

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 16CA010947

Appellee

v.

RICHARD THOMAS

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 93CR043635

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 29, 2017

CARR, Judge.

{¶1} Appellant, Richard Thomas, appeals the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} On April 20, 1993, Thomas was indicted on one count of aggravated murder along with a capital specification and a firearm specification, one count of attempted aggravated murder with a firearm specification, and one count of having weapons under disability. Thomas eventually pleaded guilty to the charges in the indictment. With respect to the aggravated murder conviction, the trial court sentenced Thomas to a life sentence with parole eligibility after 30 years, in addition to a three-year term of incarceration for the firearm specification. The trial court also imposed a prison sentence of 10 to 25 years for attempted murder and a prison sentence of eighteen months for having weapons under disability. Thomas did not appeal his conviction.

{¶3} In 2013, Thomas filed a pro se motion “to correct illegal void sentence pursuant to subject matter jurisdiction[.]” Therein, Thomas set forth a variety of arguments challenging his conviction and sentence. The trial court promptly denied the motion. This Court affirmed the trial court’s judgment on appeal. *State v. Thomas*, 9th Dist. Lorain No. 13CA010424, 2014-Ohio-64; *but see id.* at ¶ 11 (Carr, J., concurring in judgment only) (construing Thomas’ motion as an untimely petition for post-conviction relief and concluding that “the trial court was without statutory authority to address the merits of the petition”).

{¶4} Subsequently, on August 31, 2015, Thomas filed a motion to vacate his plea and sentence in the trial court wherein he again raised numerous arguments challenging his conviction and sentence. The parties filed briefs and the trial court set the matter for hearing. After the hearing, the trial court issued an order denying Thomas’ motion.

{¶5} On appeal, Thomas raises two assignments of error.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT ON JANUARY 11, 1993 AGAINST THE DEFENDANT WHEN IT LACKED SUBJECT MATTER JURISDICTION OVER THE MATTER AS THE INDICTMENT WAS NOT FILED UNTIL APRIL 20, 1993 IN VIOLATION OF R.C. [§]2931.02, ARTICLE IV[,] [SECTION] 4(B) OF THE OHIO CONSTITUTION AND THE FOURTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

{¶6} In his first assignment of error, Thomas contends that the trial court lacked subject matter jurisdiction over his case because it entered judgment against him before the filing of the indictment. This Court disagrees.

{¶7} The crux of Thomas’ argument is that the trial court lacked subject matter jurisdiction to accept his guilty pleas in January of 1993 because the indictment in this matter

was not handed down by the Lorain County Grand Jury until April 20, 1993. Thomas did not raise this issue in his motion to vacate his plea. Though Thomas acknowledges that he “has not previously raised this issue on appeal or otherwise[,]” he maintains that he may raise the issue for the first time during the instant appeal because it involves the subject matter jurisdiction of the trial court.

{¶8} “Subject matter jurisdiction focuses on whether the court is the proper forum to hear the class of cases within which a particular case falls, such as common pleas court, municipal court, or juvenile court.” *State v. Cubic*, 9th Dist. Medina 10CA0082-M, 2011-Ohio-4990, ¶ 10, quoting *State ex rel. Ralkers, Inc. v. Liquor Control Comm.*, 10th Dist. Franklin No. 04AP-779, 2004-Ohio-6606, ¶ 37, citing *State v. Swiger*, 125 Ohio App.3d 456, 462 (9th Dist.1998). “Subject matter jurisdiction is a court’s power over a type of case. It is determined as a matter of law and, once conferred, it remains.” *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 34. Thomas does not dispute that the Lorain County Court of Common Pleas was the proper forum to hear his case. Instead, Thomas makes a temporal argument focusing on the handwritten date on the journal entry that signified his guilty pleas and how it related to the date of the filing of the indictment. In effect, Thomas has argued that the trial court did not have jurisdiction to enter judgment in this particular case. *See Hurley* at ¶ 12. Jurisdiction over a particular case “encompasses the trial court’s authority to determine a specific case within that class of cases that is within its subject matter jurisdiction. It is only when the trial court lacks subject matter jurisdiction that its judgment is void; lack of jurisdiction over the particular case merely renders the judgment voidable.” *Id.*, quoting *State v. Parker*, 95 Ohio St.3d 524, 2002-Ohio-2833, ¶ 22 (Cook, J., dissenting), quoting *Swiger* at 462. Though it is readily apparent from the record that Thomas pleaded guilty and was sentenced in January of 1994, and not in

