

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

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-L-031
JASON FERGUSON,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 01 CR 000087.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Karen A. Sheppert*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077. (For Plaintiff-Appellee).

Jason Ferguson, pro se, PID: A408-970, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030. (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Jason Ferguson, acting pro se, appeals the judgment of the Lake County Court of Common Pleas denying his “Motion to Vacate Void Judgment and Sentence.” This is appellant’s second appeal following his 2001 conviction of aggravated murder in a jury trial. Appellant now challenges certain alleged irregularities in the jury verdict form. At issue is whether this appeal is barred by res judicata. For the reasons that follow, we hold that it is and affirm.

{¶2} On February 23, 2001, appellant was indicted for one count of aggravated murder and one count of murder, with a firearm specification included in each count. Appellant pled not guilty and the case was tried to a jury. Following the trial, on July 11, 2001, the jury returned a verdict finding appellant guilty of both counts and specifications.

{¶3} At appellant's sentencing on August 22, 2001, the trial court merged the two counts for purposes of sentencing and sentenced appellant for aggravated murder to life in prison with parole eligibility after serving 20 years. It also ordered that appellant serve an additional mandatory term of three years on the firearm specification, which was to be served prior and consecutive to the life sentence.

{¶4} Appellant filed a direct appeal of his conviction. On June 6, 2003, this court affirmed appellant's conviction in *State v. Ferguson*, 11th Dist. Lake No. 2001-L-170, *appeal denied by the Ohio Supreme Court at 100 Ohio St.3d 1425, 2003-Ohio-5232*.

{¶5} Twelve years later, on January 5, 2015, appellant filed a motion to vacate his sentence. The state opposed the motion. The trial court denied appellant's motion, finding it was barred by res judicata.

{¶6} Appellant now appeals the trial court's denial of his motion to vacate his sentence, asserting two assignments of error. Because they are related, they shall be considered together. They allege:

{¶7} “[1.] The trial court erred in amending the verdict form of the jury from murder, in violation of R.C. 2903.02 to aggravated murder, in violation of R.C. 2903.01.

{¶8} “[2.] The trial court erred in accepting a jury verdict where all twelve jurors did not make a unanimous finding on the aggravated murder charge.”

{¶9} Appellant argues the trial court erred in amending the jury's verdict form from murder to aggravated murder. He also argues the court erred in accepting the jury's verdict, although the jury's finding on the aggravated murder charge was allegedly not signed by all twelve jurors. Thus, both of appellant's assigned errors challenge the adequacy of the verdict. However, appellant could have raised these issues upon the jury's returning its verdict, at his sentencing, or in his direct appeal. Because he failed to do so, his appeal is barred by res judicata.

{¶10} In the context of criminal cases, "a convicted defendant is precluded under the doctrine of res judicata from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on appeal from that judgment." *State v. Szefcyk*, 77 Ohio St.3d 93, 96 (1996).

{¶11} Further, this court has held that failure to raise issues regarding the jury verdict forms at the trial court level or on direct appeal results in res judicata where such issues are raised for the first time subsequent to a direct appeal. In *State v. Garner*, 11th Dist. Lake No. 2010-L-111, 2011-Ohio-3426, this court held, "where the appellant filed and argued a direct appeal but did not raise any arguments * * * related to the inadequacy of the jury verdict form, res judicata applies to subsequent appeals." *Id.* at ¶23, citing *State v. Evans*, 9th Dist. Wayne No. 10CA0027, 2011-Ohio-1449, at ¶9 ("because Evans could have raised issues related to the jury verdict forms in his direct appeal, he is foreclosed from raising the issue at this time.").

{¶12} Since appellant failed to raise either of his arguments regarding the jury verdict form in his direct appeal, the arguments are barred by res judicata.

{¶13} In any event, even if appellant's arguments were not barred by res judicata, they would lack merit. First, with respect to appellant's argument that the trial court erred in amending the jury's verdict form from murder to aggravated murder, he does not reference the record in support of this argument. Further, our review of the record does not reveal that the court ever amended the verdict form in this regard. Appellant appears to be confusing amendment of the verdict with the court's merger of the two counts and then sentencing him on the aggravated murder count. In fact, appellant argues, "the court amended the verdict after the jury had been discharged, in effect, by sentencing defendant for aggravated murder." Thus, the court did not amend the jury's verdict form.

