[Cite as *State v. Dudas*, 2010-Ohio-3253.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**PER CURIAM OPINION**
Plaintiff-Appellee,	:	**CASE NOS. 2009-L-072**
- vs -	:	**and 2009-L-073**
RONALD DUDAS,	:	
Defendant-Appellant.	:	

Criminal Appeals from the Court of Common Pleas, Case Nos. 06 CR 000560 and 06 CR 000700.

Judgment: Affirmed.

William D. Mason, Cuyahoga County Prosecutor, and *Daniel Kasaris*, Assistant Prosecutor, The Justice Center, 9th Floor, 1200 Ontario Street, Cleveland, OH 44113 (For Plaintiff-Appellee).

Ronald Dudas, pro se, Ross Correctional Institution, P.O. Box 7010, Chillicothe, OH 45601 (Appellant).

PER CURIAM

{¶1} Appellant, Ronald Dudas, appeals the judgment of the Lake County Court of Common Pleas denying his motion to void judgment and dismiss indictment. Appellant was convicted, following his guilty plea, of intimidation of and retaliation against a Cuyahoga County Common Pleas Court Judge, of intimidation of a police officer, and of engaging in a pattern of corrupt activity involving the theft of money and real estate from numerous victims. This is the tenth appeal appellant has filed following

the denial of his successive post-conviction motions by the trial court. At issue is whether appellant's present motion is barred by his guilty plea and res judicata. For the reasons that follow, we affirm.

{¶2} Appellant pled guilty in two cases that were consolidated in the trial court. After two days of jury trial in Case No. 06 CR 000560, "the murder conspiracy case," appellant pled guilty to four counts of intimidation of Detective Simon Cesareo of the North Olmsted Police Department and Cuyahoga County Common Pleas Judge David T. Matia and one count of retaliation against Judge Matia. In Case No. 06 CR 000700, "the corrupt activity case," appellant pled guilty to engaging in a pattern of corrupt activity, tampering with records, forgery, felony theft, uttering, securing writings by deception, and telecommunications fraud.

{¶3} In the murder conspiracy case, appellant hired a hit man to murder Judge Matia and to break Detective Cesareo's legs in retaliation for their roles in investigating and sentencing him in a prior felony theft case.

{¶4} In the corrupt activity case, appellant formed and carried on an enterprise for the ostensible purpose of providing loans to individuals in desperate financial straits, but with the true purpose of stealing their funds and real estate. He set up and operated mortgage companies to accomplish this purpose. Many of appellant's victims were near foreclosure, and he took advantage of their plight by stealing the last of their assets. Appellant created false loan applications and mortgages, using the name and credit of his victims to obtain loans from lenders. He then stole the proceeds from these loans. He also stole money and real estate from his victims. He stole in excess of one million dollars from multiple victims, driving many of them into financial ruin and/or bankruptcy.

The indictment listed 35 victims. Appellant stole more than $100,000 apiece from 14 separate victims.

{¶5} Following a sentencing hearing on December 1, 2006, in the murder conspiracy case, the court sentenced appellant on each of four counts of intimidation to five years, each term to run concurrently to the others. The court also sentenced him to five years on the retaliation count, to be served consecutively with the intimidation counts, for a total of ten years.

{¶6} In the corrupt activity case, the court sentenced appellant to ten years for engaging in a pattern of corrupt activity, five years for tampering with records, 18 months for forgery, one year for theft, 18 months for uttering, five years for securing writings by deception, and 18 months for telecommunications fraud. The prison terms imposed for forgery, theft, uttering, and telecommunications fraud were to be served concurrently to each other and concurrently to the terms imposed for engaging in a pattern of corrupt activity, tampering with records, and securing writings by deception. The terms for engaging in a pattern of corrupt activity, tampering with records, and securing writings by deception were to be served consecutively to each other, for a total of 20 years in prison, and consecutively to the prison term in the murder conspiracy case, for a total of 30 years in prison.

{¶7} Appellant appealed his conviction in *State v. Dudas*, 11th Dist. Nos. 2006-L-267 and 2006-L-268, 2007-Ohio-6739, discretionary appeal not allowed, 118 Ohio St.3d 1409, 2008-Ohio-2340 ("*Dudas I*"), and this court affirmed his conviction.

