

In the Supreme Court of Ohio

STATE OF OHIO ex rel. DOUGLAS
PRADE,

Relator,

v.

NINTH DISTRICT COURT OF APPEALS

and

HON. JUDGE CHRISTINE CROCE,

Respondents.

Case No. 16-0686

Original Action for Writ of Prohibition

AGREED STATEMENT OF FACTS

David Booth Alden* (Ohio Bar #6,143)
* Counsel of Record
Lisa B. Gates (Ohio Bar #40,392)
Emmett E. Robinson (Ohio Bar #88,537)
Matthew R. Cushing (Ohio Bar #92,674)
JONES DAY
North Point, 901 Lakeside Avenue
Cleveland, Ohio 44114
Tel: (216) 586-3939; Fax: (216) 579-0212
dbalden@jonesday.com
lgates@jonesday.com
erobinson@jonesday.com
mcushing@jonesday.com

Mark A. Godsey (Ohio Bar #74,484)
Brian C. Howe (Ohio Bar #86,517)
THE OHIO INNOCENCE PROJECT
University of Cincinnati College of Law
P.O. Box 201140
Cincinnati, Ohio 45220-0040
Tel: (513) 556-6805; Fax: (513) 556-2391
markgodsey@gmail.com
brianchurchhowe@gmail.com

Counsel for Relator Douglas Prade

Michael DeWine (Ohio Bar #9,181)
Ohio Attorney General
Tiffany L. Carwile* (Ohio Bar #82,522)
* Counsel of Record
Sarah Pierce (Ohio Bar #87,799)
Ass't Ohio Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (614) 466-2872; Fax: (614) 728-7592
tiffany.carwile@ohioattorneygeneral.gov

*Counsel for Respondent
Ninth District Court of Appeals*

Colleen M. Sims* (Ohio Bar #69,790)
* Counsel of Record
Heaven R. DiMartino (Ohio Bar #73,423)
Assistant Prosecuting Attorneys
53 University Avenue, 6th Floor
Akron, Ohio 44308
simsc@prosecutor.summitoh.net

*Counsel for Respondent
Honorable Judge Christine Croce*

PARTIES

1. Relator Douglas Prade is an individual currently incarcerated in the Allen Correctional Institution in Lima, Ohio.

2. Respondent Ninth District Court of Appeals (the “Ninth District”) is the appellate court for the Summit County Court of Common Pleas.

3. Respondent Honorable Judge Christine Croce (“Judge Croce”) is the judge on the Summit County Court of Common Pleas to whom Mr. Prade’s criminal case is assigned.

FACTS

A. Mr. Prade’s Trial and Conviction.

4. On September 24, 1998, a jury convicted Mr. Prade of aggravated murder, and the trial court sentenced him to life in prison.

5. The Ninth District affirmed Mr. Prade’s conviction. *State v. Prade*, 139 Ohio App.3d 676, 745 N.E.2d 475 (9th Dist. 2000), *appeal not accepted*, 90 Ohio St.3d 1490, 739 N.E.2d 816 (2000).

B. Post-Trial DNA Testing Post-Conviction Application.

6. On February 5, 2008, Mr. Prade filed a post-conviction application to have new DNA testing performed pursuant to Chapter 2953 of the Ohio Revised Code.

7. On June 2, 2008, the trial court denied Mr. Prade’s application for new DNA testing.

8. On February 18, 2009, the Ninth District affirmed the trial court’s order denying Mr. Prade’s application for new DNA testing. *State v. Prade*, 9th Dist. No. 24296, 2009-Ohio-704.

9. On May 4, 2010, this Court reversed and remanded for further proceedings. *State v. Prade*, 126 Ohio St.3d 27, 2010-Ohio-1842, 930 N.E.2d 287.

10. After remand, Mr. Prade's case was assigned to Judge Judy Hunter of the Summit County Court of Common Pleas.

C. Mr. Prade's Petition For Postconviction Relief Or, In The Alternative, Motion For A New Trial, And The Trial Court Order.

11. On July 2, 2012, Mr. Prade filed his Petition For Postconviction Relief Or, In The Alternative, Motion For A New Trial. The State filed a brief in response on July 24, 2012. Mr. Prade filed a reply memorandum on August 1, 2012.

12. In October 2012, Judge Hunter conducted a four-day evidentiary hearing on Mr. Prade's Petition For Postconviction Relief Or, In The Alternative, Motion For A New Trial. Mr. Prade waived his appearance at the hearing. Post-hearing briefs were filed by the State on December 3, 2012 and by Mr. Prade on December 4, 2012.

13. On January 29, 2013, Judge Hunter granted Mr. Prade's petition for post-conviction relief, overturned Mr. Prade's convictions, and ordered that he be discharged from prison. (Order On Defendant's Petition For Post-Conviction Relief Or Motion For New Trial, *State v. Prade*, Summit County Common Pleas No. CR 1998-02-0462 9 (Jan. 29, 2013) (the "Trial Court Order")).

14. In the Trial Court Order, Judge Hunter also granted Mr. Prade's motion for a new trial in the event that her order was reversed. (*Id.* at 21, 25).

