

[Cite as *State v. Flugga* , 2011-Ohio-3807.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

COREY FLUGGA

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 11-CA-25

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Case No. 08 CR 00448

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 28, 2011

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

KENNETH W. OSWALT
LICKING COUNTY PROSECUTOR

BY: DANIEL H. HUSTON
Assistant Prosecutor
20 S. Second Street, Fourth Floor
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COREY FLUGGA, PRO SE
Institutional Number 596-828
P.O. Box 7010
Chillicothe, Ohio 45601

Hoffman, P.J.

{¶1} Defendant-appellant Corey Flugga appeals the February 14, 2011 Judgment Entry entered by the Licking County Court of Common Pleas which denied his Motion for De Novo Sentencing. The State of Ohio is plaintiff-appelle.

STATEMENT OF THE CASE¹

{¶2} Appellant was convicted of two counts of murder in 2009. Appellant appealed to this Court and we affirmed his convictions in *State v. Flugga* (October 19, 2009), Licking County Appeal No. 2009-CA-5, 2009-Ohio-5648.

{¶3} On September 23, 2009, Appellant filed a petition for post-conviction relief. The trial court denied Appellant's petition. Appellant also appealed that decision to this Court and we affirmed the trial court's decision in *State v. Flugga* (September 7, 2010), Licking County App. No. 09-CA-140, 2010-Ohio-4237.

{¶4} Thereafter, Appellant filed a Motion for De Novo Sentencing on October 20, 2010, arguing his sentence needed to be corrected to reflect his two convictions for murder should have been merged. The trial court denied his motion via Judgment Entry filed February 14, 2011. It is from that judgment entry Appellant prosecutes this appeal, assigning as error:

{¶5} "I. WHETHER THE TRIAL COURT ERRED IN DENYING THE APPELLANTS MOTION FOR DE NOVO SENTENCING BASED ON THAT IT LACKED JURISDICTION.

{¶6} "II. WHETHER THE TRIAL COURT ERRED IN DENYING THE APPELLANTS MOTION BASED ON RES JUDICATA."

¹ A rendition of the facts is unnecessary for our resolution of this Appeal.

II

{¶7} We address this assignment of error first as we find it dispositive of this Appeal pursuant to the two-issue rule.

{¶8} We find the trial court correctly determined Appellant's claim for relief was barred by the doctrine of res judicata; not just once, but twice. Appellant could have raised this argument in his first direct appeal but did not. Furthermore, Appellant did raise this issue on appeal from denial of his prior post-conviction relief petition. This court specifically found the issue was barred by res judicata then and still is now.

{¶9} Appellant's attempts to resurrect this issue by merely changing the title on the motion and asserting his original sentence is void. We find his argument without merit. The trial court correctly denied Appellant's motion based upon the doctrine of res judicata.

{¶10} Appellant's second assignment of error is overruled.

I

{¶11} Based upon our disposition of Appellant's second assignment of error, Appellant's first assignment of error is moot.

{¶12} The judgment of the trial court is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

COREY FLUGGA

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 11-CA-25

For the reasons set forth in our accompanying Opinion, the judgment of the Licking County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY