

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 107917
 v. :
 :
 MAURICE JACKSON, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 1, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-94-307962-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Frank Romeo Zeleznikar, Assistant Prosecuting Attorney, *for appellee*.

Maurice Jackson, *pro se*.

PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Maurice Jackson (“Jackson”) appeals *pro se* from the trial court’s denial of his motion to vacate void judgment regarding his sentence of two years of probation for a robbery conviction in 1994. Jackson assigns the following errors for our review:

- I. The trial court entered into a mutual mistake of law by placing the appellant on probation to a nonprobational offense thus, [sic] violating R.C. 2951.02(F)(3).
- II. The trial court sentenced the appellant to a crime not charged in the indictment, thus violating Cr.R. 7(D)[.]

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court's judgment. The apposite facts follow and are taken from *State v. Jackson*, 8th Dist. Cuyahoga No. 92013, 2009-Ohio-3293, in which this court affirmed the trial court's denial of one of Jackson's motions to withdraw his guilty plea regarding the same 1994 robbery:

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.

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.

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.

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.

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.

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.

Id. at ¶ 2-7.

{¶ 3} Jackson did not file a direct appeal from his conviction or sentence in the case at hand. Subsequently, however, he has filed several postconviction relief motions, all of which have been denied by the trial court. The instant appeal concerns Jackson's October 19, 2018 motion to vacate void judgment pursuant to Crim.R. 47. The trial court denied this motion on October 26, 2018. It is from this journal entry that Jackson appeals.

{¶ 4} Pursuant to Crim.R. 47, parties to a case are to request court orders by motion.

A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority, and may also be supported by an affidavit.

Id.

{¶ 5} Crim.R. 47 is not a tool that allows courts to vacate allegedly void judgments. Nonetheless, the gist of Jackson's argument is that the August 12, 1994 journal entry sentencing him to two years of probation is void for the following reasons: 1) his conviction was for a nonprobational offense under R.C. 2951.02(F)(3); and 2) it was error for him to be convicted of robbery, which is not a

lesser included offense of aggravated robbery, the crime for which he was indicted. Because these arguments could have been, but were not, raised on direct appeal, we are precluded from reviewing them under the doctrine of res judicata.

Postconviction relief proceedings in Ohio have historically been cognizable as quasi-civil. Thus, the doctrine of *res judicata* is applicable to postconviction relief proceedings. *State v. Perry* (1967), 10 Ohio St.2d 175 [226 N.E.2d 104], paragraph eight of the syllabus. Moreover, *res judicata* has been most recently utilized to justify dismissal of postconviction relief proceedings where the issue in question was never raised on direct appeal from the original judgment and sentence. *State v. Cole* (1982), 2 Ohio St.3d 112 [443 N.E.2d 169].

State v. Nichols, 11 Ohio St.3d 40, 41-42, 463 N.E.2d 375 (1984).

{¶ 6} There is no reason why Jackson could not have raised his arguments in a direct appeal of his 1994 conviction and probation sentence. Accordingly, pursuant to the doctrine of res judicata, both of his assigned errors are overruled. *See also* R.C. 2953.21(A)(2) (postconviction relief petitions “shall be filed no later than three hundred sixty-five days after the expiration of the time for filing the appeal”); R.C. 2953.23(A)(1) (“a court may not entertain a [postconviction relief] petition filed after the expiration of the period described in [R.C. 2953.21(A)(2)] unless * * * the petitioner was unavoidably prevented from discovery of * * * facts [and] but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted”).

{¶ 7} 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 is terminated. Case remanded to the trial court for execution of sentence.

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

PATRICIA ANN BLACKMON, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
LARRY A. JONES, SR., J., CONCUR