

IN THE SUPREME COURT OF OHIO

ORIGINAL

MR. ROBERT L. HILLMAN #698-409  
CHILICOTHE CORRECTIONAL INSTITUTION  
POST OFFICE BOX 5500  
CHILICOTHE, OHIO 45601

APPELLANT

SUPREME COURT NO. 15-0123

ON APPEAL FROM THE FRANKLIN  
COUNTY TENTH DISTRICT COURT  
OF APPEALS NOS. 14AP-252  
AND 14AP-253.

-VS-

STATE OF OHIO  
FRANKLIN COUNTY PROSECUTOR'S  
OFFICE  
373 SOUTH HIGH STREET  
COLUMBUS, OHIO 43215

APPELLEE'S

FILED  
MAR 04 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

THIS IS THE APPELLANT'S NOTIFICATION OF DETERMINATION MOTION  
GIVING JURISDICTION TO THIS COURT TO HEAR THE ABOVE CAPTIONED  
CASE, MEMORANDUM IN SUPPORT IS HERETO ATTACHED.

( MEMORANDUM IN SUPPORT )

ON JANUARY 30, 2015 APPELLANT ACTING IN PRO SE, REQUESTED THE TENTH DISTRICT  
APPELLATE COURT TO TAKE JUDICIAL NOTICE PURSUANT TO EVIDENCE RULE 201, SAID REQUEST  
WAS CONSISTENT WITH APPELLATE RULE 26 (A) AS THE TENTH DISTRICT FAILED TO  
ADDRESS SEVERAL ISSUES IN ITS DECEMBER 30, 2014 JUDGMENT. ON OR ABOUT  
JANUARY 12, 2015 APPELLANT FILED WITH THE TENTH DISTRICT COURT A MOTION TO CERTIFY  
A CONFLICT, TO HOLD AN EN BANC HEARING, AND TO RECONSIDER ITS DECEMBER 30, 2014  
JUDGMENT. ON (JANUARY 23, 2015) APPELLANT FILED HIS NOTICE OF APPEAL

RECEIVED  
MAR 04 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

WITH THIS COURT. ON FEBRUARY 12, 2015 APPELLANT RESUBMITTED HIS MEMORANDUM IN SUPPORT OF JURISDICTION WITHIN THIS COURT IN A TIMELY MANNER AFTER BEING INFORMED THIS HIS ORIGINAL BRIEF DID NOT FULLY COMPLY WITH SUPREME COURT RULES, AND AT THAT TIME APPELLANT INFORMED THIS COURT OF THE PENDING MOTION IN THE TENTH DISTRICT.

ON FEBRUARY 2015 THE TENTH DISTRICT APPELLATE COURT DECIDED THE MOTION, YET REFUSE TO ADDRESS THE ISSUES RAISED, GIVING THIS COURT FULL JURISDICTION TO REVIEW THE APPELLANT'S CONSTITUTIONAL CLAIMS.

RESPECTFULLY SUBMITTED BY  
MR. Robert L. Hillman  
APPELLANT ACTING IN PRO SE

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT A TRUE COPY OF THE FOREGOING MOTION WAS SENT TO THE APPELLEE BY REGULAR UNITED STATES MAIL SERVICE, LOCATED AT 373 SOUTH HIGH STREET, COLUMBUS, OHIO 43215 ON THIS 2<sup>nd</sup> DAY OF MARCH 2015

Robert L. Hillman

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 14AP-252
	:	(C.P.C. No. 13CR-11-6206) and
v.	:	No. 14AP-253
	:	(C.P.C. No. 13CR-12-6648)
Robert L. Hillman,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

MEMORANDUM DECISION

Rendered on February 24, 2015

*Ron O'Brien*, Prosecuting Attorney, and *Kimberly M. Bond*,  
for appellee.

*Robert L. Hillman*, pro se.

ON APPLICATIONS AND MOTIONS

DORRIAN, J.

