

[Cite as *State v. Hoke*, 2005-Ohio-3548.]

COURT OF APPEALS  
KNOX COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JEFFREY J. HOKE

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 05 CA 5

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case No. 99 CR 050040

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 12, 2005

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Wise, J.*

{¶1} Appellant Jeffrey Hoke appeals the decision of the Knox County Court of Common Pleas that denied his petition for postconviction relief. The following facts give rise to this appeal.

{¶2} On August 30, 1999, a jury in the Knox County Court of Common Pleas found appellant guilty of murdering his wife, Jennifer Hoke, by stabbing her thirty-two times. On September 2, 1999, the trial court sentenced appellant to serve fifteen years to life. Appellant timely appealed his conviction to this court. We affirmed the conviction on July 17, 2000. See *State v. Hoke* (July 17, 2000), Knox App. No. 99-CA-19. Thereafter, on March 20, 2000, appellant filed his first petition for postconviction relief. The trial court denied the petition.

{¶3} On January 4, 2005, appellant filed a second petition for postconviction relief. The trial court denied this petition on February 10, 2005. Appellant has timely appealed from the denial of his second petition for postconviction relief and sets forth the following assignment of error for our consideration:

{¶4} "1. THE TRIAL COURT PLAIN ERRORED (SIC) IN DENIAL OF JURISDICTION TO ENTERTAIN PETITIONER'S SUCCESIVE (SIC) POSTCONVICTION. WHEN DOCUMENTS SUBMITTED SUPPORTED HIS CLAIM, HE WAS UNAVOIDABLY PREVENTED FROM PRIOR DISCOVERY, AND BUT FOR CONSTITUTIONAL ERROR IN TRIAL, THE TRIAL JUDGE PLAIN ERRORED (SIC) FOR PETITIONER'S CLAIM IS (ACTUAL INNOCENCE) NOT GUILTY OF THE CHARGE CONVICTED OF, BUT GUILTY OF THE INFERIOR DEGREE, ALONG WITH A NEW UNITED STATES SUPREME COURT RULING WHICH DIRECTLY AFFECTS

THE PETITIONER, APPRENDI V NEW JERSEY 530 U.S. 466(2000), BLAKELY V WASHINGTON 124 S.CT. 2531 (2004), U.S. V BOOKER 2005 WL50108. U.S.C.A 5<sup>TH</sup>,6<sup>TH</sup>,8<sup>TH</sup>,14<sup>TH</sup> AMMENDMENTS (SIC). ”

I

{¶5} In his sole assignment of error, appellant maintains the trial court erred when it denied his petition for postconviction relief. We disagree.

{¶6} Appellant claims the trial court should have granted his second petition for postconviction relief based upon the United States Supreme Court’s decision in *Blakely v. Washington* (2004), 124 S.Ct. 2531, and the fact that certain reports concerning tests performed on the murder weapon and certain vaginal swabs were not previously provided to him.

{¶7} In reviewing a trial court’s denial of appellant’s petition for postconviction relief, absent a showing of abuse of discretion, we will not overrule the trial court’s finding if it is supported by competent and credible evidence. *State v. Delgado* (May 14, 1998), Cuyahoga App. No. 72288, at 3, citing *State v. Mitchell* (1988), 53 Ohio App.3d 117, 120. In order to find an abuse of discretion, we must determine that the trial court’s decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶8} The requirement for second or successive petitions for post conviction relief is addressed in R.C. 2953.23(A)(1)(b). This statute provides as follows:

{¶9} “(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a

sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.”

{¶10} The above cited statute “\* \* \* imposes a strict limitation upon consideration of second and successive petitions for post-conviction relief, in recognition of the value of finality of judgment.” *State v. Johnson*, Montgomery App. No. 19426, 2003-Ohio-1378, at ¶ 10.

{¶11} Based upon our review of the record, we are unpersuaded the trial court abused its discretion when it concluded appellant failed to meet the requirements of R.C. 2953.23(A)(1)(b). First, the *Blakely* decision has no application in the case sub judice. In *Blakely*, the Supreme Court held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Blakely* at 2536, quoting *Apprendi v. New Jersey* (2000), 530 U.S. 466, 490.

{¶12} In the matter currently before the court, the jury found appellant guilty of murder pursuant to R.C. 2903.02(A). The trial court sentenced appellant to the term of fifteen years to life, as required by R.C. 2929.11. The trial court did not sentence appellant to any term beyond the statutory maximum and therefore, the *Blakely* decision does not apply.

{¶13} Second, appellant claims the state failed to provide him with certain reports, on the testing of evidence, that may have aided in his defense at trial. As noted above, in order to prevail in this assertion, appellant must show “\* \* \* by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was

convicted \* \* \*.” At the trial of this matter, appellant admitted that he caused the death of his wife. Further, in our decision addressing appellant’s direct appeal, we specifically noted that “[a]t trial, appellant did not dispute the fact that he killed Jennifer. However, appellant argued that he was guilty only of voluntary manslaughter, as he did not intend to kill Jennifer.” *State v. Hoke*, supra, at 1.

{¶14} Based upon these admissions at trial, there is no way the evidence appellant now seeks to discover would convince a reasonable factfinder that he is not guilty since appellant specifically admitted to killing his wife.

{¶15} Accordingly, the trial court did not abuse its discretion when it denied appellant’s petition for postconviction relief.

{¶16} Appellant’s sole assignment of error is overruled.

{¶17} For the foregoing reasons, the judgment of the Court of Common Pleas, Knox County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Edwards, J., concur.

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JUDGES

