctor as an expert witness to obtain a conviction where none could have been obtained otherwise simply to give the public the appearance of doing their job.

STATEMENT OF THE CASE AND THE FACTS

In 1989, this appellant was charged somehow with numerous sex crimes against his own children which he did not commit and yet was convicted of those charges based for the most part on the State's "expert" witnesses testimony given by the non-existent Dr. Ernesto Ferrer who we now know was not ever a doctor at all. His most damaging and false testimony contributed significantly to the wrongful conviction this appellant has been struggling to overturn for 25 years and more. This wrongful conviction was initiated without any valid criminal complaint which would have had to go before the grand jury to obtain an indictment. All of which is a disgrace to American jurisprudence.

Over the last 25 years, this appellant has filed numerous

collateral attacks as any wrongfully convicted person would reasonably do in his position. This appellant has no legal training whatsoever and as such has been totally reliant on the assistance from inmate law clerks to file his pleadings. Many of those inmates have not always been on point and most have little if any training and just simply convince other inmates they themselves are truly knowledgeable when in fact they are clueless. Subsequently their legal presentations on behalf of this appellant have been procedurally deficient and not on point as they all for the most part have self-serving reasons for their efforts.

In 2013, this appellant entered into another round of collateral attacks on his wrongful conviction arguing that the lack of a valid criminal complaint deprived the trial court of subject matter jurisdiction ab initio. He further argued that without a valid criminal complaint there was no proper basis in which a grand jury could have indicted him on the charges against him. The state opposed the motion.

The trial court denied the motion on procedural grounds despite the jurisdictional challenge and a timely appeal was taken to the 6th District Court of Appeals. This appellant filed his merit brief and corresponding assignments of error. The state responded at which point claiming this appellant had attached no evidence of actual innocence to excuse any untimely filing. In response to that challenge, this appellant supplemented his brief with clear and convincing evidence of his actual innocence and the state's use of known perjury to obtain his conviction. This appellant sought leave of the court to do so in the interest of justice as well as the doctrine of invited error. The

Court of Appeals, AFTER they submitted the case on the briefs, backed up and struck the supplemental brief with all the actual innocence evidence and evidence of the state's use of known perjury and proof the "Expert" witness was no expert at all. All of which leaves this appellant, and hopefully this honorable court as well, wondering why?

The Court of Appeals denied this appellant's appeal attached hereto without addressing the merits of his constitutional claims or evidence of actual innocence and phony testimony to obtain this wrongful conviction. This timely appeal follows raising the following propositions of law. This appellant respectfully requests that this court sustain those propositions of law and accept jurisdiction of this case to correct the miscarriage of justice that has occurred and to prevent future miscarriages.

FIRST PROPOSITION OF LAW:

When a trial court and appellate court improperly recasts a Motion to Vacate based on a direct jurisdictional challenge as a post-conviction petition as to deny it on that basis rather than address the merits of the underlying claim and its jurisdictional challenge, those courts violate all appellant's constitutional rights to due process under the 5th and 14th amendments of the US Constitution and the equivalent articles and sections of the Ohio Constitution.

It should be well known that a Motion to Correct a void sentence, one which lacks subject matter jurisdiction, is an appropriate and well recognized vehicle in which to attack a void sentence, like the one at bar, , under the illegal sentence doctrine established by this court in its jurisprudence in State v Harris 132 Oh St. 3d. 318,

972 N.E. 2d. 132, Oh St. 2d. 509 (2012). Yet in this case and numerous others around this state, trial and appellate courts do not adhere to this mandate issued by this court. While it is allowed for those courts to recast IRREGULAR motions into whatever category necessary for the courts to identify them and then establish the criteria for which the motion will be judged, including post-conviction petitions, recasting was not required in this case as the motion filed was by its own able to stand by itself. See e.g. State v Schlee 117 Oh. St. 3d. 153, 2008-Ohio-545, 882 N.E. 2d. 431; and State v Reynolds 79 Oh. St. 3d. What really compounded the error committed by those courts in recasting the petition is that both courts cited these cases in their decisions yet simply misapplied the law from those cases.

This improper recasting seems to be a growing trend used by both trial and appellate courts throughout Ohio and this improper action is depriving thousands of Ohioians of the due process of law and this court must stop that erosion and accept jurisdiction of this case by sustaining this proposition of law.

