

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

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-P-0067
MICHAEL R. CLAPPER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2008 CR 0029.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Michel R. Clapper, pro se, PID: 55581-060, Federal Correctional Institution – Elkton, P.O. Box 10, Lisbon, OH 44432 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Michael R. Clapper, appeals the judgment of the Portage County Court of Common Pleas denying his pro se motion for sentencing relief. For the reasons that follow, the judgment is affirmed.

{¶2} A five-count indictment was filed against appellant in the Portage County Court of Common Pleas, charging him with aggravated trafficking in drugs in violation of R.C. 2925.03(A)(C)(1)(a). Appellant entered a plea of guilty to three counts of the indictment, while the state entered a nolle prosequi on the remaining two counts. At the

time of sentencing, appellant was serving a prison term in federal court. Appellant was ordered to serve his state sentence of six months consecutive to his federal sentence.

{¶3} On July 12, 2011, appellant filed a “petition for relief due to undue hardship,” requesting that the trial court reduce the duration of his prison term by issuing a nunc pro tunc entry altering his sentences so that they instead run concurrently rather than consecutively. Appellant argued in his motion that his sentences should be changed because his mother and father need him for support. Appellant explained that his father’s leg had succumbed to diabetes and his friends were no longer able to help his struggling family. An affidavit from appellant’s mother was attached in support verifying the hard times.

{¶4} Appellant, pro se, now timely appeals and raises four “issues” under a single “assignment of error” heading. App.R. 16(A)(3) and Loc.R. 16(C)(1) mandate that an appellant’s brief must contain assignments of error presented for review with reference to the place in the record where each error is reflected. Appellant’s “issues” state:

{¶5} [1.] Can a State sentence overrule the conditions of a federal sentence, when the state sentence does not allow the federal sentence to be fulfilled?

{¶6} [2.] Did the Court of Common Pleas maintain jurisdiction over the Defendant in sentencing him while he was serving a federal sentence?

{¶7} [3.] Did the Court of Common Pleas comply with its own Order and Journal Entry in sentencing the Defendant?

{¶8} [4.] Should Defendant’s sentence been concurrent [sic] with both federal and state sentences since both were relevant to each other in criminal activity and time period? (Emphasis deleted.)

{¶9} Even construing these issues as assignments of error, appellant’s arguments are either groundless or barred by res judicata.

{¶10} Appellant’s second argument states the court “lacked jurisdiction” because the state failed to comply with 18 U.S.C. § 3623. However, that section of the United States Code provides the procedure by which to transfer a prisoner to state authority after the completion of a federal sentence and has nothing to do with the jurisdiction of a court. The trial court had jurisdiction in this case—an indictment was issued in the Portage County Court of Common Pleas naming appellant and alleging drug trafficking in Portage County, Ohio. Merely because appellant was incarcerated in a federal facility at the time of his sentencing in state court does not mean the trial court did not have jurisdiction to sentence him.

{¶11} Appellant’s first, third, and fourth arguments are barred by res judicata. “[A]ny issues that were raised or could have been raised by a defendant at the trial court level or on direct appeal are res judicata and not subject to review in subsequent proceedings.” *State v. Lintz*, 11th Dist. No. 2010-L-067, 2011-Ohio-6511, ¶36, citing *State v. Perry*, 10 Ohio St.2d 175 (1967). The doctrine “bars not only subsequent actions involving the same legal theory of recovery as the previous action, but also claims which could have been litigated in the previous action[.]” (Emphasis deleted.) *State v. Robinson*, 8th Dist. No. 85266, 2005-Ohio-4154, ¶8, citing *Grava v. Parkman Township*, 73 Ohio St.3d 379, 381.

{¶12} Here, appellant is attempting to use the denial of his motion for sentencing relief to raise issues that should have been raised on a direct appeal or at an earlier date. Appellant's remaining arguments do not stem from the trial court's denial of his pro se motion for relief due to undue hardship that was to be the subject of this appeal. Instead, appellant's arguments stem from the trial court's February 3, 2009 sentencing order, the trial court's April 15, 2009 order denying his motion to have his sentences run concurrently, the trial court's May 22, 2009 order denying his motion to reconsider sentence, and the trial court's January 28, 2010 order denying his motion to modify his sentence. Appellant cannot collaterally attack these earlier judgments through the denial of the present motion.

{¶13} Thus, appellant's "assignments of error" are without merit. The judgment of the Portage County Court of Common Pleas is affirmed.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.