

[Cite as *State v. Carter*, 2011-Ohio-414.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLINTON COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	CASE NOS. CA2010-07-012
	:	CA2010-08-016
	:	
- vs -	:	<u>OPINION</u>
	:	1/31/2011
	:	
CHARLES WILLIAM CARTER,	:	
	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS
Case No. CRI2001-5100

Richard W. Moyer, Clinton County Prosecuting Attorney, Andrew McCoy, 103 East Main Street, Wilmington, Ohio 45177, for plaintiff-appellee

Charles William Carter, #A419712, Ross Correctional Institution, P.O. Box 7010, Chillicothe, Ohio 45601, defendant-appellant, pro se

POWELL, P.J.

{¶1} Eight years after he was found guilty of rape, aggravated burglary, kidnapping, and possession of criminal tools, Charles William Carter moved to withdraw his no contest plea. He argued that a Clinton County prosecutor withheld evidence favorable to him. On appeal of the trial court's denial of that motion, Carter also challenges his original prison sentence. We find none of Carter's alleged errors

well taken and affirm the decision of the
Clinton County Common Pleas Court.

{¶12} Carter was charged with the four offenses in 2001. The trial court denied his suppression motions. After his no contest plea, the trial court found Carter guilty and subsequently imposed a prison term of ten years for rape, and five years each for aggravated burglary and kidnapping, all sentences to be served consecutively. Carter received an 11-month sentence for possession of criminal tools, to run concurrent with the other offenses.

{¶13} On direct appeal of his conviction in 2002, Carter challenged the failure to grant the suppression of evidence and his sexual predator classification. Carter also argued that he should not have been sentenced for both rape and kidnapping because the two offenses were allied offenses committed with the same animus.¹ This court overruled all of his arguments and affirmed his conviction.² Carter's subsequent motions for postconviction relief were, essentially, based on arguments related to sentencing issues addressed in *Blakely v. Washington* and *State v. Foster*.³ This court upheld the trial court's denial of those motions.⁴

{¶14} Carter moved for resentencing in 2009, arguing unsuccessfully that he was not properly notified of postrelease control (PRC) when he was originally

1. *State v. Carter*, Clinton App. CA2002-02-012, 2002-Ohio-6108, appeal not allowed, 98 Ohio St.3d. 1490, 2003-Ohio-1189.

2. *Id.*

3. *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531; *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

4. *State v. Carter*, Clinton App. No. CA2006-03-010, 2006-Ohio-4205; *State v. Carter*, Clinton App. No. CA2007-04-021, 2007-Ohio-4974.

sentenced. Carter appealed, and this court in an accelerated judgment entry, reversed the trial court's denial of Carter's motion.⁵ The trial court was instructed to issue a corrected judgment entry nunc pro tunc on the PRC provisions because Carter was properly instructed on the mandatory five years of PRC at the hearing, but the judgment entry did not reflect the correct instruction.⁶ In Case No. CA2010-07-012, Carter appealed the nunc pro tunc judgment entered by the trial court.

{¶15} Carter subsequently moved the trial court to allow him to withdraw his plea. The trial court denied Carter's motion and he appeals that decision in Case No. CA2010-08-016. Both appeals were consolidated.

{¶16} Carter raises four assignments of error in his appeal. Three of the assignments of error involve the prison term originally imposed. In his first assignment of error, Carter argues that the trial court erred in imposing a five-year mandatory sentence for his rape conviction that was not supported by statute. In his second assignment of error, he argues that the trial court erred in imposing maximum and consecutive sentences. In his third assignment of error, Carter argues that the trial court erred in imposing sentences for the allied offenses of rape and kidnapping. The fourth assignment challenges the trial court's decision on his motion to withdraw his plea.

{¶17} First, we note that under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant from raising and litigating in any proceeding,

5. *State v. Carter*, Clinton App. No. CA2010-01-001 (acc. Cal. Judg. Entry), appeal not accepted for review, *1/19/2011 Case Announcements*, 2011-Ohio-19.

