

[Cite as *State v. Jenkins*, 2018-Ohio-4437.]

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
LAWRENCE COUNTY

STATE OF OHIO, :  
 :  
Plaintiff-Appellee, : Case No. 18CA7  
 :  
vs. :  
 :  
CARLOS L. JENKINS, : DECISION AND JUDGMENT ENTRY  
 :  
 :  
Defendant-Appellant. :

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APPEARANCES:

Carlos L. Jenkins, Chillicothe, Ohio, pro se.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and W. Mack Anderson, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for Appellee.

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CRIMINAL APPEAL FROM COMMON PLEAS COURT  
DATE JOURNALIZED:10-16-18  
ABELE, J.

{¶ 1} This is an appeal from a Lawrence County Common Pleas Court judgment that denied a postconviction motion to correct sentence filed by Carlos Jenkins, defendant below and appellant herein. Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

“THE INFERIOR COURT COMMITTED PREJUDICIAL ERROR IN IGNORING THE ‘GENERAL RULES OF THE LEGISLATURE’.”

SECOND ASSIGNMENT OF ERROR:

“APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF

COUNSEL.”

{¶ 2} On September 15, 2004, the Lawrence County Grand Jury returned an indictment that charged appellant with one count of murder and a firearm specification. The indictment resulted from an incident that resulted in the death of John Turvey. Two tape-recorded confessions indicated that appellant visited Turvey’s camper to ask permission to squirrel hunt on Turvey’s property. Appellant maintained that, at some point in this encounter, Turvey grabbed a gun, the conversants struggled, the gun fired a couple of times and Turvey fell.

{¶ 3} On January 27, 2005, the jury found appellant guilty of the murder charge and the specification. On January 31, 2005, appellant filed a Crim.R. 29 motion for acquittal and alleged that the state failed to prove beyond a reasonable doubt that he acted purposely. The trial court denied the motion and sentenced appellant to serve fifteen years to life in prison for the murder conviction, and three years for the firearm specification.

{¶ 4} On appeal, this court affirmed the trial court’s judgment. *See State v. Jenkins*, 4th Dist. Lawrence No. 05CA7, 2006-Ohio-2546. In our decision, we affirmed appellant’s conviction and sentence and concluded that: (1) the state proved beyond a reasonable doubt that appellant purposely caused Turvey’s death, (2) the trial court did not abuse its discretion by failing to admit into evidence certain testimony, (3) the state did not commit misconduct or deprive appellant of a fair trial, and (4) the trial court did not abuse its discretion by permitting a detective to testify on rebuttal regarding his qualifications as an investigator and interrogator. Subsequently, the Supreme Court of Ohio declined to exercise jurisdiction. *See State v. Jenkins*, 111 Ohio St.3d 1415, 2006-Ohio-5083, 854 N.E.2d 1093, and on February 28, 2007, *see State v. Jenkins*, 112 Ohio St.3d 1494, 2007-Ohio-724, 862

N.E.2d 119. Also, on April 1, 2016, appellant filed a motion for judicial release. The trial court denied the request.

{¶ 5} On March 8, 2018, appellant filed a motion to correct sentence and argued that his sentence does not comply with statutory requirements. In particular, appellant argued that his counsel advised him to reject a guilty plea for an agreed 13 year sentence and proceed to a jury trial “as Defendant would be acquitted on all charges.” The state responded that (1) appellant’s sentence is the only sentence that the trial court could impose (15 years to life), and (2) this case is over 13 years old and appellant’s sentence is proper. In addition, the state argued that this particular issue should have been raised on appeal.

{¶ 6} On March 22, 2018, the trial court denied appellant’s motion, referred to this court’s 2006 decision on direct appeal, and opined that appellant’s trial counsel had provided a vigorous defense throughout the case. This appeal followed.

#### I.

{¶ 7} In his first assignment of error, appellant asserts that “the inferior court committed prejudicial error in ignoring the ‘general rules of the legislature.’” In particular, appellant argues that the trial court sentenced him to serve three years in prison on the firearm specification even though no weapon was discovered at the crime scene or in appellant’s possession.

