

[Cite as *State v. Haynes*, 2009-Ohio-2596.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 08AP-824
	:	(C.P.C. No. 00CR05-3239)
Shannon D. Haynes,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

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O P I N I O N

Rendered on June 4, 2009

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

*Shannon D. Haynes*, pro se.

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APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Shannon D. Haynes, appeals from a judgment of the Franklin County Court of Common Pleas denying his "Motion to Vacate Judgment and Set Aside Sentence pursuant to Criminal Rule 33(A)(1) and *State v. Colon* (Ohio, 2008)."

For the following reasons, we affirm that judgment.

{¶2} In 2001, a jury convicted appellant of two counts of felony murder and one count of voluntary manslaughter, rape, and kidnapping. The trial court also found appellant guilty of sexually-violent and sexually-motivated specifications. The trial court

sentenced him accordingly. This court affirmed appellant's convictions. *State v. Haynes*, 10<sup>th</sup> Dist. No. 01AP-430, 2002-Ohio-4389. The Supreme Court of Ohio declined further review. *State v. Haynes*, 109 Ohio St.3d 1482, 2006-Ohio-2466.

{¶3} In 2006, appellant filed, pursuant to Crim.R. 33, a motion for leave to file a motion for new trial. On May 22, 2007, the trial court denied appellant's motion for leave to file a motion for new trial, finding that the motion was not timely filed and that appellant was not unavoidably prevented from filing the motion. Nonetheless, the trial court went on to address the merits of appellant's motion for new trial and ruled that the issues raised were barred by res judicata. This court affirmed. *State v. Haynes*, 10<sup>th</sup> Dist. No. 07AP-508, 2007-Ohio-6540.

{¶4} In 2007, appellant also filed a "Motion for Relief from Judgment pursuant to Civil Rule 60(B) and Criminal Rule 57." The motion largely reiterated arguments appellant previously made in his motion for new trial. The trial court denied appellant's motion, reasoning that Civ.R. 60(B) and Crim.R. 57 provide no basis for the trial court to grant appellant his requested relief. Appellant did not appeal that portion of the trial court's decision.<sup>1</sup>

{¶5} Subsequently, on June 16, 2008, appellant filed the instant "Motion to Vacate Judgment and Set Aside Sentence pursuant to Criminal Rule 33(A)(1) and *State v. Colon* (Ohio, 2008)." In this motion, appellant claimed that his convictions for felony murder should be reversed and vacated based on the recent Supreme Court of Ohio decision in *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624 ("*Colon I*"). In *Colon I*, the

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<sup>1</sup> The decision also denied appellant's motion for leave to satisfy court costs by community service. This court dismissed appellant's appeal from that portion of the decision because it was not a final appealable order. *State v. Haynes*, 10<sup>th</sup> Dist. No. 08AP-131 (Memorandum Decision).

court held that the failure of an indictment to charge the mens rea element of a crime violated a defendant's constitutional rights to notice and due process and was structural error. Appellant claimed that his amended indictment did not allege the requisite mens rea for the offenses of felony murder.

{¶6} In an entry filed September 8, 2008, the trial court denied appellant's June 16, 2008 motion. The trial court noted that *Colon I* provided no basis for relief in appellant's case.

{¶7} Appellant appeals and assigns the following errors:

[1.] The trial court erred when it failed to grant Appellant's motion since no procedure is specifically prescribed by rule, the court should have proceed [sic] in any lawful manner not inconsistent with the rules of criminal procedure, and looked to the rules of civil procedure and to the applicable law if no rule of criminal procedure exists.

[2.] The trial court erred when it denied Appellant's Motion to Dismiss Based Upon *State v. Colon*, (Ohio 2008) 118 Ohio St.3d 26, 885 N.E.2d 917, Pursuant to Civ.R.60(B), As Incorporated by Crim.R. 57(B), where no procedure is specifically prescribed by the criminal rules to proceed when an indictment failed to allege the *mens rea* element of recklessness.

{¶8} Because appellant's two assignments of error are related, we address them together.

{¶9} Appellant's motion was based on the claim that *Colon I* applied to his convictions. Regardless of the procedural vehicle used by appellant, the trial court correctly held that *Colon I* provided appellant no basis for relief. The Supreme Court of Ohio in *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749 ("*Colon II*"), clarified that *Colon I* only applied prospectively, to cases that were pending on the date of the decision.

It did not apply retroactively to a conviction that had become final, i.e., when appellate remedies had been exhausted. *Colon II* at ¶3-4.

{¶10} Appellant's convictions became final in 2006, when the Supreme Court of Ohio declined to hear appellant's direct appeal. See *State v. Carter*, 12<sup>th</sup> Dist. No. CA2006-03-010, 2006-Ohio-4205, ¶7 (noting that convictions became final once direct appeals were exhausted); *State v. Schroyer*, 12<sup>th</sup> Dist. No. 2006-08-064, 2007-Ohio-589, ¶12 (declining to retroactively apply ruling to case that was final and not pending on direct appeal). The Supreme Court of Ohio decided *Colon I* in 2008. Therefore, the holding in *Colon I* cannot be applied retroactively to appellant's convictions. See also *State v. Newbern*, 10<sup>th</sup> Dist. No. 08AP-768, 2009-Ohio-816, ¶14-15 (declining to apply *Colon I* retroactively to conviction that had become final before *Colon I* decided); *State v. Frash*, 10<sup>th</sup> Dist. No. 08AP-870, 2009-Ohio-642, ¶13-14 (same).

{¶11} *Colon I* does not apply retroactively to appellant's convictions. Accordingly, the trial court properly denied appellant's motion, which was premised on the application of *Colon I* to his convictions. Appellant's two assignments of error are overruled.

{¶12} Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

FRENCH, P.J., and CONNOR, J., concur.

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