

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-321
	:	(C.P.C. No. 05CR-2583)
Lenzzie R. Vance,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on February 24, 2011

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for
appellee.

Lenzzie R. Vance, pro se.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Defendant-appellant, Lenzzie R. Vance, appeals from a judgment of the Franklin County Court of Common Pleas denying his petition for post-conviction relief and his motion for sentence revision. Because both *res judicata* and R.C. 2929.20 support the trial court's decision denying defendant's motion for sentence revision, we affirm.

I. Facts and Procedural History

{¶2} By indictment filed April 21, 2005, defendant was charged with (1) five counts of gross sexual imposition, felonies of the third degree, (2) two counts of gross sexual imposition, felonies of the fourth degree, (3) three counts of rape, felonies of the first degree, and (4) one count of tampering with evidence, a felony of the third degree. As a result of a jury trial, defendant was convicted of five counts of gross sexual imposition, felonies of the third degree and of tampering with evidence. Two counts of rape were dismissed, and the jury found defendant not guilty of the remaining count of rape and two counts of fourth-degree felony gross sexual imposition. The trial court sentenced defendant to three years on each count for which the jury found defendant guilty and ordered defendant to serve the sentences consecutively, for a total of 18 years. The trial court journalized its sentence in a judgment entry filed September 25, 2006; defendant timely appealed. In an opinion filed August 28, 2007, this court affirmed defendant's conviction. *State v. Vance*, 10th Dist. No. 06AP-1016, 2007-Ohio-4407.

{¶3} While defendant's appeal was pending, he filed a petition for post-conviction relief pursuant to R.C. 2953.21. Defendant asserted four grounds for relief: (1) his convictions are against the manifest weight of the evidence; (2) he received ineffective assistance of counsel when counsel failed to object to the prosecution's improperly bolstering evidence; (3) the prosecution engaged in misconduct by repeatedly and improperly bolstering the victim's testimony through hearsay of another witness and in closing argument; and (4) defendant suffered unfair prejudice when the trial court allowed untimely introduction of material evidence during the second and third days of trial, all a

result of the prosecution's misconduct. While defendant's petition for post-conviction relief was pending, defendant filed a motion to revise his sentence.

{¶4} After the parties briefed the pending petition and motion, the court on March 11, 2010 filed a decision and entry denying both defendant's post-conviction petition and his motion for sentence revision. Noting "[r]es judicata bars any postconviction claim that was or could have been raised * * * on direct appeal," the court concluded each of the claims raised in defendant's post-conviction petition "either was or could have been raised on appeal." The court thus concluded it need not consider any of them. The court nonetheless addressed each of the issues and determined each lacked merit.

{¶5} As to defendant's motion to revise sentence, the court noted the limited circumstances in which the court may amend a sentence, such as to correct a void sentence or a clerical mistake. Observing that neither circumstance existed in defendant's case, the court added that the "validity and length of Vance's sentence could have been raised on appeal," meaning "res judicata bars him from raising it" in a post-appeal motion. Moreover, the court noted, "Vance is statutorily ineligible to be judicially released before the end of his stated prison term, even if the court were so inclined. R.C. 2929.20(A)." (Footnote omitted.) Defendant appeals.

II. Assignments of Error

{¶6} On appeal, defendant assigns the following errors:

First Assignment of error:

The eighteen year prison sentence imposed on Petitioner is unreasonable as it placed an unnecessary burden on state or local government resources.

Second Assignment of error:

The eighteen year term of imprisonment imposed was longer than necessary to protect the public by preventing Appellant from re-offending.

Third Assignment of error:

The eighteen year term of imprisonment imposed was longer than necessary to protect the public by incapacitating Appellant.

Fourth Assignment of error:

The costs of incarcerating Appellant makes a prison sentence unduly burdensome on the State of Ohio.

{¶7} Defendant's assignments of error do not challenge the trial court's decision on his petition for post-conviction relief. Rather, they address his motion to revise the 18-year sentence the trial court imposed as a result of the jury's finding defendant guilty of the noted charges. Because the assignments of error are interrelated, we address them jointly. Together, they assert the trial court wrongly refused, for the reasons set out in the assigned errors, to reduce defendant's sentence. Contrary to defendant's contentions, the trial court properly denied defendant's motion to revise his sentence.

{¶8} To the extent defendant's motion for sentence revision must be construed as a petition for post-conviction relief, principles of res judicata apply. See *State v. Bailey*, 12th Dist. No. CA2003-03-066, 2003-Ohio-5989, citing *State v. Reynolds*, 79 Ohio St.3d 158, 160, 1997-Ohio-304 (stating "[a] motion to reduce sentence is a petition for postconviction relief"); *State v. Perry* (1967), 10 Ohio St.2d 175 (stating the doctrine of res judicata applies in determining whether post-conviction relief should be given under R.C. 2953.21 et seq.) The error defendant asserts in the validity and length of his

sentence could have been raised on direct appeal, defendant did not raise the issues when he appealed, and res judicata bars defendant from attempting to litigate the issues through a post-conviction petition. See *State v. Steffen* (1994), 70 Ohio St.3d 399, 410 (stating "[p]ostconviction review is a narrow remedy, since *res judicata* bars any claim that was or could have been raised" on direct appeal).

{¶9} To the extent defendant's motion to revise sentence can be considered a request to amend his sentence, his contentions fail, as the trial court had "no authority to reconsider its own valid final judgments in criminal cases." *State ex rel. Hansen v. Reed* (1992), 63 Ohio St.3d 597, 599, citing *Brook Park v. Necak* (1986), 30 Ohio App.3d 118. See *State v. Tripodo* (1977), 50 Ohio St.2d 124 (noting a decision in a criminal case is a final appealable order when the entry of judgment is filed with the trial court). Here, the trial court journalized its proceeding through a judgment entry filed September 25, 2006, and defendant began serving his sentence. Because the entry was final, the court lacked the inherent authority to reconsider the sentence and required some statutory authority to do so. *State v. Smith* (1989), 42 Ohio St.3d 60, paragraph one of the syllabus (noting the common pleas court "may order such suspension if authorized by statute"); *State v. Addison* (1987), 40 Ohio App.3d 7, 9 (stating that "[o]nce a sentence has been executed, the trial court no longer has the power to modify the sentence except as provided by the legislature"). Defendant cites no such authority.

{¶10} The only pertinent authorizing statute in this case is R.C. 2929.20, and it allows the trial court to reduce a felony prison sentence under certain circumstances. To be eligible for judicial release under R.C. 2929.20, a defendant must be an "eligible offender." R.C. 2929.20(B). An "eligible offender" is a person "serving a state prison term

of ten years or less" when either (1) "[t]he stated prison term does not include a mandatory prison term" or (2) "[t]he stated prison term includes a mandatory prison term, and the person has served the mandatory prison term." R.C. 2929.20(A)(1) and (2). A "stated prison term" is "the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court." R.C. 2929.01(FF).

{¶11} Defendant's stated prison term in this case is 18 years: three years on each of the charges for which the defendant was found guilty, to be served consecutively. Because defendant's sentence exceeds ten years, he is not an eligible offender, leaving the court without authority to reduce his sentence. The trial court properly denied his motion.

{¶12} In the final analysis, the trial court properly concluded it lacked the authority to revisit defendant's sentence. To the extent we deem the motion a petition for post-conviction relief, res judicata would bar it, even if it could meet the other requirements of a post-conviction relief petition. To the extent defendant's motion sought reduction in his sentence, the statutory provisions set out in R.C. 2929.20 preclude revision in the circumstances of this case. Accordingly, defendant's four assignments of error are overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.
