

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 14CA010572

Appellee

v.

GILBERT ACEVEDO

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE Nos. 88 CRO 35540
 88 CRO 35723

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 22, 2015

HENSAL, Presiding Judge.

{¶1} Gilbert Acevedo appeals a judgment of the Lorain County Court of Common Pleas that denied his motion to vacate a void judgment. For the following reasons, this Court affirms.

I.

{¶2} In 1988, Mr. Acevedo was indicted and convicted of aggravated theft, engaging in hazard abatement activities without a license, and evaluations of asbestos hazards. On appeal, this Court upheld his convictions for aggravated theft and engaging in hazard abatement activities without a license. *State v. Acevedo*, 9th Dist. Lorain Nos. 88CA004423, 88CA004424, 1989 WL 54697 (May 24, 1989). Mr. Acevedo subsequently moved for a new trial and petitioned for post-conviction relief, but the trial court denied his requests, and this Court affirmed its decision. *State v. Acevedo*, 9th Dist. Lorain Nos. 90CA004843, 90CA004844, 1991 WL 65116 (Apr. 24, 1991).

{¶3} In December 2013, Mr. Acevedo moved to vacate his engaging in hazard abatement activities without a license conviction, arguing that the trial court's judgment was void. According to Mr. Acevedo, under Revised Code Section 3710.99, the prosecutor could not bring the charge against him until he received a request from Ohio's director of health. Mr. Acevedo argued that, since the health director did not request that he be charged, the prosecutor had no authority to act, and his conviction is void. The trial court denied Mr. Acevedo's motion without explanation. Mr. Acevedo has appealed, assigning four errors.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED WHEN IT ABUSED ITS [SIC] DISCRETION IN NOT VOIDING THE JUDGEMENT (SIC) IN THIS CASE AB INITIO AS REQUIRED BY LAW.

ASSIGNMENT OF ERROR IV

THE TRIAL COURT ERRED AND COMMITTED PER SE ABUSE OF DISCRETION WHEN IT DID NOT RENDER THE CONVICTION VOID AB INITIO DUE TO LACK OF SUBJECT MATTER JURISDICTION, A VIOLATION OF THIS APPELLANT'S CONSTITUTIONAL RIGHTS.

{¶4} Mr. Acevedo argues that his conviction for engaging in hazard abatement activities without a license under Revised Code Section 3710.05 is void because the prosecuting attorney did not have authority to bring the charge against him. He notes that Section 3710.99(A) provides that, "[a]t the request of the director of health, a prosecuting attorney * * * or similar chief legal officer may commence a criminal action * * * against any person who violates any provision of Chapter 3710. of the Revised Code * * *." According to Mr. Acevedo, the General Assembly has made it clear that the director of health is the gatekeeper of prosecutions under Chapter 3710. He argues that, since the health director did not ask the

prosecutor to bring charges against him, the indictment was invalid, and the trial court did not have jurisdiction to hear his case.

{¶5} The doctrine of res judicata “bars the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal.” *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, ¶ 59. Mr. Acevedo argues that the doctrine does not apply in this case because his prosecution was void ab initio and can be challenged at any time. In *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, the Ohio Supreme Court recognized that, if a court does not have subject-matter jurisdiction over a case, “any proclamation by that court is void” and may be challenged at any time. *Id.* at ¶ 11, quoting *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 75 (1998).

{¶6} Mr. Acevedo’s argument, at best, challenges the prosecutor’s standing to prosecute the Grand Jury’s indictment, not the trial court’s subject-matter jurisdiction over criminal cases. *See* 2931.03 (providing that the court of common pleas has original jurisdiction of all crimes and offenses). In *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, the Ohio Supreme Court held that a court of common pleas that otherwise “has subject-matter jurisdiction over an action does not lose that jurisdiction merely because a party to the action lacks standing.” *Id.* at ¶ 17. Mr. Acevedo, therefore, has not demonstrated that his conviction is void for lack of subject matter jurisdiction. Upon review of the record, we conclude that Mr. Acevedo could have raised his standing argument on direct appeal, and it, therefore, is barred under the doctrine of res judicata. Mr. Acevedo’s first and fourth assignments of error are overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED WHEN IT DID NOT SUA SPONTE RENDER THE STATUTE VAUGUE [SIC].

{¶7} Mr. Acevedo next argues that the trial court should have held that Section 3710.99 is unconstitutionally vague. According to him, the trial court dismissed his motion to vacate “because it found that the language within ORC 3710.02 and 3710.99 were not clear enough to determine that the General Assembly * * * did not intend for the director to Enforce the statute * * *.” He argues that, since the language of the statute is unclear, the court should have determined that it is void for vagueness. The trial court, however, made no such finding in its journal entry. Upon review of the record, we conclude that Mr. Acevedo could have argued that Section 3710.99 is unconstitutionally vague on direct appeal. His argument, therefore, is barred by res judicata. *Ketterer* at ¶ 59. Mr. Acevedo’s second assignment of error is overruled.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED WHEN IT DID NOT SET THE MOTION FOR AN EVIDENTIARY HEARING.

{¶8} Mr. Acevedo’s final argument is that the trial court should have held a hearing on his motions. In support of his argument, he cites *Malone v. Berry*, 10th Dist. Franklin No. 07AP-128, 2007-Ohio-6501. *Malone* was a civil case involving the trial court’s personal jurisdiction over the defendant under Ohio’s long-arm statute, Section 2307.382. It did not involve a challenge to the trial court’s subject matter jurisdiction, as Mr. Acevedo has argued. We conclude that in this case, in which all of Mr. Acevedo’s arguments were barred by res judicata, the trial court correctly determined that an evidentiary hearing was unnecessary. *See State v. Greene*, 9th Dist. Summit No. 25773, 2012-Ohio-791, ¶ 6. Mr. Acevedo’s third assignment of error is overruled.

III.

{¶9} Mr. Acevedo's arguments are barred by res judicata. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

CARR, J.
MOORE, J.
CONCUR.

APPEARANCES:

GILBERT ACEVEDO, pro se, Appellant.

DENNIS P. WILL, Prosecuting Attorney, and NATASHA RUIZ GUIRRIERI, Assistant Prosecuting Attorney, for Appellee.