

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

STATE OF OHIO,	:	
	:	Case No. 17CA3613
Plaintiff-Appellee,	:	
	:	
vs.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
PELE K. BRADFORD,	:	
	:	
Defendant-Appellant.	:	Released: 05/09/18

APPEARANCES:

Pele Bradford, Youngstown, Ohio, Pro Se Appellant.

Matthew S. Schmidt, Ross County Prosecuting Attorney, and Pamela C. Wells, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for Appellee.

McFarland, J.

{¶1} Pele Bradford appeals from the Ross County Common Pleas Court's denial of his motion to vacate his conviction for escape, a charge which he pleaded guilty to on October 16, 2007, and from which he filed no direct appeal. Now, on appeal, Appellant contends that the trial court erred when it denied his motion to vacate. Because Appellant's subject-matter jurisdiction argument on appeal is based on the premise that his underlying Hamilton County aggravated murder conviction and sentence are void, and because this Court has previously held that his conviction and sentence are

not void, any issue as to the voidness or validity of that conviction and sentence is barred by the doctrine of res judicata. Accordingly, Appellant's sole assignment of error is without merit and the judgment of the trial court is affirmed.

FACTS

{¶2} In light of the extremely limited record presently before us on appeal, we adopt the majority of the facts and procedural history of this case as delineated in a previous appeal of this matter. In *State v. Bradford*, 2017-Ohio-3003, -- N.E.3d --, ¶ 3-7 (4th Dist.), this Court observed, in pertinent part, as follows:

“On January 9, 2004, Appellant, Pele K. Bradford, was indicted by a Hamilton County, Ohio, grand jury on one count of aggravated murder, in violation of R.C. 2903.01(A), and one count of having weapons while under disability, in violation of R.C. 2923.13(A)(3). A review of the Hamilton County online docket indicates that the indictment was later amended on February 10, 2004; however, the substance of the amendment is not available on the online docket.¹ Appellant was subsequently

¹ Appellant has requested that we take judicial notice of the court proceedings and filings in the Hamilton County case related to his aggravated murder conviction, which form the basis of his later charge of escape, to which he pleaded guilty in the Ross County Court of Common Pleas. “Both trial courts and appellate courts can take judicial notice of filings readily accessible from a court's website.” *State v. Wright*, 4th Dist.

found guilty by a jury ‘of Aggravated Murder 2903.01(B) as charged in Count 1 of the Indictment.’ Both the verdict form and the jury trial transcript consistently reference that Appellant was found guilty of aggravated murder in violation of R.C. 2903.01(B). Appellant was also found guilty of count two as charged in the indictment. However, the judgment and sentencing entry filed by the trial court on June 8, 2004 states that Appellant was found guilty of ‘count 1; Aggravated Murder with Specifications # 1 and # 2, 2903–01A/ORCN, SF[,]’ and ‘count 2: Having Weapons While Under Disability, 2923–13A3/ORCN, F5[.]’²

The Hamilton County online docket indicates that Appellant filed a direct appeal from his convictions and sentences on June 18, 2004. In his appeal, he argued that his convictions were against the manifest weight of the evidence and the trial court erred in excluding a police report from evidence. Appellant did not raise any arguments claiming his

[Scioto Nos. 15CA3705 and 15CA3706, 2016-Ohio-7795, 2016 WL 6835304, fn. 3](#); citing *In re Helfrich*, 5th Dist. Licking No. 13CA20, 2014-Ohio-1933, 2014 WL 1875509, ¶ 35; *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, ¶ 8, 10 (court can take judicial notice of judicial opinions and public records accessible from the internet).

² Certified copies of the verdict form, excerpts from the trial transcript, and the sentencing entry from the Hamilton County case were all attached to Appellant's motion to withdraw guilty plea (of the escape conviction) that Appellant filed in the Ross County Court of Common Pleas, the denial of which he is currently appealing.

convictions or sentences were void or that the verdict form or sentencing entry cited the wrong subsection of the murder count. The First District Court of Appeals rejected both of Appellant's assignments of error and affirmed his convictions on May 6, 2005. *State v. Bradford*, 1st Dist. Hamilton No. C-040382, 2005-Ohio-2208, 2005 WL 1048506. Appellant went on to file multiple post-conviction petitions and motions for resentencing in the Hamilton County Court of Common Pleas, the substance of which we cannot discern from the online docket, but all of which have been denied.³

