

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAMES JONES

Defendant-Appellant

: JUDGES:

:  
: Hon. W. Scott Gwin, P.J.  
: Hon. William B. Hoffman, J.  
: Hon. Patricia A. Delaney, J.

: Case No. CT2023-0029

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County  
Court of Common Pleas, Case No.  
CR2022-0201

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

October 25, 2023

APPEARANCES:

For Plaintiff-Appellee:

RONALD L. WELCH  
MUSKINGUM COUNTY PROSECUTOR

JOHN CONNOR DEVER  
27 N. 5th St., P.O. Box 189  
Zanesville, OH 43702

For Defendant-Appellant:

JAMES JONES, PRO SE  
Inmate No. A799214  
P.O. Box 450  
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*Delaney, J.*

{¶1} Defendant-Appellant James Jones appeals the April 21, 2023 judgment entry from the Muskingum County Court of Common Pleas. Plaintiff-Appellee is the State of Ohio.

## **FACTS AND PROCEDURAL HISTORY**

### **Indictment, Guilty Plea, and Sentence**

{¶2} On May 3, 2022, the Muskingum County Grand Jury indicted Defendant-Appellant James Jones for one count of engaging in a pattern of corrupt activity, a first-degree felony in violation of R.C. 2923.32(A)(1), and four counts of robbery, a second-degree felony in violation of R.C. 2911.02(A)(2). Jones appeared for his arraignment hearing on May 3, 2022, where he was represented by trial counsel. Jones entered into a plea agreement with the State where he waived prosecution by Indictment and was arraigned upon a Bill of Information filed by the State.

{¶3} The plea agreement stated that Jones agreed to enter a guilty plea to all counts. Jones and the State agreed to a joint recommendation of sentence. In exchange for a guilty plea on Counts One through Five as contained in the Bill of Information, the parties agreed to jointly recommend a sentence to 15 years in prison, Jones's post release control would be terminated and imposed, and they stipulated to the findings necessary for imposition of consecutive sentences.

{¶4} The trial court held the sentencing hearing on May 3, 2022. Jones did not provide this Court with a transcript of the sentencing hearing. By sentencing entry filed on May 4, 2022, the trial court found Jones plea of guilty to be voluntary and accepted the same. Jones waived a pre-sentence investigation and elected to proceed with sentencing.

The trial court sentenced Jones on Count One to a minimum mandatory prison term of 11 years and an indefinite prison term of 16.5 years. On Counts Two through Five, the trial court sentenced Jones to a mandatory prison term of four years for each count, to be served concurrently to each other. The prison term for Count One was to be served consecutively to the prison term for Counts Two through Five. Accordingly, the trial court sentenced Jones to an aggregate minimum mandatory prison term of 15 years and an indefinite prison term of 20.5 years.

### **Public Record and/or Discovery Request**

{¶5} On February 23, 2023, Jones filed a “Motion for Order Granting Public Record – Post Discovery Request Disclosure from Muskingum County Prosecutors Office.” In the motion, Jones argued he should have post-public record discovery because his trial counsel failed to obtain discovery from the State before advising him to plea guilty to the Bill of Information. He argued his guilty plea was not knowingly, intelligently, or voluntarily given because his trial counsel did not have any discovery. Jones stated he had a justiciable claim that entitled him to the public records.

{¶6} The State responded to the motion, arguing that Jones’s motion should fail for multiple reasons. First, Jones was not entitled to discovery in a post-conviction proceeding. Second, Jones did not follow the correct procedures for a public records request.

{¶7} On April 21, 2023, the trial court issued its judgment entry denying Jones’s motion. It found that Jones did not file a petition for post-conviction relief, so there was no pending action before the court and Jones would not be entitled to discovery in post-conviction relief proceeding. The trial court further denied the motion because Jones

failed to follow the statutory process if a public entity does not provide the requested public records.

{¶8} It is from this judgment entry that Jones now appeals.

### **ASSIGNMENTS OF ERROR**

{¶9} Jones raises two Assignments of Error:

I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT INTENTIONALLY MISCONSTRUED THE ARGUMENT RAISED BY DEFENDANT-APPELLANT UNDER R.C. 149.43(C)(1) WHEN APPELLANT-DEFENDANT CLEARLY MADE THE POST DISCOVERY REQUEST UNDER R.C. 149.43(B)(8), IN CLEAR VIOLATION OF APPELLANT’S 5TH & 14TH AMENDMENT RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

II. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER THE REASONS SET FORTH BY THE DEFENDANT-APPELLANT REGARDING THE BASIS FOR THE POST DISCOVERY REQUEST FOR RECORDS PRIOR TO THE TRIAL COURT DENYING THE MOTION IN VIOLATION OF APPELLANT’S 5TH 6TH 14TH AMENDMENT RIGHTS TO DUE PROCESS, EFFECTIVE ASSISTANCE OF COUNSEL AND EQUAL PROTECTION OF THE LAWS.

