

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

State of Ohio

Court of Appeals No. H-09-015

Appellee

Trial Court No. CRI-99-685

v.

Lawrence Holder

DECISION AND JUDGMENT

Appellant

Decided: February 5, 2010

* * * * *

James J. Mayer, Jr., Richland County Prosecuting Attorney,
and Kirsten L. Pscholka-Gartner, Assistant Prosecuting Attorney,
for appellee.

Lawrence Holder, pro se.

* * * * *

COSME, J.

{¶ 1} This is an accelerated appeal from a judgment issued by the Huron County Court of Common Pleas denying appellant's motion for a new trial pursuant to *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624 ("*Colon I*"). Appellant, Lawrence Holder, was indicted and subsequently convicted on one count of aggravated murder with firearm

specification and one count of aggravated robbery with firearm specification. Appellant asserts that pursuant to *Colon I*, his indictment was defective because it did not state the culpable mental state of "knowingly" with regard to the possession of a weapon. Because *Colon I* only applies prospectively and was decided after appellant had exhausted all avenues of direct appeal, *Colon I* does not apply. This court, therefore, finds appellant's two assignments of error are not well-taken, and affirms the judgment of the Huron County Court of Common Pleas.

{¶ 2} The pertinent procedural history of this appeal begins in February 2002, when, on direct appeal, this court affirmed appellant's convictions. See *State v. Holder*, 6th Dist. No. H-00-006, 2002-Ohio-399. Appellant then filed two applications for delayed reopening, which were denied by this court in October 2003 and August 2005.

{¶ 3} Appellant then appealed the August 2005 Sixth District Court of Appeals' decision denying his application for delayed reopening, but the Supreme Court of Ohio dismissed his appeal in November 2005. See *State v. Holder*, 107 Ohio St.3d 1426, 2005-Ohio-6124. In January 2006, appellant requested a delayed appeal to the Supreme Court of Ohio of the initial February 2002 decision issued by this court. That application was denied and dismissed in March 2006. See *State v. Holder*, 108 Ohio St.3d 1486, 2006-Ohio-962.

{¶ 4} On June 19, 2009, appellant filed postconviction proceedings in the Huron County Court of Common Pleas, seeking a new trial. Appellant alleged that, based on *Colon I*, supra, his indictment for both aggravated murder and aggravated robbery was

defective for failing to state the requisite mental states. The trial court denied the motion and dismissed the postconviction application.

{¶ 5} Appellant now appeals that judgment, arguing two assignments of error, both based upon *Colon I*, supra. Appellant contends that the indictment should have been declared defective for failing to state the applicable mens rea and his convictions are void based upon a "structural error." We will address appellant's two assignments of error together.

{¶ 6} In *Colon I*, the Supreme Court of Ohio held that where an indictment fails to include a mens rea element of the crime, it is "structural error" and the defendant has not waived the defect in the indictment on appeal. *Colon I*, supra, at syllabus. In *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749 ("*Colon II*"), however, the Supreme Court of Ohio clarified its *Colon I* decision, stating that *Colon I* applies prospectively and only to those cases pending on appeal on the date *Colon I* was announced. Id. at ¶ 5. *Colon I* was announced on April 9, 2008.

{¶ 7} In this case, appellant had no appeal pending on the date *Colon I* was announced and he had exhausted his direct appeals. Thus, as we have previously held, pursuant to *Colon II*, *Colon I* is not applicable to his case. See *State v. Darden*, 6th Dist. No. E-09-030, 2010-Ohio-26; *State v. Travis*, 6th Dist. No. L-08-1407, 2009-Ohio-3194; *State v. Smith*, 6th Dist. Nos. L-08-1283, L-08-1286, L-08-1287, 2009-Ohio-1538; *State v. Diaz*, 6th Dist. Nos. L-08-1222, L-08-1252, 2008-Ohio-6389. Therefore, the trial court did not err in denying appellant's postconviction motion for a new trial.

{¶ 8} Accordingly, appellant's two assignments of error are not well-taken.

{¶ 9} The judgment of the Huron 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

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

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:
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