

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 16AP-160 (C.P.C. No. 13CR-2161)
Gregory Dodson,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 22, 2016

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Valerie Swanson*, for appellee.

On brief: *Gregory Dodson*, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, Gregory Dodson, appeals from a judgment of the Franklin County Court of Common Pleas denying his "Motion for Specific Performance and Request for an Evidentiary Hearing." For the following reasons, we affirm that judgment.

I. Factual and Procedural Background

{¶ 2} In 2013, appellant was indicted with one count of possession of cocaine in violation of R.C. 2925.11, a felony of the first degree. In 2014, he agreed to enter a guilty plea to a felony of the second-degree form of the same offense. The "Entry of Guilty Plea" form appellant signed notified him that the maximum prison term he could receive for the

offense was eight years and that the mandatory minimum prison term was two years. The section of the form that would indicate a jointly-recommended sentence states: "PSI. Defendant's Bond to be revoked as on 9 am on Tuesday, July 15 at which time he shall report to the Franklin County Correction Facility 370 South Front Street." Ultimately, the trial court accepted appellant's guilty plea, found him guilty, and sentenced him to a four-year prison term. Appellant did not appeal his conviction or sentence.

{¶ 3} In 2016, appellant filed his "Motion for Specific Performance and Request for Evidentiary Hearing." Appellant claimed that he entered his guilty plea in exchange for a jointly-recommended mandatory minimum prison sentence of two years. He argued that the state breached that agreement at his sentencing hearing when the prosecutor asked the trial court to impose a four-year prison sentence. As a result, he requested that the trial court enforce the terms of the plea agreement he thought he had entered into with the state. The trial court denied appellant's motion, in part on res judicata grounds, but also for his failure to substantiate his claims.

II. Appellant's Appeal

{¶ 4} Appellant appeals and assigns the following errors:

[1.] The trial court erred and abused its discretion by denying Defendant's clearly defined and marked "Motion for Specific Performance and Request for Evidentiary Hearing" which also compelled the preparation of complete transcripts from both the plea hearing and the sentencing hearing to aid the court in interpretation of agreement breached by prosecutor; when trial court misconstrued Motion as an untimely Petition for Postconviction relief under O.R.C. 2953.21. Here, the Plain Errors on the face of the record mandate that claims can be brought at any time, not just on direct appeal or collateral attack, and are not barred by res judicata. * * * In fact, the terms of the Joint Agreement were enforceable at any time.

[2.] The court should find that Defendant was denied due process and a fair trial pursuant to U.S. Const. Amend. V, VI, and XIV and Ohio Const. Art. 1, Sect. 10; due to ineffective assistance of trial counsel, for failure to object to State's breach of Agreement, and failure of trial court to hold an evidentiary hearing or, at least, order the preparation of complete transcripts from both the plea hearing and the sentencing hearing.

{¶ 5} Because appellant's two assignments of error collectively address the trial court's denial of his motion for specific performance of a plea agreement, we will address them together. Appellant argues that the trial court erred by denying his motion. We disagree.

{¶ 6} First, we note that the doctrine of res judicata bars the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, ¶ 59; *State v. McBride*, 10th Dist. No. 14AP-237, 2014-Ohio-5102, ¶ 6. Because appellant would have known that the state breached its agreement with him at his sentencing hearing, he could have brought such a claim in a direct appeal from his conviction and sentence. *State v. Walker*, 6th Dist. No. L-98-1210 (May 7, 1999) (raising claim that prosecutor breached plea agreement to recommend concurrent sentences in a direct appeal from conviction and sentence). Having failed to do so, res judicata would bar him from doing it now.

{¶ 7} Appellant's claim also fails on its merits. Specific performance may remedy the breach of a plea agreement. *State v. Schlichter*, 10th Dist. No. 14AP-1020, 2015-Ohio-5276, ¶ 13. In order to determine whether a party has breached a plea agreement, we must first identify the terms of the plea agreement. *Id.*; *State v. Fetty*, 11th Dist. No. 2010-P-0021, 2011-Ohio-3894, ¶ 21. Appellant's claim is premised on his belief that he entered into a plea agreement by which he agreed to plead guilty and the state agreed to recommend the mandatory minimum prison term of two years. This premise is not supported by the evidence.¹

{¶ 8} Appellant had the burden to establish the existence of a valid plea agreement and the prosecutor's failure to comply with its terms. *State v. Moody*, 8th Dist. No. 69822 (Dec. 12, 1996). Here, there is no written plea agreement in the record. The "Entry of Guilty Plea" form that appellant signed provides no indication of a plea agreement. *Fetty* at ¶ 23 (plea of guilty form made no mention of plea agreement between state and defendant). The form also states that no promises had been made to appellant to secure his guilty plea. *Id.* The only comment under the section indicating a joint recommendation on sentence was that a pre-sentence investigation ("PSI") would be

¹ Appellant has attached transcripts of his plea and sentencing hearings to his appellate brief. Those transcripts, however, were not presented to the trial court and, therefore, are not part of the record for this court to consider.

prepared. While the form does note that appellant faced a mandatory minimum prison sentence of two years for his offense, there is no evidence to support appellant's claim that the state agreed to jointly-recommend the mandatory minimum prison sentence of two years. Further, appellant attached to his motion a document he wrote to his former lawyer on August 20, 2014, nine days after his sentencing. Appellant wanted to know why his sentence was changed to a four-year mandatory term, because he thought "only 2 years of 4 were mandatory and I would be available for an early release." This comment regarding his sentence, written only days after his sentencing, refutes his current claim that he thought he was only going to receive the mandatory minimum two-year prison sentence. There is no evidence in the record to support appellant's claimed plea agreement.

{¶ 9} For these reasons, we overrule appellant's two assignments of error.

III. Conclusion

{¶ 10} The trial court did not err by denying appellant's "Motion for Specific Performance and Request for Evidentiary Hearing." Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and BRUNNER, JJ., concur.
