

[Cite as *State v. Jackson*, 2009-Ohio-3293.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92013

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MAURICE JACKSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-307962

BEFORE: Kilbane, P.J., Stewart, J., and Jones, J.

RELEASED: July 2, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, Maurice Jackson (appellant), pro se, appeals his August 12, 1994 plea of guilt to robbery, in violation of R.C. 2911.02. After reviewing the pertinent law and facts, we affirm. The following facts give rise to this appeal.

{¶ 2} On March 29, 1994, the Cuyahoga County Grand jury charged appellant under a two-count indictment alleging aggravated robbery, in violation of R.C. 2911.01, and having a weapon while under disability, in violation of R.C. 2923.13, in Case No. CR-307962. Each offense carried a separate firearm specification.

{¶ 3} On August 2, 1994, the State deleted the firearm specification from the first count of the indictment, deleted the word “firearm” from the body of the indictment, amended the aggravated robbery charge to robbery, and entered a nolle prosequi on the second count of the indictment in exchange for appellant’s guilty plea and an agreed sentence.

{¶ 4} On August 12, 1994, the trial court imposed a sentence of 8 to 15 years of incarceration, then suspended the sentence and imposed two years of probation, to begin after appellant completed serving time for his prior convictions in cases CR-299472, CR-302462, and CR-310068.

{¶ 5} On June 19, 1997, appellant was released from incarceration and began serving the two years of probation imposed in the instant case. However, appellant soon violated his probation, thereby extending his sentence until June 21, 2001.

{¶ 6} On April 18, 2000, while still on probation, appellant was indicted in a new case, CR-390243, this time alleging rape, kidnapping, and gross sexual imposition.

{¶ 7} On September 20, 2000, appellant pled guilty to the amended charges of rape and kidnapping stemming from CR-390243, at which time he was also found to be in violation of his probation in CR-307962. At the hearing, the trial court modified appellant's original sentence in CR-307962 to 3 to 15 years, to be served consecutively with the 17-year sentence it imposed in CR-390243.

{¶ 8} After his conviction, appellant filed several pro se motions in which he sought to withdraw his plea in this case and other cases.

{¶ 9} On June 14, 2001, appellant filed a "motion to withdraw guilty plea and correct manifest injustice" in this case, Case No. 307962, which was denied by the trial court on July 17, 2001.

{¶ 10} On July 16, 2001, appellant filed an "amended motion to withdraw guilty pleas" in the instant case and in Case No. 390243, which was denied on July 24, 2001.

{¶ 11} On July 18, 2001, appellant filed an "amended motion to withdraw guilty pleas" in the instant case and in Case No. 390243, which was denied on August 10, 2008.

{¶ 12} On August 16, 2005, appellant filed a motion for leave to file a delayed appeal in this court, which was denied on September 16, 2005.

{¶ 13} On July 23, 2008, appellant filed a motion to withdraw guilty plea pursuant to Crim.R. 32.1, which was denied on August 1, 2008. This appeal followed.

{¶ 14} Appellant's sole assignment of error reads:

“Appellant’s constitutional right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and Article 1, Section 16 of the Ohio Constitution was violated when the prosecutor amended the indictment without first resubmitting the matter to the grand jury.”

{¶ 15} Although appellant argues that his Fourteenth Amendment rights were violated when the State allegedly amended the aggravated robbery indictment to robbery without first resubmitting the case to the Grand Jury, the thrust of appellant's argument is that the trial court erred by denying his third motion to withdraw guilty plea pursuant to Crim.R. 32.1.

{¶ 16} Crim.R. 32.1 governs motions to withdraw guilty pleas and states:

“A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.”

{¶ 17} Accordingly, a defendant who moves to withdraw a guilty plea after sentence has been imposed bears the additional burden of demonstrating manifest injustice. *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324. Manifest injustice is “a fundamental flaw in the path of justice so extraordinary that the

defendant could not have sought redress from the resulting prejudice through another form of application reasonably available to him or her.” *State v. Sneed*, Cuyahoga App. No. 80902, 2002-Ohio-6502. The Supreme Court has also defined manifest injustice as a clear or openly unjust act. See *State ex rel. Schneider v. Kreiner* (1998), 83 Ohio St.3d 203, 208, 1998-Ohio-271, 699 N.E.2d 83. This standard permits a defendant to withdraw his guilty plea only in extraordinary cases. *Smith* at 264.

{¶ 18} Ordinarily, we review a court’s denial of a postsentence motion to withdraw guilty plea as an abuse of discretion. *State v. Makupson*, Cuyahoga App. No. 89013, 2007-Ohio-5329. However, although appellant’s claims are the proper subject for a motion to withdraw a plea pursuant to Crim.R. 32.1, we find his claims are barred by the doctrine of res judicata.

{¶ 19} Under the doctrine of res judicata, a convicted defendant who was represented by counsel is barred from raising and litigating in any proceeding, except appeal from that judgment, any defense or claimed lack of due process that he raised or could have raised at trial. *State v. Szefcyk* (1996), 77 Ohio St.3d 93, 1996-Ohio-337, citing *State v. Perry* (1967), 10 Ohio St.2d 175.

{¶ 20} The Ohio Supreme Court has held that the doctrine of res judicata bars the assertion of any issue which was raised at trial or on appeal without resort to evidence dehors the record. *Perry*, supra; *State v. Cole* (1982), 2 Ohio St.3d 112. See, also, *Sneed*, supra, holding that because the issues raised by defendant’s fourth Ohio Crim.R. 32.1 postsentence motion to withdraw a guilty plea could have

been raised in a direct appeal or in defendant's initial postconviction motion, the claims were barred by res judicata; consequently, defendant's constitutional rights under the Fifth and Fourteen Amendments to the United States Constitution and Section 16, Article I of the Ohio Constitution were not violated by the trial court's denial of the motion.

{¶ 21} Because the trial court's denial of appellant's first two motions to withdraw his guilty plea was an adjudication on the merits of his claims and was based upon the same facts and sought the same relief as the instant motion, the trial court's denial of these motions operated under res judicata to bar the successive motions. See *State v. McDonald*, Lake App. No. 2003-L-155, 2004-Ohio-6332, at ¶ 22 . Under the circumstances, we construe the instant motion as a successive motion to withdraw appellant's guilty pleas under Crim.R. 32.1. Thus, appellant's motion is barred by res judicata.

Appellant's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
LARRY A. JONES, J., CONCUR