THE SUPREME COURT OF OHIO
CASE DOCKET

State of Ohio v. Clifton Jackson

Case Information

Number	2017-0340
Type	Appeal from App.R. 26(B) Application (Murnahan Appeal)
Date Filed	03/08/2017
Status	Open
Prior Jurisdiction	Lorain County, 9th District Court of Appeals
Prior Decision Date	02/02/2017
Prior Case Numbers	14CA010555

Parties

Clifton Jackson; Appellant
Pro Se

State of Ohio; Appellee
Represented by:
Guerrieri, Natasha Ruiz (82275), Counsel of Record
Will, Dennis Patrick (38129)

Docket

Date Filed	Description	Filed By
03/08/2017	Notice of appeal of Clifton Jackson	Appellant
03/08/2017	Memorandum in support of jurisdiction	Appellant
03/08/2017	And lower court decision	Appellant
03/08/2017	Affidavit of indigence	Appellant
03/09/2017	Copy of notice of appeal sent to clerk of court	
03/22/2017	Memorandum in response to jurisdiction	Appellee

End of Docket

IN THIS HONORABLE COURT

STATE OF OHIO	)	**SUPREME COURT CASE NO. 2017-0340**
Appellee,	)	
vs.	)	**ON APPEAL FROM THE COURT OF APPEALS, NINTH APPELLATE DISTRICT 14CA010555**
CLIFTON JACKSON	)	
Appellant.	)	**LORAIN COUNTY COMMON PLEAS COURT CASE NO. 11CR083140**

MEMORANDUM OF APPELLEE IN RESPONSE TO JURISDICTION

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EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This Honorable Court should not accept jurisdiction of this matter. First, the decision of the Ninth Judicial District Court of Appeals to deny Jackson's delayed application to reopen his appeal created no injustice as Appellant's arguments were addressed by existing case law. Here, the Ninth District properly denied Jackson's application pursuant to the relevant rules and case law. Pursuant to App.R. 26(B)(1), an application for reopening may be filed in a criminal matter "based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time." "Consistent enforcement of the rule's deadline by the appellate courts in Ohio protects on the one hand the state's legitimate interest in the finality of its judgments and ensures on the other hand that any claims of ineffective assistance of appellate counsel are promptly examined and resolved." *State v. Gumm*, 103 Ohio St. 3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7.

Here, the Ninth District's decision affirming the judgment of the trial court was journalized on June 22, 2015. Thus, Jackson had until September 21, 2015 to timely file an application for reopening. Instead, Jackson filed his application for reopening five hundred and seventy five (575) days after the Ninth District's decision was journalized. Since Jackson filed his motion well beyond the ninety day timeframe as permitted under App.R. 26(B)(1), Jackson was required to show that there was good cause for the untimely filing of his application for reopening. Jackson provided no valid explanation why he waited almost nineteen (19) months to file this application. Further, Jackson failed to allege why, for good cause, the Ninth District

should accept his application to reopen beyond the ninety day time limit to file the application. Additionally, Jackson was able to file a memorandum in support of jurisdiction with this Honorable Court within the ninety days that followed the Ninth District's decision. However, Jackson has not articulated why he was prevented from timely filing his application for reopening. Jackson's failure to provide any reason for the delay in filing his delayed application for reopening does not meet the requirements of App.R. 26(B)(1). As such, the Ninth District properly denied Jackson's application.

Second, no issue or substantial constitutional question exists in the Appellant's appeal to this Honorable Court. The attempted appeal further presents no viable question of general public interest so as to warrant the exercise of this Court's jurisdiction.

STATEMENT OF THE CASE

Clifton Jackson was indicted on August 11, 2011 on three counts. Counts one and two were trafficking in drugs and possession of drugs, both first degree felonies with a specification. Count three charged possession of criminal tools, a felony in the fifth degree.

Jackson filed a motion to suppress on November 4, 2011. The court held a hearing on the motion on June 5, 2012. The court denied the motion on September 28, 2012. Jackson filed a motion for reconsideration on December 7, 2012. The court denied that motion December 11, 2012.

The court set a trial date for January 28, 2014 and eventually rescheduled for February 11, 2014. Jackson filed motions to dismiss and to preclude on February 7, 2014. The court denied both motions on February 10, 2014.

The trial began on February 11, 2014. The jury returned a verdict of guilty on all counts. On the first count, the jury found that Jackson possessed greater than 1000 grams of cocaine and classified Jackson as a major drug offender in accordance with the first two specifications on counts one and two.

The State elected to have Jackson sentenced on count one. Jackson elected to be sentenced under the new sentencing statute. The court sentenced Jackson to 11 months on count three to be served concurrently with his sentence for count one. The court further revoked Jackson's driver's license for two years and ordered he pay a $10,000 fine. The trial court ordered Jackson to pay for the costs of prosecution and his court-appointed attorney fees.

Jackson filed notice of appeal on March 7, 2014.

On June 22, 2015, this Honorable Court overruled Jackson's assignments of error and affirmed the judgment of the trial court. *State v. Jackson*, 9th Dist. Lorain No. 14CA010555, 2015-Ohio-2473.