SECOND PROPOSITION OF LAW:

The appellate court erred in striking the clear and convincing evidence of actual innocence and the known use of false expert witness testimony from the record, which was specifically invited by the appellee and would have empowered the trial and appellate court to hear this appellant's motion de novo which violates this appellant's rights under the 5th and 14th amendments of the US Constitution and the equivalent articles and sections of the Ohio Constitution.

This appellant, at the specific request of the appellee, attached substantial clear and convincing evidence to supplement his pleading of his actual innocence and the state's known use of phony expert1 witness testimony all of which was struck by the appellate court after they submitted the case on the briefs due to the court's determination that leave was not sought for the supplementation. This was clearly improper. The United States Supreme Court has repeatedly stated that the penultimate objective of any court's duty is the correct determination of guilt or innocence. See e.g. Hawkins v Frank 246 US 83. All that evidence should have never been struck because it placed the state in a very bad light having used it in over 50 cases and for no idea of how long the Lucas County Prosecutor has been doing this and if they still continue to do so.

No conviction and subsequent incarceration of any innocent person should be allowed in Ohio or anywhere else in these United States. On this basis alone, it was totally wrong for the appellate court to strike this evidence. To compound this error, included in the evidence struck was clear and convincing evidence that the state used a phony expert witness to obtain the conviction which as pointed out violatrs a long line of cases including Brady and Napue. When such evidence is shown that the state used such improper evidence, It should NEVER be struck for any reason and the state must be held accountable for it's highly unethical and unconstitutional actions.

As such, this honorable court should accept jurisdiction of this case by sustaining this proposition of law to protect the rights of

all wrongfully convicted prisoner's in Ohio and to further protect future Ohioians from overzealous state prosecutors who will stoop low enough to knowingly put a ringer on the stand as an expert witness in over 50 cases to obtain convictions in those cases for nothing short of personal vanity. The intervention of this honorable court is desperately needed to stop this from ever happening again.

THIRD PROPOSITION OF LAW:

Trial and appellate courts err in not addressing this or any appellant's direct jurisdictional challenge based upon the lack of a proper valid criminal complaint which violates this appellant's rights under the 5th and 14th amendments of the US Constitution and the equivalent sections and articles of the Ohio Constitution.

Questions of a court's subject matter jurisdiction, by firmly established federal law set forth by the US Supreme Court in US v Cotton 535 US 249, can be raised at ANY time. However, Ohio Courts, as in this case and thousands of others, simply ignore the question by raising the shield of res judicata and thus avoid even addressing the issue plainly raised in any way. This is tantamount to one who has a nail sticking out of his head, the pain caused by the nail will not be lessened in any way by simply ignoring it. Yet as in this case and thousands of others that is what the courts are doing which is clearly improper.

Certainly this court cannot allow this precedent to remain the way claims are treated. If so, overzealous prosecutors could indict anybody without any evidence at all. As in this case, what did the state go to the Grand Jury with to obtain a indictment if not a

complaint? Numerous case law exists from this very court requiring that a valid criminal complaint must exist to give the trial court subject matter jurisdiction and due process requires that one be presented to a grand jury to obtain an indictment or otherwise on what basis could a reasoned decision be made to indict a criminal defendant? This honorable court must sustain this proposition of law and accept jurisdiction of this case to stop the erosion of Ohio Law on the issue of valid criminal complaints being required to give the court it's subject matter jurisdiction to hear criminal cases which will ensure no further abuse by state prosecutors as has occurred in this case.

CONCLUSION

This appellant respectfully requests that this honorable court sustain his propositions of law and accept jurisdiction of his case to correct the fundamental miscarriage of justice which has occurred and to prevent further miscarriages from occurring by the misdeeds of overzealous prosecutors.

Respectfully submitted;

James Galloway

CERTIFICATE OF SERVICE

I, James Galloway, hereby certify that a true and accurate copy of the foregoing MEMORANDUM IN SUPPORT OF JURISDICTION was sent to the Lucas County Prosecutor by first class US Mail on this 6th day of August, 2014.

James Galloway

FILED
COURT OF APPEALS
2014 JUN 27 A 8:10

COMMON PLEAS COURT
BERNIE GUILTER
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-13-1155

Appellee

Trial Court No. CR0198905590

v.

James Galloway

DECISION AND JUDGMENT

Appellant

Decided: **JUN 27 2014**

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

James Galloway, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant, James Galloway, appeals the judgment of the Lucas County Court of Common Pleas, dismissing his “Petition to Vacate Void Conviction, Judgment, and Sentence.” Because his motion was an untimely petition for postconviction relief, we affirm.

