

[Cite as *State v. Simpson*, 2012-Ohio-1155.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 11AP-650
 : (C.P.C. No. 00CR-08-5064)
 Donovan E. Simpson, : (ACCELERATED CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on March 20, 2012

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for
appellee.

Donovan E. Simpson, pro se.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Defendant-appellant, Donovan E. Simpson, appeals from a judgment of the Franklin County Court of Common Pleas denying his motion to vacate his felonious assault convictions.

{¶ 2} On June 4, 2001, a jury returned verdicts finding appellant guilty of five counts of attempted murder, five counts of felonious assault, one count of aggravated arson, one count of murder, and one count of aggravated murder. The jury also returned a verdict finding appellant guilty of the accompanying death penalty specification because the aggravated murder was part of a course of conduct involving the purposeful killing of,

or attempt to kill, two or more persons. On July 27, 2001, appellant was sentenced to a total of 90 years in prison.

{¶ 3} On appeal, this court affirmed the convictions, but remanded the matter for resentencing. *State v. Simpson*, 10th Dist. No. 01AP-757, 2002-Ohio-3717. Pursuant to the judgment of conviction filed on March 21, 2003, appellant was sentenced to a total of 79 years in prison.

{¶ 4} On February 24, 2006, appellant filed a petition for writ of habeas corpus in the United States District Court for the Southern District of Ohio. Appellant's petition was denied, and appellant appealed to the Sixth Circuit Court of Appeals. Specifically, appellant challenged the admission of statements he made on April 24, April 27, June 16, and June 20, 2000. *Simpson v. Jackson*, 615 F.3d 421, 424 (6th Cir.2010). The Sixth Circuit Court of Appeals held the statements made on June 16, 2000 were properly admitted into evidence, but the statements made on April 24, April 27, and June 20 were not. *Id.* Though finding the erroneous admission of the statements was harmless with respect to appellant's convictions for aggravated arson and felonious assault, the court concluded the error was not harmless as to the convictions for aggravated murder, murder, and attempted murder. Therefore, habeas relief was granted as to those convictions. *Id.* The court, however, stated that appellant must still serve the remainder of the sentence imposed on the convictions for aggravated arson and felonious assault. *Id.* at 445.

{¶ 5} A petition for certiorari was filed with the United States Supreme Court on October 4, 2010 in *Sheets v. Simpson*, 80 U.S.L.W. 3493 (2012). Because the issue giving rise to the Sixth Circuit Court of Appeals' conclusion regarding the admissibility of appellant's statements was currently pending before the United States Supreme Court in *Howes v. Fields*, 80 U.S.L.W. 4154 (2012), on April 6, 2011, the federal district court ordered a stay of appellant's federal case until a decision was rendered in *Howes*.

{¶ 6} On June 24, 2011, appellant filed a motion to vacate his convictions in the trial court. According to appellant, because his felonious assault convictions were allied offenses of similar import with the attempted murder convictions and because the Sixth Circuit Court of Appeals vacated his attempted murder convictions, the felonious assault

convictions had to be vacated as well. The trial court denied appellant's motion finding that his felonious assault convictions remained valid.

{¶ 7} This appeal followed, and appellant asserts the following assignment of error:

In the present case as the attached judgment entry supports that the appellant was convicted and sentence (sic) to both attempted murder and felonious assault, however R.C. 2941.25 Governs allied offenses provides (A) Where the same conduct by defendant can be construed to constitute two or more **ALLIED OFFENSES** of similar import, the indictment or information may contain counts for **ALL** such offenses **BUT THE DEFENDANT MAY BE CONVICTED OF ONLY ONE** as the Ohio Supreme Court ruled in *State V Johnson* 128 Ohio St .3d 153.

(Emphasis sic.)

{¶ 8} An appellate court reviews a ruling on a post-conviction petition for an abuse of discretion. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679. An abuse of discretion is found only when it is determined that a trial court's attitude in reaching its judgment was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). On February 12, 2012, the United States Supreme Court rendered a decision in *Howes* rejecting the habeas petitioner's argument and the Sixth Circuit's conclusion that isolation from the general prison population combined with questioning about conduct occurring outside the prison constitutes a "custodial interrogation" within the meaning of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966).¹ On February 27, 2012, the United States Supreme Court granted appellant's petition for certiorari, vacated the Sixth Circuit's granting of habeas relief to appellant, and remanded the case to the Sixth Circuit Court of Appeals for further consideration in light of *Howes*. *Sheets*.

¹ In *Howes*, the United States Supreme Court stated, "[t]he United States Court of Appeals for the Sixth Circuit held that our precedents clearly establish that a prisoner is in custody within the meaning of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), if the prisoner is taken aside and questioned about events that occurred outside the prison walls. Our decisions, however, do not clearly establish such a rule, and therefore the Court of Appeals erred in holding that this rule provides a permissible basis for federal habeas relief under the relevant provision of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254(d)(1). Indeed, the rule applied by the court below does not represent a correct interpretation of our *Miranda* case law. We therefore reverse."

{¶ 9} First, we note that appellant has failed to provide any legal authority to support his assertion that his felonious assault convictions should be vacated because of habeas relief granted on the attempted murder convictions. Secondly, the decision granting habeas relief, *Simpson v. Jackson*, has been recently reversed by the United States Supreme Court in *Sheets*. For these reasons, we find no merit to appellant's arguments that his felonious assault convictions should be vacated. Accordingly, we do not find that the trial court erred in denying appellant's motion to vacate.

{¶ 10} For the foregoing reasons, we overrule appellant's single assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and DORRIAN, JJ., concur.
