

[Cite as *State v. Lowe*, 2015-Ohio-2625.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27611

Appellee

v.

DENNIS RAY LOWE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 02 09 2684

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

MOORE, Judge.

{¶1} Defendant-Appellant Dennis Ray Lowe appeals from the entry denying his motion for relief from judgment. We affirm.

I.

{¶2} In 2002, following a bench trial before a visiting judge, Mr. Lowe was found guilty of aggravated murder, attempted aggravated murder, and two accompanying firearm specifications. He was sentenced in January 2003. Since this Court affirmed his convictions in his direct appeal, *see State v. Lowe*, 9th Dist. Summit No. 21426, 2003-Ohio-6807, Mr. Lowe, acting pro se, has repeatedly challenged the validity of the assignment of the visiting judge to his case. Although he has not always framed the issues in the same manner, the issues he has raised ultimately relate back to his allegation that the visiting judge was not authorized to hear his case. Further, while Mr. Lowe has not always appealed the denial of his motions, on the two occasions he has done so, this Court has affirmed the trial court's denial of his motions. *See State v. Lowe*,

9th Dist. Summit No. 27199, 2014-Ohio-1817 and *State v. Lowe*, 9th Dist. Summit No. 25475, 2011-Ohio-3355.

{¶3} Most recently, in November 2014, Mr. Lowe filed a motion for relief from judgment arguing that he was entitled to relief because “there must be a journalized order on the Transcript of Docket and Journal Entries to show that Case No. CR-02-09-2684 was transferred from [the original judge] to [the visiting judge] and stat[i]ng a justifiable reason for the transfer.” The trial court denied his motion and Mr. Lowe has appealed, pro se, raising a single assignment of error for our review.

II.

ASSIGNMENT OF ERROR

STRUCTURAL ERROR WAS CREATED WHEN THE STATE FAILED TO: (1) JOURNALIZE REASON FOR TRANSFER OF JUDGE SPICER FOR CACIOPPO; (2) JOURNALIZE [MR. LOWE’S] CONSENT TO SUBSTITUTE CACIOPPO FOR SPICER; (3) JOURNALIZE CACIOPPO’S FAMIL[I]ARITY WITH [MR. LOWE’S] CASE; (4) JOURNALIZE ADMINISTRATIVE JUDGE’S REASSIGNMENT OF CACIOPPO; (5) JOURNALIZE APPOINTMENT OF CACIOPPO ON THE TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES.

{¶4} Mr. Lowe asserts that the trial court erred in failing to grant his motion for relief from judgment. He maintains that, because the record does not contain the five journalized orders listed above, the visiting judge lacked jurisdiction to hear his case. Thus, he argues that he was entitled to have his motion granted. We disagree, as Mr. Lowe’s arguments are barred by the doctrine of res judicata.

{¶5} We note that at least two of the items Mr. Lowe alleges should have been journalized, his consent to the substitution and the visiting judge’s familiarity with Mr. Lowe’s case, were not mentioned in his motion for relief for judgment, and, thus, could not form a basis

for the trial court's decision. Nonetheless, even if the trial court had considered all of the arguments now being made, they likewise would be barred by res judicata.

{¶6} While Mr. Lowe has framed his arguments slightly differently than he has done in the past, he again essentially challenges the authority of the visiting judge to preside over his case. We have previously concluded that any such arguments were barred by res judicata and did not render his conviction void. *See Lowe*, 2014-Ohio-1817, ¶ 7. We stated that, “[i]n a court that possesses subject-matter jurisdiction, procedural irregularities in the transfer of a case to a visiting judge affect the court’s jurisdiction over the particular case and render the judgment voidable, not void.” *Id.*, quoting *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, paragraph one of the syllabus. Given the foregoing, the trial court did not err in denying Mr. Lowe’s motion.

{¶7} Mr. Lowe’s assignment of error is overruled.

III.

{¶8} 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.

CARLA MOORE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

DENNIS RAY LOWE, pro se, Appellant.

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