On January 17, 2017, Jackson filed a request for leave to file a delayed application for reopening with the Ninth District Court of Appeals. On February 2, 2017, the Ninth District denied Jackson's application.

Jackson has now filed a Memorandum in Support of Jurisdiction from the Ninth District's decision to deny his Application to Reopen Direct Appeal. The State hereby responds.

STATEMENT OF FACTS

On June 14, 2012, in Lorain County, Ohio, State Trooper Christopher Beyer witnessed a silver Toyota Camry following too closely behind a large truck hauling a motor home. Supp. Tr. 4; Tr. 90. Trooper Beyer pulled out of the cross-over and caught up to the Camry at approximately mile post 135. Tr. 91. Trooper Beyer followed the Camry long enough to capture

the violation on video. Supp. Tr. 6; Tr. 92-93. Trooper Beyer initiated a traffic stop. Supp. Tr. 6; Tr. 91.

Beyer approached the Camry and asked Jackson, the driver, for his license, registration and insurance. Supp. Tr. 6. Jackson gave Trooper Beyer a rental agreement for the car, which did not list Jackson as an authorized driver. Supp. Tr. 7, 8; Tr. 98, 99. Instead, it listed Latrice Thomas as the renter. Supp. Tr. 7; Tr. 99. Jackson provided Trooper Beyer with differing stories on his relationship to the vehicle's renter and how long he had the vehicle. Supp. Tr. 8-9, Tr. 98.

Trooper Beyer believed based on his training and experience that there was something more going on than a mere traffic violation. Supp. Tr. 9-10; Tr. 97-98. Trooper Beyer decided the situation warranted further investigation due to Jackson's odd behavior, his contradictory stories, and the lack of trustworthiness of his explanation for his travels. *Id.*

Trooper Beyer called K-9 officer Trooper Trader to the scene. Supp. Tr. 10; Tr. 99. Trooper Trader and his dog Argo arrived on the scene. Supp. Tr. 10-11; Tr. 100. Jackson was removed from the car prior to the search for safety reasons. Supp. Tr. 12; Tr. 100. Trooper Beyer asked Jackson if everything in the car was his. Tr. 105. Jackson first said no and that there were no drugs in the car. *Id.* Then Jackson quickly changed his answer and admitted everything in the car was his. *Id.*

Jackson sat in the back of the cruiser for safety while Trooper Trader deployed Argo for a free air sniff. Supp. Tr. 13; Tr. 100. Argo gave a positive alert for the presence of narcotics. Supp. Tr. 16; Tr. 154. Trooper Beyer then gave Jackson his Miranda rights and placed him back in the cruiser. Supp. Tr. 13; Tr. 105. Upon searching the car, the troopers discovered 2 kilograms of cocaine in an orange duffle bag in the trunk 191-192.

Before and during the time of the search, while Jackson was in the back of the car, he made a cell phone call on speakerphone. Supp. Tr. 15; Tr. 83. The recording equipment recorded Jackson stating to a female "They just found it in my luggage." Tr. 106. The cocaine was in fact found in Jackson's luggage. Supp. Tr. 16; Tr. 106.

LAW AND ARGUMENT

RESPONSE TO FIRST PROPOSITION OF LAW

The appropriate standard to assess a claim of ineffective assistance of counsel is the two-part test enumerated in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). "The first inquiry is whether counsel's performance fell below an objective standard of reasonable representation involving a substantial violation of any defense counsel's essential duties to appellant." *State v. Young*, 5th Dist. Fairfield No. 30-CA-85, 1999 Ohio App. LEXIS 1875, *6 (April 19, 1999), citing *Lockhart v. Fretwell*, 506 U.S. 364, 113 S. Ct. 838, 122 L. Ed. 2d 180 (1993); *Strickland, supra* at 687; *State v. Bradley*, 42 Ohio St. 3d 136, 538 N.E.2d 373 (1989). "In determining whether counsel's representation fell below an objective standard of reasonableness, judicial scrutiny of counsel's performance must be highly deferential." *Id.* In the second prong of the *Strickland* ineffective assistance of counsel analysis, the court determines whether there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Bradley*, 42 Ohio St. 3d 136; *see also Strickland*, 466 U.S. at 687, 693.

Here, Jackson argues that his appellate counsel failed to raise errors in his original appeal. However, Jackson neither states what those errors were nor how, but for his counsel's failure to raise the issues, the result of his appeal would have been different. As he has failed to make any

argument regarding his appellate counsel's ineffectiveness, Jackson's first proposition of law is without merit.

RESPONSE TO SECOND PROPOSITION OF LAW

In his second proposition of law, Jackson argues that Trooper Beyer committed perjury during his testimony in order to cover up purported racial profiling. However, Jackson does not support his argument with any statutes or case law. Furthermore, Jackson never raised this argument in his appellate brief. This Court has found that it "'will not ordinarily consider a claim of error that was not raised in any way in the Court of Appeals and was not considered or decided by that court.'" *State v. Hill*, 73 Ohio St.3d 433, 438, 1995-Ohio-287, 653 N.E.2d 271, quoting *State v. Williams*, 51 Ohio St. 2d 112, 364 N.E.2d 1364 (1977), paragraph two of the syllabus. As Jackson never provided the Ninth District the chance to issue a decision regarding his racial profiling argument, this Court should decline to consider this proposition of law.

