

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-14-1188

Appellee

Trial Court No. CR0201003247

v.

Terrance Lee Taylor

DECISION AND JUDGMENT

Appellant

Decided: July 22, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, Terrance Taylor, appeals the August 12, 2014 judgment of the Lucas County Court of Common Pleas, which was entered following a resentencing hearing. For the reasons that follow, we affirm.

{¶ 2} On December 21, 2010, appellant was indicted on the charges of aggravated murder and aggravated robbery, each with an included firearm specification. Following a jury trial, appellant was found guilty both of the lesser-included offense of felony murder and aggravated robbery. At sentencing, the parties stipulated that the two counts were allied offenses of similar import, and the state elected to proceed with sentencing on the murder count. The trial court imposed sentence on the felony murder count, and dismissed the aggravated robbery count at the behest of the state “due to the counts merging.”

{¶ 3} Appellant appealed his conviction. In *State v. Taylor*, 6th Dist. Lucas No. L-11-1202, 2013-Ohio-5182, we upheld the jury’s finding of guilt as to both counts. However, we found well-taken appellant’s assignment of error that the trial court did not follow correct procedure when it dismissed the aggravated robbery count in its sentencing entry. Appellant argued that the dismissal of the aggravated robbery charge impacted his conviction for felony murder, since the victim’s death occurred during the commission of the aggravated robbery. We disagreed, and held that the error with respect to the aggravated robbery count did not affect the murder conviction. Accordingly, we vacated the trial court’s judgment to the extent it “dismisses the conviction in Count 2 along with the firearm specification due to the counts merging,” and remanded the case for resentencing on that count. *Id.* at ¶ 54. Appellant’s appeal of our decision to the Ohio Supreme Court was not accepted for review. *See State v. Taylor*, 139 Ohio St.3d 1471, 2014-Ohio-3012, 11 N.E.3d 1193.

{¶ 4} At the resentencing hearing on remand, appellant argued that it violated his double jeopardy rights to proceed with resentencing on the aggravated robbery count since that count had been dismissed by the state at the original sentencing hearing, after the jury had been empaneled. The trial court rejected appellant's argument, and proceeded to merge the felony murder and aggravated robbery counts and sentence appellant to the same prison term that was imposed at the original sentencing hearing.

{¶ 5} Appellant has timely appealed the trial court's judgment entry following the resentencing hearing, presenting one assignment of error for our review:

1) The Trial Court erred in resentencing Appellant by not dismissing the count of Aggravated Robbery, as doing so violated Appellant's right under the Fifth Amendment of the U.S. Constitution against being placed in Double Jeopardy.

{¶ 6} In support of his appeal, appellant presents the same argument that he raised at the trial court, namely that once the aggravated robbery count was dismissed after the trial, it had the same effect as an acquittal. Thus, double jeopardy applies.

Double Jeopardy

{¶ 7} The double jeopardy clause provides three basic protections: "[It] protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense." *Ohio v. Johnson*, 467 U.S. 493, 498, 104 S.Ct. 2536,

81 L.Ed.2d 425 (1984). Here, contrary to appellant's argument, double jeopardy is not implicated. Appellant is not facing a second prosecution for the offense of aggravated robbery as the jury has already found him guilty of that offense, and he is not being re-indicted on that charge. Similarly, he is not facing multiple punishments for the same offense as the trial court merged the aggravated robbery count with the felony murder count, and sentenced him only on the felony murder count. Appellant is simply being resentenced because the trial court erroneously dismissed the count "due to the counts merging." See *State v. Whitfield*, 124 Ohio St.3d 319, 2010-Ohio-2, 922 N.E.2d 182, ¶ 27 ("[T]he determination of the defendant's guilt for committing allied offenses remains intact, both before and after the merger of allied offenses for sentencing. Thus, the trial court should not vacate or dismiss the guilt determination."). "The purpose of the Double Jeopardy Clause is to preserve for the defendant acquittals or favorable factual determinations but not to shield from appellate review erroneous legal conclusions not predicated on any factual determinations." *State v. Calhoun*, 18 Ohio St.3d 373, 377, 481 N.E.2d 624 (1985). Therefore, we hold that where a defendant has been found guilty of two or more allied offenses and the trial court erroneously dismisses one or more of the offenses at sentencing instead of merging them, double jeopardy does not preclude the defendant from being resentenced so that those offenses can be properly merged.

{¶ 8} Accordingly, appellant's assignment of error is not well-taken.

{¶ 9} For the foregoing reasons, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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