D. The State's Appeal, the Ninth District's Reversal of the Grant of Postconviction Relief, and Other Proceedings Relating To The Trial Court Order.

15. On January 29, 2013, the State filed a notice of appeal from the grant of postconviction relief with the clerk of the trial court and clerk of the appellate court, which took the appeal as Ninth District Case No. 26775.

16. On March 19, 2014, the Ninth District reversed the grant of postconviction relief in the Trial Court Order and remanded for further proceedings consistent with its reversal. *State v. Prade*, 2014-Ohio-1035, 9 N.E.3d 1072, ¶ 131 (9th Dist.), *appeal not accepted*, 139 Ohio St.3d 1483, 2014-Ohio-3195, 12 N.E.3d 1229.

17. On March 19, 2014, Mr. Prade filed a notice of appeal in this Court seeking discretionary review of the Ninth District's decision reversing the Trial Court Order's grant of postconviction relief and a motion for a stay while this Court considered his request for discretionary review.

18. This Court granted Mr. Prade's motion for a stay. *State v. Prade*, 138 Ohio St.3d 1444, 2014-Ohio-1063, 5 N.E.3d 662 (Pfeifer, acting C.J.) (temporary stay); *State v. Prade*, 138 Ohio St.3d 1467, 2014-Ohio-1674, 6 N.E.3d 1203 (stay).

19. On April 17, 2014, while Mr. Prade's request for discretionary review was pending in this Court, the State filed a notice of appeal and accompanying motion for leave to appeal from the alternative ruling in the Trial Court Order granting Mr. Prade a new trial, which became Ninth District Case No. 27323.

20. On July 23, 2014, this Court denied discretionary review of the Ninth District's decision reversing the Trial Court Order's grant of postconviction relief. *State v. Prade*, 139 Ohio St.3d 1483, 2014-Ohio-3195, 12 N.E.3d 1229.

E. Mr. Prade's Incarceration and Subsequent Proceedings.

21. After this Court's July 23, 2014, ruling denying discretionary review, the case returned to the Summit County Court of Common Pleas where the case was assigned to Judge Croce.

22. On July 23, 2014, Judge Croce set the case for a status conference on July 25, 2014, and ordered that Mr. Prade be present at the status conference.

23. At the July 25, 2014, status conference, Judge Croce ordered that Mr. Prade be reincarcerated, and Mr. Prade was taken into custody.

24. Mr. Prade has been incarcerated since July 25, 2014.

25. On August 14, 2014, the Ninth District dismissed the State's appeal from Judge Hunter's ruling in the Trial Court Order granting Mr. Prade a new trial, finding that Judge Hunter's order granting Mr. Prade's motion for a new trial was a contingent, interlocutory order that the trial court—now Judge Croce—could reconsider. (Journal Entry, *State v. Prade*, 9th Dist. Case No. 27323 (Aug. 14, 2014)).

26. In November 2015, Judge Croce conducted a two-day evidentiary hearing on Mr. Prade's new trial motion that Judge Hunter had granted conditionally in the Trial Court Order filed on January 29, 2013.

27. On March 11, 2016, Judge Croce issued an order denying Mr. Prade's motion for a new trial. (Order on Defendant's Motion for New Trial, *State v. Prade*, Summit County Common Pleas Case No. CR 1998-02-0463 (Mar. 11, 2016)).

28. On April 7, 2016, Mr. Prade filed a notice of appeal from Judge Croce's March 11, 2016, order denying his motion for a new trial in the Ninth District.

29. Mr. Prade's appeal from Judge Croce's March 11, 2016, order denying his motion for a new trial currently is pending before the Ninth District as Ninth District Case No. 28193.

Dated August 16, 2016

Respectfully submitted,

/s/Tiffany L. Carwile (by permission)
Michael DeWine (Ohio Bar #9,181)
Ohio Attorney General
Tiffany L. Carwile* (Ohio Bar #82,522)
* Counsel of Record
Sarah Pierce (Ohio Bar #87,799)
Ass't Ohio Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (614) 466-2872; Fax: (614) 728-7592
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*Counsel for Respondent
Ninth District Court of Appeals*

/s/ Colleen M. Sims (by permission)
Colleen M. Sims* (Ohio Bar #69,790)
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Heaven R. DiMartino (Ohio Bar #73,423)
Assistant Prosecuting Attorneys
53 University Avenue, 6th Floor
Akron, Ohio 44308
simsc@prosecutor.summitoh.net

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JONES DAY
North Point, 901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
dbalden@jonesday.com
lgates@jonesday.com
erobinson@jonesday.com
mcushing@jonesday.com

Mark A. Godsey (Ohio Bar #74,484)
Brian C. Howe (Ohio Bar #86,517)
THE OHIO INNOCENCE PROJECT
University of Cincinnati College of Law
P.O. Box 201140
Cincinnati, Ohio 45220-0040
Telephone: (513) 556-6805
Facsimile: (513) 556-2391
markgodsey@gmail.com
brianchurchhowe@gmail.com

Counsel for Relator Douglas Prade