{¶ 1} Defendant-appellant, Robert L. Hillman ("appellant"), has filed an application for reconsideration of this court's December 30, 2014 decision in *State v. Hillman*, 10th Dist. No. 14AP-252, 2014-Ohio-5760. Appellant has also filed a motion to certify a conflict, an application for en banc consideration, and a motion for judicial notice. In our prior decision, we overruled appellant's three assignments of error raised in his merit brief and an additional eight assignments of error raised in his supplemental brief, affirming the judgment of the Franklin County Court of Common Pleas. *Id.* at ¶ 73. However, having determined that the trial court's judgment entry contained a clerical error, we remanded the case to that court to issue a nunc pro tunc judgment entry correcting the error. *Id.*

{¶ 2} We first examine appellant's pro se motion filed on January 30, 2015, in which appellant requests that this court "take judicial notice pursuant to Evidence Rule 201" of this court's "December 30, 2014 judgment rendered in the case at bar, and its conflicting findings on just a couple of issue's out of many which was rendered not in accordance with the reviewable evidence admitted at trial." (Sic passim.) After careful review, it is apparent that appellant's motion actually seeks recognition of alleged evidentiary inconsistencies in the course of raising arguments against our prior decision. However, such grounds do not qualify for judicial notice under Evid.R. 201(B), which permits judicial notice of a fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." See *State v. Triplett*, 10th Dist. No. 11AP-30, 2011-Ohio-4480, ¶ 6. Accordingly, appellant's motion for judicial notice is denied.

{¶ 3} Next, we address appellant's arguments raised in his application for reconsideration. The test generally applied to an application for reconsideration is whether the application "calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." *Matthews v. Matthews*, 5 Ohio App.3d 140 (10th Dist.1981), paragraph two of the syllabus. Reconsideration will be denied where the moving party simply seeks to "rehash the arguments [the party] made in its appellate brief." *Garfield Hts. City School Dist. v. State Bd. of Edn.*, 85 Ohio App.3d 117, 127-28 (10th Dist.1992). "Importantly, an appellate court will not grant '[a]n application for reconsideration \* \* \* just because a party disagrees with the logic or conclusions of the appellate court.'" *State v. Harris*, 10th Dist. No. 13AP-1014, 2014-Ohio-672, ¶ 8, quoting *Bae v. Dragoo & Assoc., Inc.*, 10th Dist. No. 03AP-254, 2004-Ohio-1297, ¶ 2.

{¶ 4} Appellant raises a number of arguments asserting that this court failed to fully consider his arguments or committed obvious error. First, appellant asserts that the trial court lacked subject-matter jurisdiction. We fully reviewed appellant's contentions regarding subject-matter jurisdiction. *Hillman* at ¶ 14. Appellant fails to provide citation

to relevant authority demonstrating any obvious error with our determination of this issue.

{¶ 5} Second, appellant asserts that his constitutional rights were violated by the admission of false testimony at his trial. Specifically, appellant "attacks Officer Larrison's testimony as being perjury." (Appellant's Application, 3.) In our prior decision, we reviewed appellant's arguments concerning the credibility of Officer Larrison's testimony. *Id.* at ¶ 42, 48. Appellant fails to demonstrate with citation to relevant authority any obvious error in our prior decision.

{¶ 6} Third, appellant asserts that the circumstantial evidence presented in his trial was insufficient to establish the element of trespass in the offense of burglary. We thoroughly reviewed appellant's contentions in this regard and concluded that "ample circumstantial evidence supported the element of trespass in the charged offenses." *Id.* at ¶ 44. Appellant's application demonstrates no obvious error in our analysis.

{¶ 7} Fourth, appellant asserts that the trial court abused its discretion by denying his request for a continuance in order to subpoena an alibi witness. We fully reviewed appellant's contentions in this regard. *Id.* at ¶ 15-25. Appellant's application fails to demonstrate with citation to relevant authority any obvious error in our prior decision.