Appellant was subsequently arrested and charged with escape on February 5, 2006, 'after climbing the perimeter fence at Ross Correctional Institution' while he 'was serving a sentence for aggravated murder.' *State v. Bradford*, 4th Dist. Ross No. 08CA3053, 2009-Ohio-1864, 2009 WL 1065402, ¶ 2. As a result, Appellant was indicted for escape, in violation of R.C. 2921.34. *Id.* Appellant pleaded guilty to that charge on October 16, 2007, and did not file an appeal. However, on March 26, 2008, Appellant filed a petition for post-conviction

³ The Hamilton County Court Clerk's page does not permit viewing of the actual pleadings and documents filed, citing the fact that the "document may contain sensitive information."

relief in the Ross County Court of Common Pleas claiming he was not the actual defendant named in the indictment and that the trial court lacked jurisdiction over him. The petition was denied and Appellant filed an appeal in this Court from the denial. On April 10, 2009, this Court rejected Appellant's arguments and affirmed his conviction for escape. *Id.* at ¶ 20.

Subsequently, on March 25, 2015, Appellant filed an action in mandamus in the First District Court of Appeals, seeking a correction of the judgment entry for his conviction for aggravated murder. *State ex rel. Bradford v. Dinkelacker*, 146 Ohio St.3d 219, 2016-Ohio-2916, 54 N.E.3d 1216, ¶ 1. The First District Court dismissed the motion and Appellant then appealed the decision to the Supreme Court of Ohio. *Id.* at ¶ 3. In analyzing Appellant's argument, the Supreme Court noted that Appellant had been found guilty ‘ ‘ ‘of Aggravated Murder 2903.01(B) as charged in Count I of the Indictment[,]’ ’ ’ but also noted that ‘ ‘ ‘the court's journal entry stated “[a]ggravated Murder with Specifications # 1 and # 2, 2903–01A/ORCN, SF.” ’ ’ ’ The Supreme Court nevertheless affirmed the First

District's dismissal of Appellant's action in mandamus on May 12, 2016, reasoning as follows:

‘Bradford could have raised the mistake in the original journal entry as part of his direct appeal of his conviction. He also could have appealed Judge Dinkelacker's entry denying his motion to correct the judgment entry. He therefore had an adequate remedy in the ordinary course of the law.’ *Id.* at ¶ 6.

Nowhere in its decision did the Supreme Court state that Appellant's conviction or sentence was void as a result of the discrepancy between the verdict form and the sentencing entry.

Then, on October 22, 2015, six years after we affirmed his conviction for escape, Appellant filed a motion to withdraw his guilty plea to the escape charge in the Ross County Court of Common Pleas. In his motion he argued that his original murder conviction in Hamilton County was void because the verdict forms indicated he was found guilty of aggravated murder in violation of R.C. 2903.01(B), as charged in the indictment, but the trial court's sentencing entry stated he had been found guilty of a violation of R.C. 2903.01(A). Appellant

argued that because his underlying conviction and sentence were void, his conviction for escape was also void, because he was not under lawful detention at the time he was charged with escape. The trial court, however, denied the motion.”

{¶3} Appellant appealed the trial court's denial of his motion to withdraw his guilty plea to the escape charge to this Court arguing, among other things, that his Ross County escape conviction was void, because his underlying Hamilton County aggravated murder was void. However, this Court found no merit to Appellant's argument and affirmed the decision of the trial court. *Id.* at ¶ 23. Thereafter, on July 24, 2017, Appellant filed another motion in the Ross County Court of Common Pleas, this time asking the court to vacate his “void escape conviction” pursuant to this Court's most recent decision. Appellant further argued in his motion that the Hamilton County Court of Common Pleas lacked subject-matter jurisdiction under a R.C. 2903.01(A) indictment “to enter judgment upon a verdict convicting [him] of R.C. 2903.01(B) * * *.” The trial court again denied Appellant's motion. It is from the denial of this motion that Appellant now appeals, setting forth a single assignment of error for our review.

ASSIGNMENT OF ERROR

“I. THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO VACATE.”

ASSIGNMENT OF ERROR I

{¶4} In his sole assignment of error, Appellant contends the trial court erred when it denied his motion to vacate. A review of the record indicates that Appellant's most recent appeal stems from the Ross County Common Pleas Court's denial of his motion to vacate his escape conviction.

