

[Cite as *State v. Stoudemire*, 2021-Ohio-1496.]

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 109254  
 v. :  
 :  
 MICHAEL J. STOUDEMIRE, :  
 :  
 Defendant-Appellant. :  
 :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**

**RELEASED AND JOURNALIZED: April 29, 2021**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-94-307920-ZA

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***Appearances:***

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

Cullen Sweeney, Cuyahoga County Public Defender, and John T. Martin, Assistant Public Defender, *for appellant*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant Michael Stoudemire (“Stoudemire”) seeks to appeal his 1994 convictions for aggravated murder with a three-year firearm

specification upon the trial court's limited order resentencing him, dated November 5, 2019. For the reasons set forth below, we affirm.

### **Facts and Procedural History**

{¶ 2} We have previously set forth the facts surrounding Stoudemire's convictions in *State v. Stoudemire*, 118 Ohio App.3d 752, 694 N.E.2d 86 (8th Dist.1997). For judicial clarity, the facts relevant to this appeal are briefly summarized as follows.

{¶ 3} Stoudemire's convictions resulted from an incident that occurred on February 18, 1994, and resulted in the death of Osceola Jones. Stoudemire's case was tried to a jury, and he was found guilty of one count of aggravated murder with a firearm specification in the death of Osceola Jones. The trial court sentenced Stoudemire to three years on the firearm specification to run consecutive to a sentence of life imprisonment. Stoudemire filed a direct appeal of his convictions. In that appeal, Stoudemire argued 1) there was insufficient evidence presented to support the convictions, 2) the state committed discovery violations, 3) improper jury instructions were given to the jury, and 4) his convictions were not supported by the greater weight of the evidence. This court affirmed Stoudemire's convictions in 1997. *Id.*

{¶ 4} On April 23, 2019, Stoudemire filed a pro se motion to vacate a void sentence. On September 16, 2019, the state filed a response asking the court to set a limited hearing for the purpose of correcting the sentence, arguing that

Stoudemire should have been sentenced to the three-year firearm specification consecutive to a sentence of 15 years to life with parole eligibility after 20 years.

{¶ 5} The trial court held a sentencing hearing on November 5, 2019, in which Stoudemire was sentenced to a three-year firearm specification consecutive to a sentence of 15 years to life with parole eligibility after 20 years. The court noted that the three-year term for the firearm specification had been served in its entirety. On December 2, 2019, Stoudemire filed an appeal of the trial court's limited decision amending his sentence.

### **Law and Argument**

{¶ 6} Stoudemire presents the following assignments of error:

#### **Assignment of Error I**

The trial court erred when it prohibited the defense from trying to establish the bias of the prosecution's witnesses via cross-examination regarding their illegal activities and bad acts committed individually and in concert with each other and with Osceola Jones.

#### **Assignment of Error II**

The jury instructions improperly relieved the state of Ohio of its burden of proof.

#### **Assignment of Error III**

The evidence was insufficient to establish that the defendant acted with prior calculation and design.

#### **Assignment of Error IV**

The verdict is against the manifest weight of the evidence.

{¶ 7} Stoudemire argues that his 1994 sentence was illegal and void. He argues that, as a result, the trial court did not sentence him in 1994, and this court

did not have jurisdiction to hear the subsequent appeal because such there was no final appealable order. He argues that his 2019 resentencing provides him an opportunity to relitigate the appeal of his conviction. He is mistaken.

{¶ 8} As the Ohio Supreme Court recently explained, “[a] sentence is void when a sentencing court lacks jurisdiction over the subject matter of the case or personal jurisdiction over the accused.” *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 42. “A void judgment has no legal force or effect, and any party whose rights are affected may challenge its invalidity at any time and any place.” *State v. Hairston*, 10th Dist. Franklin Nos. 07AP-160 and 07AP-161, 2007-Ohio-5928, ¶ 36, citing *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 33, (Lanzinger, J., concurring), quoting *Black’s Law Dictionary* 861 (8th Ed.2004).

{¶ 9} A sentence is voidable, not void, when the court has jurisdiction to act and may be successfully challenged on direct appeal. *Hairston* at ¶ 37, citing *Payne* at ¶ 27. “[A] voidable sentence is one that a court had jurisdiction to impose but was imposed irregularly or erroneously. A party challenges avoidable sentence in accordance with laws and principles of appellate procedure \* \* \* .” *Id.*, citing *Payne* at ¶ 22-30. “A judgment is not void if it is entered by a court with personal and subject-matter jurisdiction.” *State v. Hobbs*, 8th Dist. Cuyahoga No. 109706, 2021-Ohio-852, ¶ 8, citing *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, following *Harper* at ¶ 4-6 and 41.

{¶ 10} In the instant case, the trial court had subject-matter and personal jurisdiction over Stoudemire’s case. A common pleas court has subject-matter jurisdiction over felony cases. *State v. Goodwin*, 8th Dist. Cuyahoga No. 109352, 2020-Ohio-5187, ¶ 18, quoting *Smith v. Sheldon*, 157 Ohio St.3d 1, 2019-Ohio-1677, 131 N.E.3d 1, ¶ 8. Therefore, the error in Stoudemire’s sentence was avoidable, and the laws and principles of appellate procedure apply.

{¶ 11} As previously stated, Stoudemire is attempting to get another direct appeal. However, “[it] is well settled that the doctrine of res judicata bars claims that were raised or could have been raised on direct appeal.” *Goodwin* at ¶ 19. As noted, Stoudemire appealed his conviction in 1994 in *State v. Stoudemire*, 118 Ohio App.3d 752, 694 N.E.2d 86 (8th Dist.1997). He therefore is barred from raising any issues that he raised or could have raised in that appeal. For that reason, Stoudemire’s attempt to relitigate his direct appeal must fail.

{¶ 12} For the foregoing reason, we affirm the decision of the trial court and overrule Stoudemire’s assignments of error as barred by res judicata.

{¶ 13} 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 be sent to said court to carry this judgment into execution.

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

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EMANUELLA D. GROVES, JUDGE

MICHELLE J. SHEEHAN, P.J., and  
MARY EILEEN KILBANE, J., CONCUR