E-JOURNALIZED

JUN 27 2014

{¶ 2} Appellant sets forth the following assignments of error:

I. The trial court erred in construing the appellant's pleadings as a postconviction petition when on its (sic) face, the initial pleading was a direct jurisdictional challenge. Thus violating this appellant's constitutional rights under the 5th and 14th amendments of the US Constitution and Article 1, Section 16 of the Ohio Constitution.

II. The trial court erred in not holding an evidentiary hearing to determine the initial trial court's jurisdiction to hear the case due to a lack of subject-matter resulting from the failure to have a valid criminal complaint. This failure violates this appellant's constitutional rights under the 5th and 14th amendments of the US Constitution and Article 1, Section 16 of the Ohio Constitution.

III. The trial court erred in refusing to provide this appellant a copy of the original transcripts for purposes of this appeal to enable him to point to specific portions of the record for this court's consideration. This denial deprived this appellant of his right to due process under the 5th and 14th amendments of the U.S. Constitution and Article 1, Section 16 of the Ohio Constitution.

{¶ 3} Appellant was convicted in 1990 of three counts of rape in violation of R.C. 2907.02 and two counts of gross sexual imposition in violation of R.C. 2907.05(A)(3).

This court affirmed his convictions in *State v. Galloway*, 6th Dist. Lucas No. L-90-056, 1991 WL 254216 (Nov. 8, 1991).

{¶ 4} On May 23, 2013, appellant filed the petition that is at issue in his appeal. In his petition he challenged the sufficiency of his original indictment and asked the court to vacate his conviction. The trial court, construing appellant's motion as one for postconviction relief, denied his petition citing its untimeliness and the fact that it is a successive petition asserting no new evidence. *False 5/10/13 of 21/1/13*

{¶ 5} Appellant's assignments of error will be considered together. A motion to correct or vacate a sentence is a petition for postconviction relief irrespective of its caption. *State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131 (1997). Issues that could have been raised on direct appeal are barred from consideration in a motion for postconviction relief by the doctrine of res judicata. *Id.*, citing *State v. Duling*, 21 Ohio St.2d 12, 254 N.E.2d 670 (1970), *rev'd on other grounds*, *Duling v. Ohio*, 408 U.S. 936, 92 S.Ct. 2861, 33 L.Ed.2d 753 (1972). Moreover, a petition for postconviction relief must be filed no later than 180 days after the expiration of the time for filing an appeal, R.C. 2953.21(A)(2), absent specific exceptions not present here. *See* R.C. 2953.23(A).

{¶ 6} Here, appellant's petition was filed nearly two decades out of time and raised issues that could have been raised on an original appeal. No specific exceptions apply to this appeal. Consequently, the trial court committed no error by declining to consider it on the merits.

{¶ 7} Moreover, this appears to be, at least, appellant's seventh petition for postconviction relief. When a petition for postconviction relief is a second or successive petition, R.C. 2953.23(A)(1)(a) prohibits a trial court from hearing said petition unless the petitioner either demonstrates (1) that he was "unavoidably prevented from discovering the facts upon which" he relies; or (2) that after the 180 day time limit for filing a petition for postconviction relief, "the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based upon that right."

{¶ 8} Neither of the alternative requirements exists in this case to permit consideration of this instant petition as a successive petition for postconviction relief under R.C. 2953.23(A)(1). Accordingly, appellant's three assignments of error are found not well-taken.

{¶ 9} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is hereby ordered to pay the court costs incurred on appeal.

Judgment affirmed.

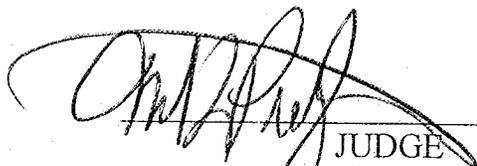
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Arlene Singer, J.

Thomas J. Osowik, J.

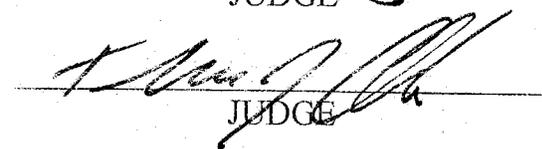
CONCUR.



JUDGE



JUDGE



JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.