

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-08-1407

Appellee

Trial Court No. CR0200603531

v.

William A. Travis

**DECISION AND JUDGMENT**

Appellant

Decided: June 30, 2009

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and Mark T. Herr,  
Assistant Prosecuting Attorney, for appellee.

William A. Travis, pro se.

\* \* \* \* \*

OSOWIK, J.

{¶ 1} This is a pro se accelerated appeal from a judgment of the Lucas County Court of Common Pleas that denied appellant's motion to withdraw his guilty plea. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth a single assignment of error:

{¶ 3} "The trial court committed an error of law by dismissing defendant-appellant's Motion to Withdraw Guilty Pleas(s) pursuant to Criminal Rule 32.1. (10/17/08 Entry.)"

{¶ 4} In October 2006, appellant was indicted for three separate robberies. On January 26, 2007, he entered guilty pleas to one count of aggravated robbery with a deadly weapon in violation of R.C. 2911.01(A)(1) and one count of robbery in violation of R.C. 2911.02(A)(2). On March 1, 2007, appellant was sentenced to serve a total of eight years incarceration.

{¶ 5} Appellant did not appeal his conviction. However, on August 22, 2008, he filed a pro se motion to withdraw his guilty pleas pursuant to Crim.R. 32.1. On October 17, 2008, the trial court denied appellant's motion, finding that the decision on which appellant based his argument (*State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624) did not apply to appellant's case.

{¶ 6} On appeal, appellant again bases his argument on *Colon*, supra ("*Colon I*"). Appellant argues that he should have been permitted to withdraw his guilty pleas pursuant to *Colon I* because the indictment in his case did not give him "real notice of the crimes against him." In *Colon I*, the Supreme Court concluded that an indictment charging a violation of R.C. 2911.01(A)(2) must contain the mens rea of "recklessly."

{¶ 7} The Supreme Court of Ohio clarified its decision in *Colon I* in *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749 ("*Colon II*"). In *Colon II*, the Supreme Court limited *Colon I* to those cases that were pending when it was decided on April 9,

2008. The court stated in *Colon II*, ¶ 3, that "*Colon I* is only prospective in nature, in accordance with our general policy that newly declared constitutional rules in criminal cases are applied prospectively, not retrospectively." Appellant was sentenced in this case on March 1, 2007. He did not file a timely appeal and, thus, his case could not be regarded as pending when *Colon I* was announced in April 2008. See *State v. Silsby*, 119 Ohio St.3d 370, 2008-Ohio-3834, ¶ 19.

{¶ 8} Based on the foregoing, the trial court did not err by finding appellant's reliance on *Colon I* to be misplaced and denying his motion to withdraw his guilty plea. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 9} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

\_\_\_\_\_  
JUDGE

Arlene Singer, J.

\_\_\_\_\_  
JUDGE

Thomas J. Osowik, J.

CONCUR.

\_\_\_\_\_  
JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
---