Appellant's motion to vacate was based upon the rationale that the Hamilton County Common Pleas Court lacked subject-matter jurisdiction over him when it convicted and sentenced him for aggravated murder in violation of R.C. 2903.01(B), when he was indicted for aggravated murder in violation of R.C. 2903.01(A) in Hamilton County Common Pleas Court Case No. B-0400169. He argues that his underlying aggravated murder sentence is void, he was not under lawful detention when he was charged with escape, and that his escape conviction is, therefore, also void and should be vacated. He contends that because he is challenging the Hamilton County Court's subject-matter jurisdiction, his claim is not barred by res judicata and can be raised at any time. We disagree.

{¶5} Initially, we note that once again, as was the case in Appellant's preceding appeal to this Court, Appellant has not provided us with a complete record. Not only has he not provided us with a complete record of his Ross County case involving his escape conviction which he seeks to

vacate, he has not provided us with a copy of the Hamilton County record related to his underlying aggravated murder conviction. “ ‘[I]t is the appellant's duty to transmit the [record] to the court of appeals. * * * This duty falls to the appellant because the appellant has the burden of establishing error in the trial court.’ ” *State v. Bailey*, 4th Dist. Scioto No. 09CA3287, 2010-Ohio-2239, ¶ 57; quoting *State v. Dalton*, 9th Dist. Lorain No. 09CA009589, 2009-Ohio-6910, ¶ 25; citing *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980) (internal citations omitted). Further, in the absence of a complete record, we must presume the regularity of the record. *Bailey, supra*.

{¶6} We also note that in Appellant's previous appeal of this matter to this Court we determined, based upon the very limited record before us and taking judicial notice of the limited information available on the online Hamilton County docket, that Appellant was originally indicted in Hamilton County for aggravated murder in violation of R.C. 2903.01(A). *State v. Bradford*, 2017-Ohio-3003, -- N.E.3d --, ¶ 3 (4th Dist.). We further determined Appellant was convicted by the jury, per the verdict forms, of a violation of R.C. 2903.01(B). *Id.* He was thereafter sentenced by the trial court for a violation of R.C. 2903.01(A). *Id.* Noting that the Hamilton County online docket indicated an amended indictment had been filed, we

presumed the regularity of the record and assumed that the indictment was amended from R.C. 2903.01(A) to (B), and that the verdict forms were correct. *Id.* at ¶ 21. Based upon this presumption, we held that the trial court's reference to R.C. 2903.01(A) in the sentencing entry was simply a clerical error that could be corrected by a nunc pro tunc order and that the error did not render Appellant's underlying conviction and sentence for aggravated murder void. *Id.* at ¶ 23.

{¶7} Thereafter Appellant filed a motion in the Ross County Court of Common Pleas alleging that his escape conviction should be vacated because the Hamilton County Court lacked subject-matter jurisdiction to convict and sentence him for what he again alleges is a void conviction for aggravated murder. Once again, he argues his aggravated murder conviction and sentence are void based upon the same argument he made in his preceding appeal to this Court. However, this Court already considered Appellant's voidness argument as it relates to his underlying Hamilton County aggravated murder conviction and rejected it. *Id.* Thus, to the extent Appellant's current argument that the Hamilton County Common Pleas Court lacked subject-matter jurisdiction to sentence him because his aggravated murder conviction was void, his argument is without merit. Further, we find the doctrine of res judicata is applicable.

{¶8} The doctrine of res judicata prevents an appellant from raising an issue that he could have raised, but did not, in a first appeal of right. *See State v. Lofton*, 4th Dist. Pickaway No. 13CA10, 2014-Ohio-1021, ¶ 8; citing *State v. Beach*, 4th Dist. Gallia No. 11CA4, 2012-Ohio-1630, ¶ 5, fn.2; *State v. Evans*, 4th Dist. Pickaway No. 09CA20, 2010-Ohio-5838, ¶ 12; *State v. Houser*, 4th Dist. Washington No. 03CA7, 2003-Ohio-6461, ¶ 8. Further, if an appellant actually raised an issue that an appellate court decided in a first appeal of right (or any other case involving the same appellant), res judicata likewise bars the issue from being raised and re-litigated yet again in a subsequent proceeding. *See State v. Thompson*, 4th Dist. Ross Nos. 09CA3129 & 09CA3131, 2011-Ohio-6616, ¶ 5; *State v. Paulsen*, 4th Dist. Hocking Nos. 09CA15 & 09CA16, 2010-Ohio-806, ¶ 14. Because this Court has already concluded Appellant's underlying aggravated murder conviction and sentence are not void, that issue is now res judicata and Appellant cannot continue to litigate the issue.