Moreover, in relation to his proposition of law as it relates to unlawfully extending the duration of the traffic stop, Jackson's appellate counsel raised as an assignment of error that the troopers lacked reasonable suspicion to stop his vehicle and further that the troopers illegally extended the stop to allow for the dog sniff of his vehicle. This assignment of error was thoroughly reviewed and rejected by the Ninth District in its original opinion. *Jackson*, *supra*, at ¶ 11-31. As such, Jackson's second proposition of law is without merit.

RESPONSE TO THIRD PROPOSITION OF LAW

A *Brady* violation occurs when the prosecution suppresses evidence favorable to an accused and material to either guilt or punishment. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). Favorable evidence is material if there is a reasonable probability of a different result. *Id.* at 434. A reasonable probability of a different result is

shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. *Id.* To show a *Brady* violation, the favorable evidence must be considered in the cumulative, not item-by-item, to demonstrate that the collective evidence could reasonably be taken to put the entire case into such a different light as to undermine confidence in the verdict. *State v. Gumm*, 169 Ohio App. 3d 650, 2006-Ohio-6451, 864 N.E.2d 133, ¶ 37 (1st Dist.).

Here, the State addressed several of Jackson's additional discovery requests. (See Response to Discovery filed on October 17, 3013). Regarding the remaining requests, the State argued that those items were not part of discovery. (See transcript of November 18, 2013 hearing). However, despite this fact, the State agreed to respond to the remaining requests if those items existed. *Id.*

Additionally, Jackson failed to articulate how the introduction of the supposedly suppressed *Brady* material would have caused a reasonable probability of a different result of his trial. Jackson failed to state what evidence the Leads log and the CAD reports contained or how such material would have changed the outcome of the trial. Jackson simply makes a conclusory statement that this is *Brady* material that would support his claim with no explanation how this would have changed the outcome of his matter as is required under *Brady*. As such, Jackson's third proposition of law is without merit.

RESPONSE TO FOURTH PROPOSITION OF LAW

Bias or prejudice of a judge "implies a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts." *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956). "A judge is presumed to follow the law and is presumed not

to be biased." *State v. Brown (In re O'Neill)*, 100 Ohio St. 3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 15. "The appearance of bias or prejudice must be compelling to overcome these presumptions." *Id.* at ¶ 15, citing *In re Disqualification of Olivito*, 74 Ohio St.3d 1261, 657 N.E.2d 1361 (1994).

In this matter, Jackson argues that both trial court judges denied him a fair trial due to their bias. Jackson claims that Judge Zaleski listened to perjured testimony and added facts to the record to support the troopers' illegal search of his vehicle. However, Jackson neither points to any evidence that refutes the testimony provided by Trooper Beyer nor states what facts that Judge Zaleski added to the record to support his finding that the search was justified. Additionally, Jackson provides no reason why Judge Miraldi was biased. Jackson's reasoning supporting his contention of judicial bias cannot overcome the presumption that both trial court judges were not bias. *Brown, supra.* Therefore, Jackson's fourth proposition of law is without merit.

RESPONSE TO FIFTH PROPOSITION OF LAW

Jackson alleges he was denied effective assistance of trial counsel because of his attorneys' failure to request a decision from the trial court regarding his discovery request. As argued previously, Jackson has neither shown that this material was subject to *Brady* disclosure nor how, but for trial counsel having these documents, the outcome of his matter would have been different. *Brady, supra.* Again, Jackson failed to illustrate what evidence these documents contained or how they would prove that the trooper's testimony was perjury. Moreover, Jackson's appellate counsel raised the issue of ineffective assistance of trial counsel in his original brief. This Ninth District rejected that argument. *See Jackson, supra.* Thus, this fifth proposition of law is without merit.

RESPONSE TO SIXTH PROPOSITION OF LAW

Jackson argues his sentences violated Double Jeopardy. Once again, Jackson has failed to provide this Court with any argument regarding how he was twice put in jeopardy due to his sentences for Trafficking in Drugs and Possession of Drugs. The State can only assume that Jackson makes an allied offenses argument regarding these charges. However, a review of the record demonstrates that the trial court made the determination that these counts were allied offenses of similar import and therefore only issued a sentence as to count one, Trafficking in Drugs. The trial court issued no sentence for count two, Possession of Drugs, or the specifications to that count. For that reason, Jackson's sixth proposition of law is without merit.

CONCLUSION

For the foregoing reasons, the State of Ohio respectfully requests that this Honorable Court decline jurisdiction over the instant matter.

Respectfully submitted,
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memo in Opposition to Jurisdiction was sent via regular U.S. Mail this 22nd day of March, 2017 to Clifton Jackson A652-163, Pro Se, Lake Erie Correctional Institution, 501 Thompson Road, P.O. Box 8000, Conneaut, Ohio 44030.

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