{¶ 8} Fifth, appellant asserts that he received ineffective assistance of trial counsel and ineffective assistance of advisory counsel. We fully considered appellant's arguments regarding his counsel during the pretrial, investigative, and advisory stages of the proceedings. *Id.* at ¶ 52-59. Appellant's application fails to call to our attention any obvious error in our determination of his arguments.

{¶ 9} Sixth, appellant asserts that the trial court erred by joining his indictments. We fully considered appellant's arguments regarding joinder of his indictments. *Id.* at ¶ 26-41. Appellant's application fails to demonstrate with citation to relevant authority any obvious error in our analysis.

{¶ 10} Finally, appellant asserts that the trial court erred by failing to merge his sentences. Appellant's arguments in this regard reiterate the arguments he made in his appellate brief. We fully considered those arguments. *Id.* at ¶ 61. Appellant's application fails to demonstrate with citation to relevant authority any obvious error in our analysis.

{¶ 11} In summary, although it is clear that appellant disagrees with this court's prior decision, a party's disagreement with a decision is not a sufficient basis for granting reconsideration. See *Harris* at ¶ 8. Appellant's arguments in his application for reconsideration largely rehash the same arguments made in his briefs on appeal, which we fully considered in our prior decision. Additionally, appellant fails to raise any arguments in his application demonstrating obvious error in our analysis. *Wissler v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 09AP-569, 2010-Ohio-4123, ¶ 4 ("[A]ppellant's contention that we failed to consider certain facts or that we reached certain factual conclusions with which she disagrees does not establish an obvious error for reconsideration."). As a result, we decline to reconsider our prior decision.

{¶ 12} Next, we address appellant's motion to certify a conflict. Article IV, Section 3(B)(4) of the Ohio Constitution governs motions seeking an order to certify a conflict. It provides:

Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination.

See also *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594 (1993), syllabus, rehearing denied by *Whitelock v. Cleveland Clinic Found.*, 67 Ohio St.3d 1420 (1993).

{¶ 13} In *Whitelock*, the Supreme Court of Ohio held that, pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution and S.Ct.Prac.R. III, "there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination is proper." *Id.* at paragraph one of the syllabus. The Supreme Court further stated:

[A]t least three conditions must be met before and during the certification of a case to this court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict *must* be "upon the same question." Second, the alleged conflict must be on a rule of law-not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in

conflict with the judgment on the same question by other district courts of appeals.

(Emphasis sic.) *Id.* at 596. It is important to note that factual distinctions between cases are not a basis upon which to certify a conflict. *Id.* at 599.

{¶ 14} App.R. 25 governs motions to certify a conflict and provides that "[a] motion under this rule shall specify the issue proposed for certification and shall cite the judgment or judgments alleged to be in conflict with the judgment of the court in which the motion is filed." App.R. 25(A).

{¶ 15} Here, at the outset, appellant's motion does not comply with App.R. 25(A) and Loc.R. 14 of the Tenth District Court of Appeals by setting forth a specific question of law to be certified. Furthermore, appellant's motion fails to specifically point to conflicts between this court and others. As a result, we find appellant's motion to certify a conflict to be without merit. *Whitelock* at paragraph one of the syllabus. Accordingly, appellant's motion to certify conflict is denied.

{¶ 16} Finally, we address appellant's application for en banc consideration. Here, appellant fails to specifically point to a decision of this court in conflict with our decision in the underlying matter. Thus, upon review of appellant's motion, pursuant to App.R. 26(A)(2) and Loc.R. 15, we find that no identifiable intra-district conflict exists and, therefore, en banc consideration is not permitted. *See State v. Forrest*, 10th Dist. No. 11AP-291, 2012-Ohio-280, ¶ 15; *State v. Castlin*, 10th Dist. No. 13AP-331, 2014-Ohio-223, ¶ 6. Accordingly, appellant's motion for en banc consideration is denied.

*Motion for judicial notice denied;*  
*application for reconsideration denied;*  
*motion to certify conflict denied;*  
*application for en banc consideration denied.*

SADLER and HORTON, JJ., concur.

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