{¶14} In addition, appellant argues his sentence is void because the jury's verdict form did not comply with Crim.R. 31(A). That rule provides: "The verdict shall be unanimous. It shall be in writing, signed by all jurors concurring therein, and returned by the jury to the judge in open court." The verdict complied with each requirement of Rule 31(A). Appellant argues the verdict form was insufficient because it did not contain a separate set of signatures for its finding on Count 1, aggravated murder with the firearm specification. We do not agree.

{¶15} The jury's verdict is a two-page document. On the first page, the jury found appellant guilty of aggravated murder by writing the word "guilty" in the space provided for finding him "guilty or not guilty" and also found him guilty of the specification to that count by writing the word "did" in the space provided for finding he "did or did not" use a firearm to facilitate the offense. The verdict form did *not* provide spaces for the jurors to sign its finding on Count 1 and, thus, contrary to appellant's argument, the verdict is not blank as to that count. On page two of the verdict, the jury

found appellant guilty of murder and the specification to that count by writing the same words in the spaces provided. The verdict is then dated and signed by all twelve jurors.

{¶16} We note that nothing in Crim.R. 31(A) requires the jurors to separately sign their verdict as to each count in the indictment or to sign each page of the verdict.

{¶17} In *State v. Walton*, 8th Dist. Cuyahoga Nos. 44479 and 45223, 1983 Ohio App. LEXIS 16006 (June 9, 1983), the Eighth District considered virtually the same argument appellant advances here. In *Walton*, the defendant objected to the verdict form used, which provided a place for the jury to decide each count separately, but provided for only one set of signatures. The Eighth District stated that Crim. R. 31(A) requires that verdicts be in writing and signed by all jurors, but that no other specific form is mandated. *Walton* at *17. In upholding the jury's verdict, the Eighth District found the verdict's meaning was clear. *Id.*

{¶18} As in *Walton, supra*, the meaning of the juror's verdict was clear. After the jury found appellant "guilty" of both counts and specifications and dated the verdict, all twelve jurors signed their names in the only spaces provided on the second page of the verdict form. "The Ohio Supreme Court has held that '[j]ury verdicts in criminal cases are to have reasonable constructions and are not to be declared void unless from necessity originating in doubt of their import or irresponsiveness to the issue submitted, or unless they show a manifest tendency to work injustice.'" *State v. Robinson*, 9th Dist. Summit No. 27480, 2015-Ohio-2376, ¶5, quoting *State v. McNicol*, 143 Ohio St. 39 (1944), paragraph two of the syllabus.

{¶19} Further, even if the verdict was unclear in some way, any lack of clarity was resolved by the court's polling the jury. After the verdict forms were returned and read in open court, the court polled the jurors upon the request of defense counsel.

After the bailiff read the verdict finding appellant guilty of aggravated murder and murder and both specifications and after each juror acknowledged this was his or her verdict, defense counsel made no objection to any perceived deficiencies in the verdict form. In the absence of a timely objection, the error of which the defendant now complains was waived. *State v. Carmack*, 61 Ohio App.3d 351, 353-354 (1st Dist.1989).

{¶20} Appellant argues that at sentencing, his attorney moved that appellant be sentenced for murder or for a mistrial. Appellant does not reference the record in support of this argument. Our review of the record and the sentencing transcript shows appellant's counsel never made such a motion. In fact, at sentencing, appellant's counsel never challenged the jury's verdict form and stated the defense "accept[ed] the jury's verdict."

{¶21} We therefore hold the trial court did not err in overruling appellant's motion to vacate his sentence.

{¶22} For the reasons stated in this opinion, the assignments of error are overruled. It is the order and judgment of this court that the judgment of the Lake County Court of Common Pleas is affirmed.

DIANE V. GRENDALL, J.,
THOMAS R. WRIGHT, J.,
concur.