### **ANALYSIS**

#### **Pro Se Appeal**

{¶10} We understand that Jones has filed this appeal pro se. Nevertheless, “like members of the bar, pro se litigants are required to comply with rules of practice and

procedure.” *Hardy v. Belmont Correctional Inst.*, 10th Dist. Franklin No. 06AP-116, 2006-Ohio-3316, ¶ 9. See also, *State v. Hall*, 11th Dist. Trumbull No. 2007-T-0022, 2008-Ohio-2128, ¶ 11. We also understand that “an appellate court will ordinarily indulge a pro se litigant where there is some semblance of compliance with the appellate rules.” *State v. Richard*, 8th Dist. Cuyahoga No. 86154, 2005-Ohio-6494, ¶ 4 (internal quotation omitted).

### I. and II.

{¶11} In his first and second Assignments of Error, Jones contends the trial court abused its discretion in denying his motion for post-conviction discovery. We disagree.

{¶12} First, there is no provision for conducting discovery in the post-conviction process. *State v. Curtis*, 5th Dist. Muskingum No. CT2018-0014, 2018-Ohio-2822, 2018 WL 3430312, ¶ 42 citing *State ex Rel. Love v. Cuyahoga County Prosecutor's Office*, 86 Ohio St.3d 279, 281, 1999-Ohio-102, 714 N.E.2d 905. The power to conduct and compel discovery in post-conviction is not included within a trial court's statutorily defined authority. *Id.*

{¶13} Second, we consider Jones's motion to be a public records request, which the trial court denied. As an incarcerated individual, R.C. 149.43(B)(8) applied to Jones's public records request. That statute provides, in pertinent part:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction \* \* \* 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.

{¶14} R.C. 149.43(B)(8) “sets forth heightened requirements for inmates seeking public records, and requires an incarcerated criminal defendant to demonstrate that the information he is seeking \* \* \* is necessary to support a justiciable claim or defense.” (Citations omitted.) *State v. Shontee*, 2nd Dist. Montgomery No. 29433, 2022-Ohio-4319, ¶ 9 quoting *State v. Gibson*, 2nd Dist. Champaign No. 2006-CA-37, 2007-Ohio-7161, ¶ 13. Establishing a justiciable claim ordinarily involves identifying “a pending proceeding with respect to which the requested documents would be material.” (Citations omitted.) *Id.* quoting *State v. Heid*, 4th Dist. Scioto No. 14CA3655, 2015-Ohio-1467, ¶ 14. This Court has held that a justifiable claim does not exist where an inmate fails to identify “any pending proceeding with respect to which the requested documents would be material \* \* \*.” *State v. Benson*, 5th Dist. Guernsey No. 22CA00005, 2022-Ohio-2126, 2022 WL 2236244, ¶ 22 quoting *State v. Atakpu*, 2nd Dist. Montgomery No. 25232, 2013-Ohio-4392, ¶ 9, citing *Gibson* at ¶ 14.

{¶15} An inmate may seek appellate review of a trial court's denial of his request for public records. This type of order is reviewed for an abuse of discretion. *State v. Shontee*, 2nd Dist. Montgomery No. 29433, 2022-Ohio-4319, ¶ 7 citing *State v. Lather*, 6th Dist. Sandusky No. S-08-036, 2009-Ohio-3215, ¶ 11, citing *State ex rel. Rittner v. Barber*, 6th Dist. Fulton No. F-05-020, 2006-Ohio-592, ¶ 31. The term “abuse of

discretion” indicates an attitude that is arbitrary, unconscionable, or unreasonable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶16} We find no abuse of discretion for the trial court to deny Jones’s motion. First, our review of the motion shows that Jones failed to identify any pending proceeding with respect to which the requested documents would be material. Second, Jones did not specify exactly which documents he was requesting. He argued in his motion that his appointed trial counsel did not request discovery or conduct a thorough investigation before advising Jones to plead guilty to the charges. Because his trial counsel did not present Jones with discovery, Jones argued his only available option for relief was through a public records request. “[I]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue.” *State v. Benson*, 5th Dist. Guernsey No. 22CA00005, 2022-Ohio-2126, 2022 WL 2236244, ¶ 23 quoting *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 29, quoting *State ex rel. Fant v. Tober*, 8th Dist. No. 63737, 1993 WL 173743, \*1 (Apr. 28, 1993), affirmed, 68 Ohio St.3d 117, 623 N.E.2d 1202 (1993).

{¶17} Jones failed to meet the threshold requirements of a public records document request pursuant to R.C. 149.43.(B)(8). We therefore find the trial court did not abuse its discretion in denying Jones’s motion.

{¶18} Jones’s two Assignments of Error are overruled.

[Cite as *State v. Jones*, 2023-Ohio-3930.]

## CONCLUSION

{¶19} The judgment of the Muskingum County Court of Common Pleas is affirmed.

By: Delaney, J.,

Gwin, P.J. and

Hoffman, J., concur.