January of 1993 as he now alleges, this Court is precluded from reaching the merits of his assignment of error. Thomas' argument, which implies that his sentence was avoidable, could have been raised on direct appeal. As such, he is now barred from raising his claims under the principles of res judicata. *State v. Lowe*, 9th Dist. Summit No. 27199, 2014-Ohio-1817, ¶ 7.

{¶9} Even if we could reach the merits of Thomas' assignment of error, his argument is not supported by the record. On January 11, 1994, the trial court issued a journal entry stating that Thomas had withdrawn his initial pleas of not guilty and pleaded guilty to the charges in the indictment. The time stamp signifies when the journal entry was entered in the clerk's journal. *See generally State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 337 (1997). Thomas' position is predicated on the fact that the handwritten date of "1-11-93" appears in two locations on the journal entry. Though Thomas suggests that the trial court accepted his guilty pleas on January 11, 1993, that same journal entry indicating that he pleaded guilty to the offenses in the indictment was time-stamped on January 11, 1994, at 4:32 p.m., quite clearly revealing that the handwritten date of "1-11-93" was inadvertent. Moreover, the date at the end of the form bears a handwritten correction altering "93" to "94." Thus, while Thomas contends that the trial court did not have jurisdiction to decide the case in January 1993, the record does not reflect that the trial court took action in this matter at that time. Instead, the record definitively indicates that Thomas was indicted on April 20, 1993. Thomas subsequently pleaded guilty to the charges on January 11, 1994. The trial court proceeded with sentencing and issued its sentencing entry thereafter on January 13, 1994. It follows that Thomas's argument regarding the timing of the procedural sequence is without merit.

{¶10} The first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING
DEFENDANT’S MOTION TO VACATE PLEA AND SENTENCING AS THE
PLEA AND SENTENCE ARE VOID NOT VOIDABLE.

{¶11} In his second assignment of error, Thomas contends that the trial court abused its discretion by denying his motion to vacate his plea and sentence. While Thomas alludes to the plain error doctrine as well as the voidness doctrine in his merit brief, the crux of Thomas’ argument is that the trial court abused its discretion in denying his motion to vacate his plea because his waiver of his right to a jury trial was not done in strict compliance R.C. 2945.05. This Court disagrees.

{¶12} More than twenty years ago, Thomas pleaded guilty to the serious charges levied against him. In his August 31, 2015 motion, Thomas effectively moved the trial court to withdraw his guilty pleas on the basis that the trial court failed to properly secure a waiver of his right to a jury trial. The Supreme Court of Ohio has held that “[r]es 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, citing *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus. “This prohibition extends to claims made in support of motions to withdraw a plea.” *State v. Brown*, 9th Dist. Summit Nos. 25353, 25355, 2011-Ohio-1043, ¶ 6, citing *Ketterer* at ¶ 59.

{¶13} Here, Thomas did not file an appeal from his convictions in 1994. Nevertheless, the arguments Thomas raised in his motion to vacate his plea could have been raised at that time. As Thomas’ argument regarding the validity of his plea could have been raised on direct appeal from his conviction, he is now barred from raising that issue under the doctrine of res judicata. *Brown* at ¶ 6, citing *Ketterer* at ¶ 59.

{¶14} The second assignment of error is overruled.

III.

{¶15} Thomas' assignments of error are overruled. 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.

DONNA J. CARR
FOR THE COURT

SCHAFFER, P. J.
TEODOSIO, J.
CONCUR.

APPEARANCES:

GIOVANNA V. SCALETTA-BREMKE, Attorney at Law, for Appellant.

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