

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27480

Appellee

v.

GLENN D. ROBINSON

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 2003-01-0003

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 17, 2015

HENSAL, Presiding Judge.

{¶1} Glenn Robinson appeals an order of the Summit County Court of Common Pleas that denied his motion to resentence. For the following reasons, this Court affirms.

I.

{¶2} In April 2003, a jury found Mr. Robinson guilty of aggravated murder, murder, aggravated robbery, having weapons while under disability, and carrying a concealed weapon. Several of the offenses had firearm specifications. Mr. Robinson also pleaded guilty to one count of felonious assault. The trial court sentenced him to life imprisonment with parole eligibility after 38 years. On appeal, this Court determined that Mr. Robinson’s guilty plea was defective, but affirmed his other convictions and sentences.

{¶3} On remand, Mr. Robinson re-entered a guilty plea to the felonious assault count. He did not appeal his conviction or sentence for that offense. Since that time, however, Mr. Robinson has filed a number of post-judgment motions. Relevant to this appeal, in May 2014,

Mr. Robinson moved for resentencing as to one of the firearm specifications, arguing that the jury had not found him guilty of the specification because it wrote its finding on a “Special Interrogatory” instead of a verdict form. The trial court construed his motion as a successive petition for post-conviction relief and determined that it did not have authority to consider the motion under Revised Code Section 2953.23(A). It also found that his claims were barred under the doctrine of res judicata. Mr. Robinson has appealed, assigning five errors. We have rearranged the assignments of error for ease of consideration.

II.

ASSIGNMENT OF ERROR V

THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT WHEN IT CONSTRUED HIS MOTION TO RESENTENCE AS A PETITION FOR POST CONVICTION RELIEF AND FAILED TO CORRECT A VOID JUDGMENT THAT WAS FACIALLY EVIDENT ON THE RECORD.

{¶4} Mr. Robinson argues that the trial court incorrectly concluded that his motion for resentencing was a successive petition for post-conviction relief. According to him, the trial court’s judgment is void because there are no “verdict forms” for any of the firearm specifications for which he was sentenced. Mr. Robinson contends that a void judgment may be attacked in any proceeding at any time.

{¶5} Mr. Robinson has not directed this Court to any requirement that a jury’s findings appear on a specific “Verdict Form.” Although Criminal Rule 31(A) requires a verdict to be in writing, we have recognized that even that requirement “is procedural rather than substantive.” *State v. Hoffmeyer*, 9th Dist. Summit No. 27065, 2014-Ohio-3578, ¶ 42. The Ohio Supreme Court has held that “[j]ury verdicts in criminal cases are to have reasonable constructions and are not to be declared void unless from necessity originating in doubt of their import or

irresponsiveness to the issue submitted, or unless they show a manifest tendency to work injustice.” *State v. McNicol*, 143 Ohio St. 39 (1944), paragraph two of the syllabus. The jury interrogatories in this case leave no doubt that it found that Mr. Robinson had a firearm in his possession or under his control at the time he committed the charged offenses. Mr. Robinson, therefore, has not established that the trial court’s judgment entry is void. Upon review of the record, we conclude that the trial court did not err when it re-characterized Mr. Robinson’s motion for resentencing as a successive petition for post-conviction relief under Section 2953.21. *State v. Conley*, 9th Dist. Medina No. 05CA0057-M, 2005-Ohio-6218, ¶ 8-9. Mr. Robinson’s fifth assignment of error is overruled.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT BY NOT RESENTENCING AS TO THE GUN SPECIFICATION TO COUNT ONE OF THE INDICTMENT, AS THERE ARE NO SPECIFICATION VERDICT FORMS WHICH FIND APPELLANT GUILTY OF ANY FIREARM SPECIFICATION.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT WHEN IT FAILED TO REQUIRE THE JURY TO UNANIMOUSLY FIND APPELLANT GUILTY OF ANY FIREARM SPECIFICATIONS, ON ANY VERDICT FORMS, IN VIOLATION OF CRIM.R. 31, R.C. 2945.171, THE 5TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND STATE V. BAKER, 119 OHIO ST.3D 197.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT WHEN IT FAILED TO ACQUIT HIM OF HAVING WEAPONS WHILE UNDER DISABILITY CHARGE AFTER THE JURY RETURNED A VERDICT OF NOT GUILTY FOR THE CARRYING WEAPONS WHILE UNDER DISABILITY CHARGE THEREBY RENDERING THE SENTENCE IMPOSED ON THE HAVING WEAPONS WHILE UNDER THE DISABILITY CHARGE VOID AND IN VIOLATION

OF THE DUE PROCESS CLAUSES OF BOTH THE UNITED STATES AND OHIO CONSTITUTIONS.

ASSIGNMENT OF ERROR IV

APPELLATE COUNSEL'S PERFORMANCE WAS DEFICIENT BASED ON EVITTS V. LUCEY, 469 U.S. 387 AND INEFFECTIVE UNDER STRICKLAND V. WASHINGTON AND GUNNER V. WELCH.

{¶6} In his remaining assignments of error, Mr. Robinson presents the merits of his “verdict form” argument. He also argues that the jury’s finding that he was not guilty of a count of carrying a concealed weapon is inconsistent with its finding that he had a weapon while under disability. He further argues that his appellate counsel was ineffective for not raising those issues on direct appeal and for not telling him when the record was filed in his direct appeal, which started the 180-day clock for filing a timely petition for post-conviction relief.

{¶7} Because Mr. Robinson’s motion was a successive petition for post-conviction relief, the trial court did not have authority to consider the merits of his arguments. It also did not have authority to assess whether Mr. Robinson’s appellate counsel had been ineffective, as that is an issue that must be raised pursuant to Appellate Rule 26(B). *State v. Stekelenburg*, 9th Dist. Summit No. 24825, 2010-Ohio-219, ¶ 10. Mr. Robinson’s first, second, third, and fourth assignments of error are overruled.

III.

{¶8} The trial court correctly concluded that it did not have authority to consider the merits of Mr. Robinson’s motion to resentence. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

WHITMORE, J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

GLENN D. ROBINSON, pro so, Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.