{¶ 8} First, we point out that this argument should have been raised in appellant’s direct appeal. “‘Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or claimed lack of due process that was raised or could have been raised by the defendant at the trial, \* \* \* or on appeal from that judgment.’” *State v. Szefcyk*,

77 Ohio St.3d 93, 95, 671 N.E.2d 233 (1996), quoting *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus. ““Res judicata does not, however, apply only to direct appeal, but to all postconviction proceedings in which an issue was or could have been raised.”” *State v. Heid*, 4th Dist. Scioto No. 15CA3710, 2016-Ohio-2756, ¶ 18, quoting *State v. Montgomery*, 2013-Ohio-4193, 997 N.E.2d 579, ¶ 42 (8th Dist.)

{¶ 9} Although the consideration of this issue is barred by res judicata, we also find no merit to appellant’s claim. Once again, appellant asserts that no weapon was found at the scene. The state responds, however, that although no firearm was recovered, the coroner testified that multiple gunshot wounds to the head and body from a 22 caliber weapon caused Turvey’s death. Testimony also referred to a slug extracted from the wall of the victim’s trailer that appeared to be a 22 caliber. Moreover, when Detective Hanshaw asked appellant “[s]o, you think that the rifle would have been thrown over the hill there somewhere possibly,” appellant responded: “I’d say it probably is because when I got back to my car the only thing I had was my 12 gauge.” When asked, “[b]ut do you remember having it (the rifle) in your right hand when you left the trailer,” appellant replied: “Yeah.” It is important to recognize that “a firearm enhancement specification can be proven beyond a reasonable doubt by circumstantial evidence.” *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d. 541, syllabus paragraph one. Here, the circumstantial evidence adduced at trial clearly supports the jury’s verdict.

{¶ 10} Appellant also contends that the trial court “advised and sentenced Appellant to the additional punishment of postrelease control.” Appellant appears to argue that the trial court failed to notify him that if he violated his postrelease control, he could receive a prison term of up to one half of his stated prison sentence. However, the February 3, 2005 sentencing entry states:

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Further, for a felony of the first degree or a felony sex offense, the mandatory period of postrelease control is five years; for a felony of the second or third degree that is not a felony sex offense, the mandatory period of postrelease control is three years. The Court further advised Defendant that if sentenced to a term of imprisonment for a felony of the third, fourth or fifth degree that is not subject to Section 2929.19(B)(3)(c), postrelease control is discretionary and the Court notified Defendant that he or she may be supervised under postrelease control for up to three years upon release from prison. Further, the Court notified the Defendant that failing to comply with the conditions of postrelease control *could result in the imposition of a prison term of up to one-half of the stated prison term originally imposed.* (Emphasis added.)

{¶ 11} Here, the trial court adequately advised appellant of his postrelease control obligations. Appellant contends, however, that *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, required the trial court to provide “statutorily compliant notification to him regarding postrelease control, including notifying appellant of the details of the postrelease control and the consequences of violating postrelease control.” However, as the state points out (1) *Qualls* was decided seven years after appellant’s conviction and sentencing, and (2) the trial court did include proper postrelease control notification in appellant’s sentencing entry.

{¶ 12} Accordingly, we overrule appellant’s first assignment of error.

## II.

{¶ 13} In his second assignment of error, appellant asserts that he received ineffective assistance of counsel. In addition to this argument included in an untimely petition for postconviction relief, *see* R.C. 2953.23(A)(1) and (2); *State v. Hamilton*, 4th Dist. Hocking No. 16CA17, 2017-Ohio-1294, ¶ 20; *State v. McDougald*, 4th Dist. Scioto No. 16CA3736, 2016-Ohio-5080, ¶ 22-23, we once again find no merit to this assertion. Appellant contends that his trial counsel “caused the rejection of a plea leading to a more severe sentence at trial.” However, the order that appellant appeals from in the case sub judice is an order that denied his motion to

correct sentence. Thus, the only issue before the court was whether his sentence should be corrected.

{¶ 14} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error and we affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY:\_\_\_\_\_

Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.