{¶9} Before concluding our analysis, however, we are mindful that in the very limited record before us, which simply contains Appellant's most recently filed motion to vacate and the denial thereof, a certified copy of the amended indictment from the Hamilton County case is attached as an exhibit to the motion. The contents of this amendment were not part of the record

during the previous appeal to this Court and as discussed above, in the absence of it we presumed that the R.C. 2903.01(A) charge was amended to a R.C. 2903.01(B) charge, which would explain why the jury verdict forms stated Appellant had been found guilty of R.C. 2903.01(B) instead of (A). Thus, we reasoned that the jury verdict forms were correct, and the trial court's entry contained a clerical error which could be corrected nunc pro tunc. However, after reviewing the amended indictment it is clear that only the date of the offense was amended, and not the statutory code section from (A) to (B), which means that the jury verdict forms contained an error, and the trial court's entry contained the correct reference to R.C. 2903.01(A). This results in a technically different error than we understood the case to be in our prior consideration of this matter.

{¶10} We further note that Appellant has not only been petitioning courts in this district for relief, he has filed multiple complaints in various districts putting forth a variety of theories that his underlying murder conviction is void.⁴ Of importance, just before our last decision was issued, the Supreme Court of Ohio issued a decision addressing Appellant's argument that he was entitled to a writ of mandamus ordering the Hamilton County Court “to vacate his [aggravated murder] sentence as void” and to

⁴ For instance, a Westlaw search reveals decisions issued by the First District Court of Appeals, the Tenth District Court of Appeals, and the Supreme Court of Ohio, all involving the same or similar issues as Appellant now raises on appeal.

resentence him “according to the verdict returned by the jury.” *State ex rel. Bradford v. Dinkelacker*, 149 Ohio St.3d 683, 2017-Ohio-1342, 77 N.E.3d 935, ¶ 2. The Court denied the writ, reasoning as follows with respect to Appellant's entitlement to a writ, and also regarding the subject matter jurisdiction of a court in relation to an alleged sentencing error:

“Bradford's mandamus claim asserts an error in sentencing. A sentencing error ‘does not patently and unambiguously divest the court or its judges of jurisdiction to enter judgment.’ *State ex rel. Pruitt v. Donnelly*, 129 Ohio St.3d 498, 2011-Ohio-4203, 954 N.E.2d 117, ¶ 2. ‘In the absence of a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party contesting that jurisdiction has an adequate remedy by appeal.’ *State ex rel. Plant v. Cosgrove*, 119 Ohio St.3d 264, 2008-Ohio-3838, 893 N.E.2d 485, ¶ 5.

In fact, in 2015, Bradford filed a ‘motion to correct the judgment entry pursuant to Criminal Rule 36,’ arguing that the trial court had violated his constitutional right to a jury trial ‘when it effectively “amended” the aggravated-murder verdict form by entering judgment convicting him under division (A),

rather than division (B)’ of R.C. 2903.01. *State v. Bradford*, 1st Dist. Hamilton No. C–150207, 2 (May 18, 2016).⁵ The trial court denied his motion. On appeal, the First District affirmed and held that while the verdict form was subject to correction under Crim.R. 36, ‘the trial court, when it entered judgment convicting Bradford under division (A) of the aggravated-murder statute, effectively made that correction’ and did not thereby abuse its discretion. *Id.*, citing *State v. Davie*, 80 Ohio St.3d 311, 686 N.E.2d 245 (1997) (holding that the trial court did not abuse its discretion in changing the wording in a verdict form after the jury was discharged when the change was not demonstrably prejudicial). [FN 1: ‘We also note that the applicable sentences for a conviction under R.C. 2903.01 are the same whether the conviction is under division (A) or (B). R.C. 2903.01(F) and 2929.02(A).’]

