

[Cite as *State v. Vincent*, 2017-Ohio-1441.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 15CA3512
 :
 vs. :
 :
 WESLEY C. VINCENT, : DECISION AND JUDGMENT ENTRY
 :
 :
 Defendant-Appellant. :

APPEARANCES:

Wesley C. Vincent, Chillicothe, Ohio, pro se.

Matthew S. Schmidt, Ross County Prosecuting Attorney, Chillicothe, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT

DATE JOURNALIZED: 4-10-17

ABELE, J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment that denied a “Motion to Resentence in Order to Correct an Illegal Sentence,” a “Motion for Open Hearing on Motion,” a “Motion to Vacate Judgment,” and a “Motion to Strike Prosecutor’s Response” filed by Wesley C. Vincent, defendant below and appellant herein. Appellant assigns the following error for review:

ASSIGNMENT OF ERROR:

“APPELLANT WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW WHEN THE TRIAL COURT DENIED

HIS MOTION WITHOUT A HEARING.”

{¶ 2} In 1991, a Ross County Grand Jury returned an indictment that charged appellant with (1) two counts of aggravated murder, both with firearm specifications and a death specification on the second count, (2) one count of attempted aggravated burglary, (3) one count of failure to comply with an order or signal of a police officer, and (4) two counts of felonious assault with firearm specifications. Subsequently, the parties agreed to dismiss the death specification and one aggravated murder count in return for appellant’s guilty pleas to the remaining charges. As part of the plea agreement, the state recommended that appellant receive a life sentence for the remaining aggravated murder count.¹

{¶ 3} Appellant commenced the instant action with a series of motions wherein he argued various errors in the sentencing process. The trial court noted that the issues appellant raised in “his various motions have been addressed many times by the trial court and by the Fourth District Court of Appeals.” In his current filings, the trial court indicated that appellant “is still beyond the timelines for post-conviction relief and has failed to meet the exception for an untimely filing.” Accordingly, the trial court overruled the motions. This appeal followed.

{¶ 4} As this court referenced in *State v. Vincent*, 4th Dist. Ross No. 14CA3451, 2014-Ohio-5811, at ¶ 5, “Constitutional challenges to a criminal conviction are generally treated as petitions for postconviction relief.” See *State v. Garrett*, 4th Dist. Gallia No. 13CA13, 2014-Ohio-3462, at ¶ 3; *State v. Johnson*, 4th Dist. Adams No. 13CA988, 2014-Ohio-3027, at ¶ 8.

¹We note that this is appellant’s eighth appeal. The facts are largely taken from this court’s most recent decision in *State v. Vincent*, 4th Dist. Ross No. 14CA3451, 2014-Ohio-5811, which cited *State v. Vincent*, 4th Dist. Ross No. 92CA1894, 1993 WL 19531 (Jan. 28, 1993).

{¶ 5} The state asserts that appellant has “filed an unending stream of meritless motions * * *, most of which simply re-package his same arguments under a new caption.” *See, e.g., State v. Vincent*, 4th Dist. Ross No. 14CA3451, 2014-Ohio-5811 (appeal of denial of “motion to vacate sentence”), *State v. Vincent*, 4th Dist. Ross No. 09CA3135, 2010-Ohio-3261 (appeal of denial of motion to withdraw guilty plea); *State v. Vincent*, 4th Dist. Ross No. 08CA3041, 2009-Ohio-588 (appeal of denial of motion to withdraw guilty plea); *State v. Vincent*, 4th Dist. Ross No. 03CA2713, 2003-Ohio-3998 (appeal of denial of motion to withdraw guilty plea); *State v. Vincent*, 4th Dist. Ross No. 02CA2672, 2003-Ohio-2591 (appeal of denial of motion to withdraw guilty plea); *State v. Vincent*, 4th Dist. Ross No. 02CA2654, 2003-Ohio-473 (appeal of denial of motion to withdraw guilty plea); *State v. Vincent*, 4th Dist. Ross No. 92CA1894, 1993 WL 19531 (Jan. 28, 1993) (appeal of denial of petition for postconviction relief).

{¶ 6} By this court’s count, this is appellant’s eighth appeal. As with prior cases, the arguments that appellant raises here were raised, or could have been raised, in those prior cases, including his first appeal of right. *See generally State v. Shaffer*, 4th Dist. Lawrence No. 14CA15, 2014-Ohio-4976, at ¶ 16; *State v. Johnson*, 4th Dist. Adams No. 13CA988, 2014-Ohio-3027, at ¶ 7.

{¶ 7} The genesis of appellant’s motions appears to be his argument that when he waived his right to a jury trial, a three judge panel was required to accept his plea of guilty. This court, however, addressed this issue in *State v. Vincent*, 4th Dist. Ross No. 09CA3135, 2010-Ohio-3261, ¶ 7, where we held:

Moreover, even if we considered the merits of appellant’s assignment of error, we would affirm the trial court’s decision. R.C. 2945.06 states, inter alia, ‘[i]f the accused pleads guilty of aggravated murder, a court composed of three judges shall examine the witnesses, determine whether the accused is guilty of aggravated murder or any other offense, and pronounce sentence accordingly.’ The Ohio Supreme Court

has held that any failure to comply with the R.C. 2945.06 three judge panel requirement must be raised on direct appeal. *State ex rel. Rash v. Jackson*, 102 Ohio St.3d 145, 807 N.E.2d 344, 2004-Ohio-2053, at ¶ 9. Appellant, however, filed no direct appeal from his judgment of conviction and sentence. Therefore, this issue is barred by the doctrine of res judicata. *State v. Porterfield*, Trumbull App. No. 2008-T-2, 2008-Ohio-5948, at ¶ 19; *State v. Thompson*, Lucas App. No. L-05-1213, 2006-Ohio-1224, at ¶ 28; *Pratts v. Hurley*, 102 Ohio St.3d 81, 806 N.E.2d 992, 2004-Ohio-1980, at ¶ 20.

{¶ 8} In the case sub judice, appellant's claims are issues that could have been raised in a timely filed direct appeal and were previously considered and rejected by this court. As such, these claims are barred for consideration by the doctrine of res judicata. Accordingly, we overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the 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 Ross County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty-day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Supreme Court of Ohio in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

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

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.