

[Cite as *State v. Santini*, 2000-Ohio-2649.]

STATE OF OHIO)
)
MAHONING COUNTY) SS: SEVENTH DISTRICT

STATE OF OHIO)
)
 PLAINTIFF-APPELLEE)
)
VS.)
)
RICHARD SANTINI)
)
 DEFENDANT-APPELLANT)

CASE NO. 98-C.A.-102

O P I N I O N
 AND
JOURNAL ENTRY

CHARACTER OF PROCEEDINGS:

Criminal Appeal from Struthers
Municipal Court, Mahoning
County, Ohio
Case No. 97 TRC 2148

JUDGMENT:

Motion for Reconsideration
Denied.

APPEARANCES:

For Plaintiff-Appellee:

Atty. Carol Clemente Wagner
Prosecuting Attorney
Struthers Municipal Court
6 Elm Street
Struthers, Ohio 44471

For Defendant-Appellant:

Atty. Matthew C. Giannini
950 Windham Court
Suite 5
Youngstown, Ohio 44512

JUDGES:

Hon. Cheryl L. Waite
Hon. Edward A. Cox
Hon. Gene Donofrio

Dated: October 6, 2000

PER CURIAM.

{¶1} Appellant filed a motion that this Court reconsider its decision in *State v. Santini* (Dec. 6, 1999), Mahoning App. No. 98-C.A.-102, unreported. Appellant filed his Request for Reconsideration on December 27, 1999, based on his claims that our Opinion erroneously stated that a transcript of the lower court proceedings was not filed into the record. Appellant claimed that in actuality, a transcript was properly filed. On January 24, 2000, Appellant filed what he has styled as an Addendum to Request for Reconsideration in which he now admits that a transcript could not have been filed because the recorded tapes of the lower court proceedings were destroyed immediately after trial.

{¶2} App.R. 26(A) governs motions for reconsideration of appellate court decisions. The test generally applied when determining whether an appellate decision should be reconsidered is, "whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for the court's consideration that was either not considered at all or was not fully considered by the court when it should have been." *State v. Wong* (1994), 97 Ohio App.3d 244, 246. The issue of the lack of a trial transcript was fully considered in this Court's December 6, 1999, Opinion. We noted that Appellant's counsel incorrectly directed the trial court to send the trial transcript to the Court

of Appeals for Trumbull County instead of to Mahoning County. We also pointed out that Appellant could have submitted an Agreed Statement of the Evidence under App.R. 9(D). It is incumbent on Appellant's counsel to determine whether a transcript which has been requested has actually been properly prepared and delivered to this Court so that it can become part of the record on appeal.

Not only did Appellant's counsel fail to determine whether the transcript existed prior to our December 6, 1999 Opinion, he apparently failed to make the determination prior to filing the December 27, 1999 Request for Reconsideration.

{¶3} App.R. 26(A) also requires that an application for reconsideration be made before the judgment of this Court has been approved and filed or within ten days after the announcement of the decision, whichever is later. The Opinion was filed and announced on December 6, 1999. The latest day for filing an application for reconsideration would have been December 16, 1999.

Neither document filed in support of Appellant's application for reconsideration was timely filed.

{¶4} For the foregoing reasons, Appellant's Request for Reconsideration is overruled.

Waite, J., concurs.

Cox, P.J., concurs.

Donofrio, J., concurs.