‘An appeal is generally considered an adequate remedy in the ordinary course of law sufficient to preclude a writ.’ *Shoop v. State*, 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 432, ¶ 8, citing *State ex rel. Pressley v. Indus. Comm.*,

⁵ Despite an exhaustive search we were unable to locate this appellate decision on Westlaw.

11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. Bradford had and has used an adequate remedy in the ordinary course of the law by way of his 2015 motion and his appeal of the denial of that motion. Therefore, the court of appeals correctly dismissed his petition for a writ of mandamus.” *Id.* at ¶ 3-5.

{¶11} Although we were unable to locate the First District Hamilton County case referenced in the above passage, the Supreme Court's explanation of the issues in that case are instructive to the issue presently before us involving the question of the Hamilton County Court's subject-matter jurisdiction. In light of the above reasoning, it is clear that a sentencing error involving the inclusion of an incorrect statutory reference in a jury verdict form is subject to correction at any time, even after the jury is discharged, provided the correction is not prejudicial, which in this case, it is not due to the fact the Appellant's sentence would have been the same under either the (A) or (B) portion of R.C. 2903.01. Here, as explained by the Supreme Court of Ohio, the trial court's reference to the correct statutory section, R.C. 2903.01(A) in the sentencing entry effectively corrected the error in the jury verdict form. Further, Appellant could have raised this issue on direct appeal from his aggravated murder conviction and sentence, but he

did not, and he raised the issue by a motion filed in the Hamilton County Court in 2015, which was denied. As such, and as noted above, the issue of the voidness or validity of Appellant's underlying aggravated murder conviction and sentence is *res judicata*.

{¶12} Appellant has also attempted to litigate this issue in the Tenth District Court of Appeals as noted in *State ex rel. Bradford v. Ohio Department of Rehabilitation and Correction*, 10th Dist. Franklin No. 16AP-750, 2017-Ohio-7300. In that case, Appellant filed an original action seeking a writ of mandamus ordering ODRC to correct its records, essentially to reflect that he was convicted and sentenced for a violation of R.C. 2903.01(B) rather than R.C. 2903.01(A) as stated in his sentencing entry. *Id.* at ¶ 1. Noting that Appellant had failed to raise the issue in his first, direct appeal from his aggravated murder conviction and that he also did not directly appeal the Hamilton County Common Pleas Court's denial of his motion to correct the judgment, the Tenth District denied Appellant's request, reasoning as follows:

“Because relator did not exhaust available legal remedies to correct the alleged error in the judgment of conviction, *the judgment entry of conviction is conclusive as to the offense for which appellant was convicted.* [*State ex rel. Bradford v.*

Dinkelacker, 146 Ohio St.3d 219, 2016-Ohio-2916; *Thompson v. Wing*, 70 Ohio St.3d 176, 637 N.E.2d 917 (1994)]. Because *the trial court judgment of conviction is no longer subject to correction*, relator does not have a clear right to the relief requested in his complaint, and DRC does not have a clear legal duty to ‘correct’ its record. Here, DRC's record is consistent with the final, unappealed judgment entries at issue.

Accordingly, the magistrate was correct in determining that nothing in the *Bradford* decision imposes a duty on DRC to correct its record regarding relator's conviction. We agree with the magistrate.” *Id.* at ¶ 11. (Emphasis added).

Thus, in the Tenth District's view, the Hamilton County Court of Common Pleas’ judgment convicting and sentencing Appellant of aggravated murder is no longer subject to correction and the judgment entry of conviction is conclusive as to the offense for which Appellant was convicted. Stated another way, Appellant's opportunity to argue any error, sentencing or otherwise, related to his aggravated murder conviction has long since passed and he cannot be permitted to continue to repeatedly litigate this issue in multiple forums.

{¶13} In light of these principles, to the extent Appellant argues his escape conviction must be vacated because his underlying aggravated murder conviction and sentence are void, it is without merit and barred by res judicata. Further, to the extent Appellant argues his escape conviction should be vacated because the Hamilton County Court lacked subject-matter jurisdiction to convict and sentence him for aggravated murder, the First District Court of Appeals and also the Supreme Court of Ohio have addressed this argument and found it to be without merit. Thus, because this particular issue has already been raised and rejected in this Court and other courts as well, it is barred by res judicata. Accordingly, we find no merit to Appellant's sole assignment of error and the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

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 BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal 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 expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Hoover, P.J. & Harsha, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland

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.