

[Cite as *State v. Parker*, 2018-Ohio-1847.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106062

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

VINCENT PARKER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-95-320034-ZA

BEFORE: E.A. Gallagher, A.J., McCormack, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: May 10, 2018

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EILEEN A. GALLAGHER, A.J.:

{¶1} Defendant-appellant Vincent Parker appeals the judgment of the Cuyahoga County Court of Common Pleas denying his “motion to withdraw void guilty plea pursuant to Crim.R. 32.1.” We affirm.

Facts and Procedural History

{¶2} A detailed examination of the lengthy procedural history of this case is set forth in this court’s decision in *State v. Parker*, 8th Dist. Cuyahoga No. 82687, 2004-Ohio-2976. For the purposes of the present appeal, the relevant facts are that Parker pled guilty to aggravated murder in 2003 and was sentenced to a prison term of 15 years to life. Parker appealed his conviction to this court arguing that his statutory and constitutional speedy trial rights had been violated, that the trial court failed to comply with Crim.R. 11 in accepting his guilty plea and that he was denied effective assistance of counsel. We rejected Parker’s arguments and affirmed his conviction. *Id.* at ¶ 42. In 2008, Parker filed a delayed application for reconsideration and reopening arguing that his appellate counsel had been ineffective. We denied the application in *State v. Parker*, 8th Dist. Cuyahoga No. 82687, 2008-Ohio-215.

{¶3} On June 26, 2017, Parker filed a motion to withdraw void guilty plea pursuant to Crim.R. 32.1 and requested a hearing. Parker argued in his motion that his 2003 guilty plea was the result of a mutual mistake of law, that his plea was coerced by the trial judge’s participation in the plea bargaining process, that his trial counsel provided ineffective assistance of counsel and that his plea was involuntary. The trial

court denied Parker's motion without conducting a hearing and denied a related motion by Parker seeking findings of fact and conclusions of law.

Law and Analysis

I. Challenges to the Guilty Plea

{¶4} In his first four assignments of error, Parker argues that 1) his plea agreement was based on a mutual mistake of law, 2) the trial judge coerced his plea by participating in the plea-bargaining process, 3) he was denied effective assistance of counsel at the plea stage and 4) his plea was entered in violation of Crim.R. 11. Each of these assignments of error raise arguments challenging his 2004 guilty plea that were either raised and addressed in his direct appeal or could have been raised at that time. Therefore, these claims are barred by res judicata. *State v. Perry*, 10 Ohio St.2d 175, 177, 226 N.E.2d 104 (1967) (“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 any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment”).

{¶5} To the extent that Parker's arguments can be interpreted as reasons why the trial court erred in denying his Crim.R. 32.1 motion to withdraw his guilty plea, we find that the trial court was without jurisdiction to consider his motion.

{¶6} We review a trial court's decision to deny a defendant's postsentence motion to withdraw a guilty plea under an abuse of discretion standard. *State v. Britton*, 8th Dist.

Cuyahoga No. 98158, 2013-Ohio-99, ¶ 17, citing *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph two of the syllabus, and *State v. Peterseim*, 68 Ohio App.2d 211, 214, 428 N.E.2d 863 (8th Dist.1980).

{¶7} We find no abuse of discretion here because a trial court lacks jurisdiction to consider a defendant's motion to vacate his guilty pleas under Crim.R. 32.1 after a court of appeals has reviewed and affirmed the defendant's convictions. *State ex rel. Special Prosecutors v. Judges, Belmont Cty. Court of Common Pleas*, 55 Ohio St.2d 94, 97-98, 378 N.E.2d 162 (1978) (a trial court loses jurisdiction over a case "after an appeal has been taken and decided" and that, absent a remand, does not regain jurisdiction subsequent to the decision of the appellate court); *see also State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 61-62; *State v. Nicholson*, 8th Dist. Cuyahoga No. 97567, 2012-Ohio-1550, ¶ 9-10; *State v. Vild*, 8th Dist. Cuyahoga Nos. 87742, and 87965, 2007-Ohio-987, ¶ 12 ("A trial court has no jurisdiction to grant a motion to withdraw a plea after the plea and judgment have been affirmed on appeal."). Crim.R. 32.1 does not "vest jurisdiction in the trial court to maintain and determine a motion to withdraw the guilty plea subsequent to an appeal and affirmance by the appellate court." *Special Prosecutors* at 97.

{¶8} We find that the arguments presented in Parker's first four assignments of error are barred by res judicata and the trial court did lack jurisdiction to grant the relief sought in Parker's Crim.R. 32.1 motion.

{¶9} Parker's first four assignments of error are overruled.

II. Failure to Hold a Hearing

{¶10} In his fifth assignment of error, Parker argues that the trial court erred in denying his motion to withdraw his plea without conducting an evidentiary hearing.

{¶11} A trial court is not automatically required to hold a hearing on every postsentence motion to withdraw a guilty plea. *State v. Chandler*, 10th Dist. Franklin No. 13AP-452, 2013-Ohio-4671, ¶ 7. A hearing is required only if the facts alleged by the defendant, accepted as true, would require that the defendant be allowed to withdraw the plea. *Id.*; *State v. Rodriguez*, 8th Dist. Cuyahoga No. 103640, 2016-Ohio-5239, ¶ 23. A trial court's decision whether to hold a hearing on a postsentence motion to withdraw a guilty plea is likewise reviewed for abuse of discretion. *See, e.g., State v. Rice*, 2d Dist. Montgomery No. 27045, 2017-Ohio-122, ¶ 10; *State v. Bruce*, 10th Dist. Franklin No. 2016-Ohio-7132, ¶ 7-8.

{¶12} As addressed above, the claims raised in Parker's motion to withdraw his plea were barred by res judicata and the trial court was without jurisdiction to consider the motion after his plea was affirmed on direct appeal in *Parker*, 8th Dist. Cuyahoga No. 82687, 2004-Ohio-2976. Therefore, the trial court had no duty to conduct a hearing in this instance.

{¶13} Parker's fifth assignment of error is overruled.

III. Failure to Issue Findings of Fact and Conclusions of Law

{¶14} In his final assignment of error, Parker argues that the trial court erred in denying his motion to issue findings of fact and conclusions of law pertaining to the denial of his motion to withdraw his plea.

{¶15} Parker's argument is without merit. "Such findings and conclusions assist an appellate court in reviewing the exercise of discretion, but are not required when ruling on a motion to withdraw a guilty plea." *State v. Linder*, 8th Dist. Cuyahoga No. 99350, 2013-Ohio-5018, ¶ 9, quoting *State v. McNeal*, 8th Dist. Cuyahoga No. 82793, 2004-Ohio-50, ¶ 5. "Crim.R. 32.1, which governs the withdrawal of guilty pleas, does not require the trial court to make findings of fact and conclusions of law." *Id.*, citing *State ex rel. Chavis v. Griffin*, 91 Ohio St.3d 50, 51, 741 N.E.2d 130 (2001). Therefore, the fact that the trial court did not make findings of fact and conclusions of law is not grounds for reversal. *Id.*

{¶16} Parker's sixth assignment of error is overruled.

{¶17} The judgment of the trial court is affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

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

EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

TIM McCORMACK, J., and
SEAN C. GALLAGHER, J., CONCUR