

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-02-034
	:	
- VS -	:	<u>O P I N I O N</u>
	:	12/12/2011
	:	
DAMON DODSON,	:	
	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. 2008-10-1756

Michael T. Gmoser, Butler County Prosecuting Attorney, Donald R. Caster, Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for plaintiff-appellee

Sarah Schregardus, 492 City Park Avenue, Columbus, Ohio 43215, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Damon Dodson, appeals from the Butler County Court of Common Pleas decision revoking his community control and sentencing him to serve three years in prison. For the reasons outlined below, we affirm.

{¶2} On October 15, 2008, appellant was indicted for one count of trafficking in marijuana in violation of R.C. 2925.03(A)(2) and one count of possession of marijuana in violation of R.C. 2925.11. Following a February 18, 2009 guilty plea, appellant was sentenced to five years of community control for both counts on April 10, 2009.

{¶3} On January 25, 2011, the trial court found appellant violated the terms of his probation and revoked appellant's community control. Consequently, appellant was sentenced to a total of three years in prison. However, the three-year prison term ordered in this case was to be served consecutively with his seven-year prison term in a previous case in which he was convicted on a separate count of trafficking in marijuana and one count of engaging in a pattern of corrupt activity in 2010.

{¶4} Appellant now appeals from his revocation of community control, raising one assignment of error for review.

{¶5} Assignment of Error No. 1:

{¶6} "THE TRIAL COURT ERRED WHEN IT FAILED TO MERGE [APPELLANT'S] CONVICTIONS."

{¶7} In his single assignment of error, appellant initially argues that the trial court erred by failing to merge his trafficking in marijuana and possession of marijuana convictions following his February 18, 2009 guilty plea. We disagree.

{¶8} The record indicates that following appellant's guilty plea to both trafficking in marijuana and possession of marijuana he was convicted and sentenced to five years of community control on April 10, 2009. There is no indication that appellant ever appealed from this entry of conviction. Appellant now seeks to challenge aspects of his conviction of trafficking in marijuana and possession of marijuana in an appeal from the revocation of his community control that could have been raised in a timely direct appeal from his judgment entry of conviction.

{¶9} Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction or on

an appeal from that judgment. *State v. Carter*, Clinton App. Nos. CA2010-07-012, CA2010-08-016, 2011-Ohio-414, ¶7; *State v. Perry* (1967), 10 Ohio St.2d 175, paragraph nine of the syllabus. In turn, the time to challenge a conviction based on allied offenses is through a direct appeal. *State v. Woods*, Cuyahoga App. No. 96487, 2011-Ohio-5825, ¶21; see *State v. Hobbs*, Lake App. No. 2010-L-064, 2011-Ohio-1298; see, also, *State v. Crutchfield*, Paulding App. Nos. 11-01-09, 11-01-10, 2002-Ohio-568. Accordingly, because appellant did not raise the issue of whether trafficking in marijuana and possession of marijuana are allied offenses of similar import in a timely direct appeal, we now find his challenge barred by res judicata. See *State v. Black*, Richland App. No. 08 CA 41, 2009-Ohio-3608; see, also, *State v. Harlow*, Union App. No. 14-04-23, 2005-Ohio-959. Appellant's first argument is overruled.

{¶10} Also under his single assignment of error, appellant argues that the trial court erred by failing to merge his trafficking in marijuana conviction in this case and his 2010 conviction for engaging in a pattern of corrupt activity. However, as addressed in *State v. Dodson*, Butler App. No. CA2010-08-191, 2011-Ohio-6222, we do not find the trial court erred in failing to merge the predicate offense of trafficking in marijuana and engaging in a pattern of corrupt activity. Accordingly, appellant's second argument is overruled.

{¶11} In light of the foregoing, we find the trial court did not err when it failed to merge appellant's convictions, and appellant's sole assignment of error is overruled.

{¶12} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.