6. *Id.*

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.⁷

{¶18} Further, the Ohio Supreme Court has stated that with the "law of the case doctrine," the decision of a reviewing court in a case remains the law of the case on legal questions involved for all subsequent proceedings at both trial and reviewing levels.⁸ This doctrine precludes a litigant from attempting to rely on arguments at retrial that were fully litigated, or could have been fully litigated in a first appeal.⁹

{¶19} Carter's first three assignments of error were not raised with the trial court through either of the judgments from which Carter now appeals. The nunc pro tunc entry dealt with PRC notification and those issues are currently before the Ohio Supreme Court. We assume that Carter is attempting to bootstrap the three claimed sentencing errors onto the nunc pro tunc sentencing entry. After reviewing the Ohio Supreme Court case of *State v. Fischer*, we believe Carter's attempt to raise errors other than the PRC issues must fail, whether it is after a nunc pro tunc entry is entered correcting the PRC notification or whether the trial court resentenced Carter to properly notify him of PRC.¹⁰

{¶110} In *Fischer*, the defendant argued that since his original sentence that lacked proper PRC notification was void, he could raise "any and all issues relating to

7. *State v. Black*, Stark App. No. 2010CA00136, 2010-Ohio-5338, ¶40, appeal not allowed, 96 Ohio St.3d 1440, 2002-Ohio-3344.

8. *State ex rel. Dannaher v. Crawford*, 78 Ohio St.3d 391, 394, 1997-Ohio-72.

9. *Id.*

10. *State v. Fischer*, ___ Ohio St.3d ___, 2010-Ohio-6238.

his conviction."¹¹ The *Fischer* court disagreed and held that a new sentencing hearing for the proper imposition of PRC was limited to imposition of PRC and res judicata still applied to other aspects of the conviction, such as the determination of guilt and the lawful elements of the ensuing sentence.¹²

{¶11} We turn first to Carter's third assignment of error. Carter claims that he could not be found guilty and sentenced for rape and kidnapping because they are allied of offenses of similar import. This issue was addressed in Carter's original appeal, and is barred by res judicata.

{¶12} Res judicata would also bar Carter's first and second assignments of error related to his original prison term as those claimed errors could have been raised at the initial appeal. Further, we find that the trial court clearly indicated why it was imposing the specific sentences and all of the sentences imposed for the four offenses were within the statutory range as authorized under R.C. 2929.14(A). Therefore, Carter's first, second, and third assignments of error are overruled.

{¶13} With his fourth assignment of error, Carter argues that the prosecutor withheld the exculpatory evidence that she authorized a detective to travel to the neighboring county to pick up Carter after Carter's car had been stopped. He claims that withholding that evidence resulted in the detective lying about having probable cause.

{¶14} "Exculpatory evidence" is defined as evidence favorable to the accused, which, if disclosed and used effectively, may make the difference between conviction

11. Id. at ¶4.

12. Id. at paragraphs two and three of the syllabus.

and acquittal.¹³

{¶15} Crim.R. 32.1 provides that a trial court may grant a defendant's postsentence motion to withdraw a guilty plea only to correct manifest injustice, and a defendant seeking to withdraw a plea after the imposition of sentence has the burden of establishing the existence of manifest injustice.¹⁴ In general, manifest injustice relates to a fundamental flaw in the proceedings that results in a miscarriage of justice or is inconsistent with the demands of due process.¹⁵ Therefore, a postsentence withdrawal motion is allowable only in extraordinary cases.¹⁶

{¶16} The decision to grant or deny a Crim.R. 32.1 motion is within the trial court's discretion and the good faith, credibility and weight of the defendant's assertions in support of the motion are matters to be resolved by the trial court.¹⁷

{¶17} The record indicates that Carter argued in one of his suppression motions that his arrest was unlawful when a Clinton County law enforcement officer traveled to a neighboring county to pick up Carter. The trial court addressed the claim in denying the motion to suppress. As we previously noted, Carter's conviction was upheld on appeal.

{¶18} We cannot agree that the evidence Carter now sets forth establishes

13. *State v. Dotson*, Clark App. No. CIV.A.2003 CA 34, 2004-Ohio-6875, ¶22, citing *United States v. Bagley* (1985), 473 U.S. 667, 676, 105 S.Ct. 3375.

14. Crim.R. 32.1; *State v. Smith* (1977), 49 Ohio St.2d 261, paragraph one of the syllabus.

15. *State v. Degaro*, Butler App. No. CA2008-09-227, 2009-Ohio-2966, ¶10.

16. *Smith* at 264.

17. *Id.* at paragraph two of the syllabus.

the existence of a manifest injustice to justify withdrawing his plea.¹⁸ The trial court did not abuse its discretion in denying Carter's postsentence motion to withdraw his plea. Carter's fourth assignment of error is overruled.

{¶19} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur

18. Crim.R. 11.