

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

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|------------------------|---|------------------------|
| State of Ohio,         | : | No. 12AP-1081          |
| Plaintiff-Appellee,    | : | (C.P.C. No. 09CR-3340) |
|                        | : | and                    |
| v.                     | : | No. 12AP-1082          |
|                        | : | (C.P.C. No. 11CR-1744) |
| Ricardo Cornell Jones, | : |                        |
| Defendant-Appellant.   | : | (REGULAR CALENDAR)     |

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D E C I S I O N

Rendered on April 25, 2013

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*Ron O'Brien*, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

*Ricardo C. Jones*, pro se.

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APPEALS from the Franklin County Court of Common Pleas

McCORMAC, J.

{¶ 1} On June 5, 2009, the Franklin County Grand Jury issued a one-count indictment charging defendant-appellant, Ricardo Cornell Jones, with murder, a violation of R.C. 2903.02, for purposely causing the death of Michelle Keller in Franklin County Court of Common Pleas case No. 09CR-3340 (appellate case No. 12AP-1081). Thereafter, on April 5, 2011, defendant was charged by way of information with the abduction of Keller, a violation of R.C. 2905.02, in Franklin County Court of Common Pleas case No. 11CR-1744 (appellate case No. 12AP-1082).

{¶ 2} On April 5, 2011, while represented by counsel, defendant entered a guilty plea to the stipulated lesser-included offense of voluntary manslaughter, a first-degree felony (No. 12AP-1081), and abduction, a third-degree felony (No. 12AP-1082). These two cases were consolidated.

{¶ 3} The parties jointly recommended that the trial court impose a ten-year prison term for the manslaughter conviction to be served consecutively to a five-year

prison term for the abduction conviction. The trial court imposed the jointly recommended sentences by an entry filed on April 6, 2011. No appeals were filed.

{¶ 4} On November 16, 2012, defendant filed a motion for re-sentencing, claiming error in the imposition of multiple prison terms for allied offenses. On November 29, 2012, the trial court denied defendant's motion.

{¶ 5} Defendant asserts a single assignment of error, which states as follows:

The trial court subjected the Defendant/Appellant to Double Jeopardy in violation of the Fifth Amendment to the United States Constitution, and to a void sentence contrary to the Statutes of the State of Ohio when it failed to merge allied offenses of similar import.

{¶ 6} Defendant advances several issues that he wants this court to review; however, as later explained, there is no necessity to review these issues as his assignment of error is clearly frivolous and without merit.

{¶ 7} Defendant's assignment of error is that the trial court erroneously denied defendant's motion for re-sentencing. Defendant claims in his motion for re-sentencing that his convictions for voluntary manslaughter and abduction should have merged because he had no separate animus when he fatally stabbed the victim. Defendant's crimes were both committed against the same victim on the same date. Defendant makes a shocking claim that the abduction offense merged with the manslaughter offense because his only intent was to kill her because he was infuriated by a disrespectful comment she made. He said that, with intent to kill her, he chased her until he caught her and that he pulled his knife out and stabbed her until she was dead. He stated that the murder was the only crime, as his chasing and holding her down was simply to kill her.

{¶ 8} In his motion for re-sentencing, defendant claimed error in the trial court's imposing multiple prison terms for allied offenses. The trial court denied defendant's motion, pointing out that defendant's "motion for re-sentencing" amounted to a post-conviction petition. *State v. Reynolds*, 79 Ohio St.3d 158 (1997). The motion for re-sentencing properly held by the trial court to be a post-conviction petition was untimely, having been filed well after the deadline contained in R.C. 2953.21(A)(2). The time limit is jurisdictional, and a trial court has no authority to entertain an untimely petition unless the petitioner demonstrates that one of the exceptions contained in R.C. 2953.23(A) applies. *State v. Myers*, 10th Dist. No. 05AP-228, 2005-Ohio-5998, and *State v. Dixon*,

10th Dist. No. 10AP-75, 2010-Ohio-3894. Because defendant filed his motion over one year after the expiration of the time allowable under R.C. 2953.21(A)(2), the trial court's remedy was to deny defendant's motion. Defendant did not demonstrate in any way that he was unavoidably prevented from discovering new evidence upon information about his case that was necessarily outside the record, or that the United States Supreme Court recognized a new constitutional right that applied to the defendant retroactively. R.C. 2953.23(A). He was also required to demonstrate that, but for the constitutional error that occurred at trial, he would not have been convicted.

{¶ 9} Since defendant failed to demonstrate that his untimely filing met one of the exceptions listed in the statute, his failure to do so left the trial court without jurisdiction to entertain his motion for re-sentencing.

{¶ 10} Defendant's motion was also barred by application of the doctrine of res judicata. Res judicata bars review of any claim that defendant could have raised in the trial court before conviction or on appeal after conviction. *State v. Perry*, 10 Ohio St.2d 175 (1967).

{¶ 11} For the foregoing reasons, defendant's assignment of error is overruled, and the judgments of the Franklin County Court of Common Pleas is affirmed.

*Judgments affirmed.*

TYACK and DORRIAN, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of the Ohio Constitution, Article IV, Section 6(C).

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