

SUPREME COURT OF OHIO

State v. Everett

129 Ohio St. 3d 317, 2011-Ohio-2856 (Ohio 2011) · No. 2010-1325 · Decided June 16, 2011

SUMMARY

The Supreme Court of Ohio held that, when both a videotape recording and a certified written transcript of proceedings are available, only the certified written transcript constitutes the relevant transcript under Appellate Rule 9 and Ohio Revised Code 2953.21(A)(2). The court therefore held that the 180-day period for filing a postconviction-relief petition began when the written transcripts were filed, reversed the judgment dismissing Everett's petition as untimely, and remanded the case.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, C.J.; Pfeifer, J.; Lundberg Stratton, J.; McGee Brown, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.
JURISDICTION	Ohio
DECIDED	June 16, 2011
DOCKET	2010-1325
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Everette appealed the dismissal of his petition for postconviction relief as untimely. The Supreme Court of Ohio accepted discretionary review to determine whether a videotape recording or a certified written transcript constituted the trial transcript triggering the statutory 180-day filing period.
STANDARD OF REVIEW	De novo review of the interpretation of R.C. 2953.21(A)(2) and App.R. 9(A).
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio
PARTIES	Everette v. State of Ohio

TOPICS

[post-conviction relief](#)[appellate procedure](#)[statutory interpretation](#)[criminal procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a videotape recording of trial proceedings constitutes the trial transcript under App.R. 9(A) and R.C. 2953.21(A)(2) when a certified written transcript is also available.
2. When the 180-day statutory period for filing a petition for postconviction relief begins to run when both videotaped proceedings and certified written transcripts have been filed.

HOLDINGS

1. When both a videotape recording and a certified written transcript of proceedings are available, only the certified written transcript constitutes the trial transcript or transcript of proceedings for purposes of triggering the 180-day filing period under R.C. 2953.21(A)(2).
2. Everette's petition was timely because the 180-day period began on October 15, 2008, when the certified written transcripts were filed, rather than on August 26, 2008, when the videotapes were filed.

KEY QUOTATIONS

“For the reasons stated below, we hold that for purposes of determining when the 180- day time period for filing a postconviction-relief petition shall accrue, only the certified, written transcript constitutes a “transcript” under App.R. 9 and R.C. 2953.21(A)(2) when both a videotape recording and the written form of the proceedings are available.” (¶ 1)

“We thus hold that whenever a written transcript is certified by the reporter in accordance with App.R. 9(A), the written transcript shall constitute the trial “transcript” or “transcript of proceedings” for purposes of calculating the time by which to file a petition for postconviction relief.” (¶ 27)

“Therefore, the 180-day period to file a petition for postconviction relief does not begin to run until the certified, written transcript of the proceedings is filed.” (¶ 30)

FACTUAL BACKGROUND

A jury found Thomas E. Everette Jr. guilty of aggravated murder, aggravated robbery, grand theft of a motor vehicle, and firearm specifications; the trial court also found him guilty of having a weapon while under disability and imposed a life sentence with parole eligibility after 28 years. During his direct appeal, videotapes of the trial, suppression hearing, and sentencing hearing were filed on August 26, 2008, while certified written transcripts of the suppression hearing and trial were filed on October 15, 2008. Everette filed a postconviction petition on April 8, 2009, alleging ineffective assistance of trial counsel and prosecutorial misconduct.

PROCEDURAL HISTORY

After Everette's convictions and sentence, the appellate record initially included videotapes filed on August 26, 2008, followed by certified written transcripts filed on October 15, 2008. Everette filed his postconviction petition on April 8, 2009. The trial court dismissed it as untimely, and the Second District Court of Appeals affirmed, holding that the 180-day period began when the videotapes were filed. The Supreme Court of Ohio reversed and remanded for consideration of Everette's second assignment of error.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the Court of Appeals for Montgomery County for consideration of Everett's second assignment of error.

CASES CITED

- State v. Everett, Montgomery App. No. 23585, 2010-Ohio-2832
- State v. Hollingsworth, 118 Ohio St. 3d 1204, 2008-Ohio-1967, 886 N.E.2d 863
- State ex rel. Brenders v. Hall, 71 Ohio St. 3d 632, 634, 646 N.E.2d 822 (1995)
- State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn., 69 Ohio St. 3d 217, 220, 631 N.E.2d 150 (1994)
- Brookwood Presbyterian Church v. Ohio Dept. of Edn., 127 Ohio St. 3d 469, 2010-Ohio-5710, 940 N.E.2d 1256
- Humphrys v. Winous Co., 165 Ohio St. 45, 49, 59 O.O. 65, 133 N.E.2d 780 (1956)
- 126 Ohio St. 3d 1597, 2010-Ohio-4928, 935 N.E.2d 44