{¶8} Following appellant's conviction, he filed multiple pro se motions and appealed their denial by the trial court. In *State v. Dudas*, 11th Dist. No. 2007-L-074,

2007-Ohio-6731 ("*Dudas II*"), this court affirmed the trial court's denial of appellant's motion to require the state to return his laptop computer and his personal and business files, which he argued the state had seized in an unlawful search.

{¶9} In *State v. Dudas*, 11th Dist. Nos. 2007-L-140 and 2007-L-141, 2008-Ohio-3262 ("*Dudas III*"), this court affirmed the trial court's dismissal of appellant's petition for post conviction relief, which was based on the alleged ineffective assistance of his trial counsel.

{¶10} In *State v. Dudas*, 11th Dist. No. 2007-L-169, 2008-Ohio-3261 ("*Dudas IV*"), this court affirmed the trial court's denial of appellant's motion to compel two victims of his theft scheme to return his property

{¶11} In *State v. Dudas*, 11th Dist. Nos. 2007-L-170 and 2007-L-171, 2008-Ohio-3260 ("*Dudas V*"), this court affirmed the trial court's denial of appellant's Civ.R. 60 motion for relief from judgment.

{¶12} In *State v. Dudas*, 11th Dist. Nos. 2008-L-081 and 2008-L-082, 2008-Ohio-7043 ("*Dudas VI*"), this court affirmed the trial court's denial of appellant's motion to withdraw his guilty plea, which was also based on the alleged ineffective assistance of his trial counsel.

{¶13} In *State v. Dudas*, 11th Dist. Nos. 2007-L-189 and 2007-L-190, 2008-Ohio-6983 ("*Dudas VII*"), this court affirmed the trial court's denial of appellant's petition to return all seized contraband from law enforcement officials.

{¶14} In *State v. Dudas*, 11th Dist. Nos. 2008-L-078 and 2008-L-079, 2009-Ohio-1003 ("*Dudas VIII*"), this court affirmed the trial court's denial of appellant's post-

sentence request for production of documents pursuant to Civ.R. 34 and his "investigative demand against state."

{¶15} In *State v. Dudas*, 11th Dist. Nos. 2008-L-109 and 2008-L-110, 2009-Ohio-1001 ("*Dudas IX*"), this court affirmed the trial court's denial of appellant's motion to quash the indictment.

{¶16} In addition, by our judgment entry, dated June 3, 2008, we denied appellant's motion for reconsideration of this court's affirmance of his conviction in *Dudas I.*

{¶17} On May 5, 2009, two and one-half years after appellant was sentenced, he filed the instant motion to void judgment and dismiss indictment, which the trial court denied. In the instant case, soon to be known as *Dudas X*, appellant appeals the court's ruling, asserting six assignments of error. Virtually each assigned error is barred by res judicata and his guilty plea. Because appellant's first, second, and third assignments of error are interrelated, they shall be considered together. They allege:

{¶18} "[1.] The State of Ohio, its Prosecutors and Trial Counsel, allowed a 'RICO Charge' to be put on an indictment when there is no official RICO Act in Ohio. Since Corrupt Activity is the charge, all other charges fall under Corrupt Activity, as allied offenses of similar import.

{¶19} "[2.] Does Double Jeopardy attach to Appellants [sic] case, due to consecutive sentences, in order to dismiss indictment and void judgment?

{¶20} "[3.] The sentence should be void due to denial of Constitutional Rights and lack of jurisdiction."

{¶21} First, appellant argues the indictment in the corrupt activity case is defective because the prosecutor incorrectly captioned the second count as "conspiracy to engage in RICO." He argues the charge is incorrect because the state corrupt activity statute, unlike its federal counterpart, is not referred to as "RICO," i.e., "the racketeer influenced and corrupt organizations act." However, based on our review of the second count of the indictment, the term "RICO" does not appear in it. Instead, count two is correctly captioned, "conspiracy to engage in a pattern of corrupt activity." Appellant's argument is, therefore, not well taken.

{¶22} Next, appellant argues that because the predicate offenses of which he was convicted in the corrupt activity case are allied offenses to engaging in a pattern of corrupt activity, his conviction of the predicate offenses violates double jeopardy. This argument, however, is precluded by appellant's guilty plea.

{¶23} "Ohio courts have repeatedly upheld plea agreements that are knowingly, intelligently, and voluntarily entered into even if the defendant argues that his plea included allied offenses." *State v*. *Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059, at ¶33, citing *State v. Jackson*, 8th Dist. No. 86506, 2006-Ohio-3165, at ¶13; *State v. Stansell* (Apr. 20, 2000), 8th Dist. No. 75889, 2000 Ohio App. LEXIS 1726, *12-*13; *State v. Graham* (Sept. 30, 1998), 10th Dist. No. 97APA11-1524, 1998 Ohio App. LEXIS 4676, *9. "An agreement that is knowingly and voluntarily entered into by the defendant is sufficient to withstand any later attack even when the attack involves a plea to allied offenses." *State v. Styles* (Oct. 9, 1997), 8th Dist. No. 71052, 1997 Ohio App. LEXIS 4547, *8, citing *State v. Butts* (1996), 112 Ohio App. 3d 683.

{¶24} "'Therefore, the fact that [appellant's guilty] plea may have included allied offenses does not per se invalidate the plea.'" *Swank*, supra, at ¶34, quoting *Jackson*, supra, at ¶14. "'The plea can be invalidated only if the defendant can show that his plea was not made knowingly, intelligently, or voluntarily.'" *Swank*, supra, quoting *Jackson*, supra.

{¶25} In *Dudas VI*, we held that appellant's guilty plea was knowingly, intelligently, and voluntarily entered. Id. at ¶39-58. As a result, he is precluded from challenging his conviction on the ground that the offenses to which he pled guilty are allied offenses.

{¶26} Further, appellant's double jeopardy argument is barred by res judicata because he could have, but failed to raise it in the trial court or on direct appeal. *State v. Szefcyk*, 77 Ohio St.3d 93, 96, 1996-Ohio-337.

{¶27} In fact, appellant raised and we rejected his double jeopardy argument in *Dudas IX:* "*We therefore hold that RICO and the other offenses to which appellant pled guilty are offenses of dissimilar import. As a result, appellant's right to be free from double jeopardy was not violated by his conviction and sentence*." (Emphasis added.) Id. at ¶50.

{¶28} Thus, our holding in *Dudas IX* is dispositive of appellant's double jeopardy argument.

{¶29} Next, appellant argues the indictment did not include all the essential elements of the offenses charged in the indictment. However, he fails to specify which offenses suffer from this infirmity or which elements are lacking. Appellant's argument is therefore not well taken. See *Dudas IX* at ¶42.

{¶30} Next, appellant argues the prosecutor's use of the term "RICO" in count two resulted in structural error, requiring a finding of per se prejudice. However, since "RICO" is not mentioned in count two, as noted above, this argument is not well taken. In any event, as we held in *Dudas IX*: "*** [A]ppellant's suggestion that structural error was committed is precluded since his conviction is based on a guilty plea. See *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624." *Dudas IX* at ¶43.

{¶31} Appellant's first, second, and third assignments of error are overruled.

{¶32} Appellant's fourth and fifth assignments of error are also interrelated and for this reason, they shall be considered together. They allege:

{¶33} "[4.] Counsel was ineffective for not objecting to Double Jeopardy.

{¶34} "[5.] Res judicata does not apply where there is plain error at the trial court."

{¶35} Once again, appellant argues his trial counsel was ineffective. This time he claims his attorney was deficient in not challenging the indictment on double-jeopardy grounds. However, because we hold that appellant was barred by his guilty plea and res judicata from asserting a double jeopardy violation, he could not have been prejudiced by any failure of his trial counsel to challenge his conviction on this ground. For this reason alone, these assignments of error lack merit.

{¶36} Further, since appellant could have asserted this ineffective assistance claim during his guilty plea and sentencing hearings and on direct appeal, but failed to do so, his argument is barred by res judicata. In addition, because he previously asserted an ineffective assistance claim in *Dudas VI* and in *Dudas VIII*, he could have raised this argument in either of those appeals, but failed to do so. For this additional

reason, his argument is barred by res judicata. However, even if the argument was not barred by res judicata, it would lack merit. In *Dudas VI*, this court held:

{¶37} "*** In the context of a guilty plea, the standard of review for ineffective assistance of counsel is whether: (1) counsel's performance was deficient; and (2) the defendant was prejudiced by the deficient performance in that there is a reasonable probability that, but for counsel's error, the defendant would not have pled guilty. *State v. Madeline*, 11th Dist. No. 2000-T-0156, 2002-Ohio-1332, 2002 Ohio App. LEXIS 1348, *9, citing *Hill v. Lockhart* (1985), 474 U.S. 52. The burden of proving ineffective assistance of counsel falls upon the defendant. *Madeline* at *10.

{¶38} "***

{¶39} "Based on our thorough and complete review of the record, the trial court scrupulously complied with Crim.R.11(C), and the record demonstrates appellant's guilty plea was entered voluntarily. Further, there is no evidence or affidavits showing trial counsel was deficient or that their representation induced appellant's guilty plea."

{¶40} "***

{¶41} "In summary, there is no evidence trial counsel was deficient and we therefore cannot conclude that counsel's performance fell below an objective standard of reasonableness. Further, appellant *** admitted he understood the terms of the plea bargain and, when asked by the court, stated that his attorneys had done everything he had asked them to do and that he was completely satisfied with their representation. We therefore cannot conclude that appellant was prejudiced by any alleged deficient conduct on the part of his counsel. Finally, there is no evidence in the record that any

alleged deficiencies of trial counsel induced appellant to enter his guilty plea." (Emphasis sic.) *Dudas VI* at ¶27-58, 68.

{¶42} Likewise, here, there is no evidence trial counsel's performance was deficient or that appellant suffered any prejudice. Appellant pled guilty and failed to present any evidence that, but for the alleged deficient performance of his trial counsel, he would not have entered his guilty plea.

{¶43} Next, appellant argues that his counsel's failure to assert his double jeopardy argument amounted to plain error. We do not agree. In *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, the Supreme Court of Ohio held there are three limits placed on reviewing courts for correcting plain error:

{¶44} "'First, there must be an error, i.e., a deviation from the legal rule. *** Second, the error must be plain. To be "plain" within the meaning of Crim.R. 52(B), an error must be an "obvious" defect in the trial proceedings. *** Third, the error must have affected "substantial rights." We have interpreted this aspect of the rule to mean that the trial court's error must have affected the outcome of the trial.' *State v. Barnes* (2002), 94 Ohio St.3d 21, 27, 2002-Ohio-68. Courts are to notice plain error 'only to prevent a manifest miscarriage of justice.' *State v. Long* (1978), 53 Ohio St.2d 91, paragraph three of the syllabus.

{¶45} "The burden of demonstrating plain error is on the party asserting it. See, e.g., *State v. Jester* (1987), 32 Ohio St.3d 147, 150. A reversal is warranted if the party can prove that the outcome 'would have been different absent the error.' *State v. Hill* (2001), 92 Ohio St.3d 191, 203, 2001-Ohio-141." *Payne*, supra, at 505.

{¶46} Even if appellant's trial counsel erred in not raising a double jeopardy challenge below, the error did not amount to plain error for two reasons. First, appellant admitted he had defrauded his victims and, at his sentencing, he told the court he would serve any sentence the court imposed, whether it was one or 100 years, because he owed it to his victims. Second, as noted above, there is no evidence in the record that, but for his counsel's alleged error, he would not have pled guilty.

{¶47} Appellant's fourth and fifth assignments of error are overruled.

{¶48} For his sixth assignment of error, appellant contends:

{¶49} "When charged offense [sic] results in the forfeiture of property, the indictment has to allege the extent of the interest of property subject to forfeiture."

{¶50} Appellant does not cite any authority or present any argument in support of this assigned error, in violation of App.R. 16. His assigned error thus lacks merit.

{¶51} Appellant's sixth assignment of error is overruled.

{¶52} For the reasons stated in the Per Curiam Opinion of this court, the assignments of error are without merit. It is the judgment and order of this court that the judgment of the Lake County Court of Common Pleas is affirmed.

MARY JANE TRAPP, P.J., CYNTHIA WESTCOTT RICE, J., TIMOTHY P. CANNON, J., concur.