

[Cite as *State v. Bindus*, 2017-Ohio-8583.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105858

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DONALD BINDUS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-04-448745-ZA

BEFORE: Keough, A.J., S. Gallagher, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: November 16, 2017

APPELLANT

Donald Bindus, pro se
Inmate No. 482059
Marion Correctional Institution
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ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Anthony Thomas Miranda
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
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KATHLEEN ANN KEOUGH, A.J.:

{¶1} Defendant-appellant, Donald Bindus, appeals from the trial court’s decision denying his motion to compel. For the reasons that follow, we affirm the trial court’s decision.

{¶2} In 2005, Bindus pleaded guilty to several counts of rape, gross sexual imposition, and kidnapping; he was ordered to serve the agreed sentence of 15 years in prison with no judicial release. Subsequently, Bindus moved the trial court to withdraw his plea (March, October, and November 2005), set aside his sentence (2006), grant habeas corpus (2006), order DNA testing (2007), grant judicial release (2013), and vacate a void judgment (2013). Each request was denied.

{¶3} In March 2017, Bindus filed a “motion to compel,” but failed to request the production of anything. Instead, Bindus challenged the form of the indictment against him and the trial court’s subject matter jurisdiction. The trial court summarily denied his motion.

{¶4} Bindus now appeals, raising the following four assignments of error:

I. The trial court erred when it failed to confirm the validation of said indictments since the documents returned to the clerk were actually nineteen individual indictments, not a single indictment containing nineteen counts, denying the appellant his Fifth, Sixth, and Fourteenth Amendment rights to the United States Constitution and his rights under the Supremacy Clause, Article VI.

II. The trial court erred when it failed to establish any subject matter jurisdiction in this case, violating the appellant’s Fifth, Sixth, and Fourteenth Amendment rights to the United States Constitution.

III. The trial court erred when it failed to produce a valid indictment denying the appellant his Fifth, Sixth, and Fourteenth Amendment rights to the United States Constitution and his right to due process.

IV. The trial court erred when it failed to produce a legally formatted indictment that did not contain carbon copy counts which placed the defendant within a

violation of the Double Jeopardy Clause denying the appellant's Fifth Amendment rights to the United States Constitution.

{¶5} Bindus's motion filed with the trial court is actually an untimely petition for postconviction relief. Pursuant to R.C. 2953.21(A)(2), a petition must be filed within 365 days of the expiration date for filing a direct appeal. In this case, Bindus's petition was filed over ten years after that expiration date. For this reason alone, the trial court did not err in denying Bindus's motion to compel.

{¶6} Moreover, Bindus pleaded guilty. A defendant waives any deficiency in the indictment by failing to object to the indictment and pleading guilty to the offense. *State v. Barton*, 108 Ohio St.3d 402, 2006-Ohio-1324, 844 N.E.2d 307; *State v. Spates*, 64 Ohio St.3d 269, 272, 595 N.E.2d 351 (1992); *State v. Hawkins*, 8th Dist. Cuyahoga No. 91930, 2009-Ohio-4368.

{¶7} Finally, Bindus's argument that the trial court lacked subject matter jurisdiction over his indictment is without merit. Felony charges were filed in the Cuyahoga County Court of Common Pleas against Bindus pursuant to an indictment. *See* R.C. 2931.03 and Crim.R. 7(A); *State v. Moore*, 8th Dist. Cuyahoga No. 99360, 2013-Ohio-4491, ¶ 10 (criminal case brought by indictment is procedural in nature — not jurisdictional). Accordingly, while subject matter jurisdiction can be raised at any time, any procedural error is barred by res judicata because it could have been raised in any one of Bindus's prior postconviction challenges.

{¶8} The assignments of error are overruled.

{¶9} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR