

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	PER CURIAM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-L-002
RONALD DUDAS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 06 CR 000560.

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 (For Appellant).

PER CURIAM

{¶1} Appellant, Ronald Dudas, appeals the judgment of the Lake County Court of Common Pleas denying his second motion to withdraw his guilty plea. Appellant was convicted, following his guilty plea, of intimidation of and retaliation against a Cuyahoga County Common Pleas Court Judge, intimidation of a police officer, and engaging in a pattern of corrupt activity involving the theft of money and real estate from numerous

victims. This is the eleventh 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 res judicata. For the reasons that follow, we affirm.

{¶2} On October 19, 2006, 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 filed a direct appeal and this court affirmed 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*”).

{¶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.

{¶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 first motion to withdraw his guilty plea.

{¶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 *State v. Dudas*, 11th Dist. Nos. 2009-L-072 and 2009-L-073, 2010-Ohio-3253 (“*Dudas X*”), this court affirmed the trial court’s denial of appellant’s motion to void judgment and dismiss indictment, in which he argued his conviction violated double jeopardy.

{¶17} 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*.

{¶18} On October 28, 2009, nearly three years after appellant was sentenced, he filed his second motion to withdraw his guilty plea, which the trial court denied. Appellant now appeals the trial court’s ruling, asserting the following as his sole assignment of error:

{¶19} “The trial court abused it’s [sic] discretion by denying defendant’s motion to withdraw his plea in violation of his due process rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Sections 10 and 16, Article 1 of the Ohio Constitution.”

{¶20} Appellant argues the trial court abused its discretion by denying his second motion to withdraw his guilty plea because, he claims, he has new evidence of tampering with evidence, theft of files, fraud on the court, entrapment and prosecutorial misconduct. He does not, however, reference the evidence on which he relies. For this reason alone, his argument lacks merit. App.R. 16(A)(7). In any event, we note that in

Dudas VI, appellant's appeal of the trial court's denial of his first motion to withdraw his guilty plea, appellant made virtually the same argument. We stated in that case: “*** [A]ppellant argues the trial court abused its discretion in denying his motion to withdraw his guilty plea because he has established manifest injustice in that ‘[t]here is fraud on the Court, false testimony, entrapment by State officials, perjury,’ and because the court erred in failing to conduct an evidentiary hearing. We do not agree.” *Id.* at ¶35. Further, based on our review of the record, appellant was aware of the evidence filed in support of his present motion to withdraw at the time he pled guilty. By failing to raise this argument in the trial court or on direct appeal, it is also barred by *res judicata*. *State v. Szefcyk*, 77 Ohio St.3d 93, 96, 1996-Ohio-337.

{¶21} Next, appellant argues he should have been permitted to withdraw his guilty plea because, if his attorney had shown him and discussed with him his presentence report, he “may” have been able to challenge it. First, appellant's failure to outline any basis for a challenge to his presentence report is fatal to his argument. In any event, appellant was aware of this argument at the time of his sentence. By failing to raise this objection at that time or in his direct appeal, the argument is also barred by *res judicata*. Appellant's reference to Fed.R.Crim.Proc. 32 is inapposite as it does not apply in state trials.

{¶22} Appellant once again argues his plea was induced by his trial counsel's erroneous advice and was therefore involuntary. However, appellant fails to prove what that advice was or how he was prejudiced thereby, and for this reason alone, his argument lacks merit. Moreover, in *Dudas VI*, this court overruled appellant's ineffective-assistance claim, holding that appellant had failed to demonstrate that any of

his counsel's alleged deficiencies affected the voluntary nature of his guilty plea. *Id.* at ¶60. This court also held that there was no evidence that his counsel had given him incorrect advice or that it had played any part in inducing his guilty plea. *Id.* at ¶61. We further held: "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." *Id.* at ¶58. This argument is therefore likewise barred by *res judicata*.

{¶23} Appellant argues, once again, that the note of Robert Harmon, his fellow inmate at the Cuyahoga County Jail, is new evidence entitling him to withdraw his guilty plea. While Harmon and appellant were fellow inmates at the Cuyahoga County Jail, appellant went into Harmon's cell and found a prescription for Harmon's medication. On the back of the prescription, appellant wrote a note stating that he, referring to himself as Harmon, had set up appellant, and signed it forging Harmon's signature. The Lake County Crime Lab concluded that appellant had actually written this note and forged Harmon's signature. Appellant argues that, in light of Harmon's note, the trial court should have allowed him to withdraw his guilty plea. However, appellant was aware of the Harmon note and the Lake County Crime Lab's report prior to entering his guilty plea. Further, he raised this same argument in *Dudas III*, his appeal of the trial court's denial of his motion for post conviction relief. The following holding in *Dudas III* is pertinent here: "*** [B]ased on the record ***, appellant was aware of his claim[] based on set up *** long before he entered his guilty plea. He failed to assert [it] in trial or on the direct appeal of his conviction. As a result, these issues are barred by *res judicata*." *Id.* at ¶72.

{¶24} Finally, appellant argues the state unlawfully seized his files in an illegal search and indicted him based on information contained in those files. In *Dudas II*, we held: “By entering his plea of guilty, appellant waived the right to challenge in subsequent proceedings the legality of a search and seizure.” *Dudas II* at ¶10. Further, in *Dudas III*, we held that appellant was aware of this claim before he pled guilty. *Id.* at ¶72. He also asserted it in *Dudas II*, *Dudas IV*, and *Dudas VII*. It is therefore additionally barred by *res judicata*.

{¶25} We therefore hold the trial court did not abuse its discretion in denying appellant’s second motion to withdraw his guilty plea.

{¶26} For the reasons stated in the Per Curiam Opinion of this court, the assignment of error is not well taken. 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.