

[Cite as *State v. Lane*, 2015-Ohio-2712.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

CAMERON R. LANE

Defendant-Appellant

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Appellate Case No. 2014-CA-54

Trial Court Case No. 2008-CR-389

(Criminal Appeal from
Common Pleas Court)

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OPINION

Rendered on the 2nd day of July, 2015.

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ELIZABETH A. ELLIS, Atty. Reg. No. 0009172, Greene County Prosecuting Attorney, 55
Greene Street, Xenia, Ohio 45385

Attorney for Plaintiff-Appellee

CAMERON R. LANE, Inmate No. 588-719, London Correctional Facility, P.O. Box 69,
London, Ohio 43140

Defendant-Appellant-Pro Se

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WELBAUM, J.

{¶ 1} Defendant-appellant, Cameron R. Lane, appeals pro se from the judgment of the Greene County Court of Common Pleas denying his post-conviction motion to vacate and correct the sentence he received for one count of robbery and one count of abduction. For the reasons outlined below, the judgment of the trial court will be affirmed.

Facts and Course of Proceedings

{¶ 2} On October 23, 2008, a jury found Lane guilty of one count of robbery in violation of R.C. 2911.02(A)(3) and one count of abduction in violation of R.C. 2905.02(A)(2), both felonies of the third degree. The same day, the trial court sentenced Lane to serve five years in prison on each count and ordered the prison terms to run consecutively for a total prison term of ten years. On November 20, 2008, Lane appealed from his conviction and assigned errors challenging the legal sufficiency and manifest weight of the evidence. He also challenged the trial court's jury instructions. Lane, however, did not challenge any aspect of his sentence in the direct appeal. On January 29, 2010, we affirmed Lane's conviction in *State v. Lane*, 2d Dist. Greene No. 2008 CA 98, 2010-Ohio-287.

{¶ 3} Over four years later, on April 14, 2014, Lane filed a "Motion to Vacate and Correct Sentence of Allied Offense of Similar Import." In the motion, Lane argued that his robbery and abduction offenses were allied offenses of similar import that the trial court should have merged at sentencing. Lane also argued that his trial counsel was ineffective in failing to object to his offenses not being merged. After the State filed a memorandum in opposition and Lane filed a reply, on November 6, 2014, the trial court

overruled Lane's motion to vacate and correct sentence. Specifically, the trial court held that Lane's crimes were not allied offenses because they did not arise from the same conduct. The trial court also held that Lane's claims were barred by res judicata given that Lane did not raise the merger issue during his direct appeal.

{¶ 4} Lane now appeals from the trial court's decision overruling his post-conviction motion to vacate and correct sentence, raising two assignments of error for review.

First Assignment of Error

{¶ 5} Lane's First Assignment of Error is as follows:

THE TRIAL COURT['S] FAILURE TO MERGE ALLIED OFFENSES OF
SIMILAR IMPORT CONSTITUTES PLAIN ERROR.

{¶ 6} Under his First Assignment of Error, Lane contends the trial court should have granted his post-conviction motion to merge his robbery and abduction convictions because they were allied offenses of similar import. Lane's argument lacks merit for three reasons.

{¶ 7} First, Lane's motion is the functional equivalent of a petition for post-conviction relief, which was untimely because it was not filed within 180 days after the trial transcript was filed with this court in Lane's direct appeal.¹ See R.C. 2953.21(A)(2). In addition, none of the statutory exceptions for filing untimely petitions

¹Effective March 23, 2015, the deadline for filing petitions for post-conviction relief was changed from 180 days after the date on which the trial transcript is filed with the appellate court in the direct appeal to 365 days. Sub.H.B. 663, 2014 Ohio Laws 179. Under either deadline, Lane's motion is untimely, as he filed the trial transcript with this court on June 12, 2009 and then filed his post-conviction motion to vacate and correct sentence on April 14, 2014.

apply here. See R.C. 2953.23(A).

{¶ 8} Second, Lane's allied-offense argument is barred by res judicata because he was required to raise that argument during his direct appeal. See *State v. Reid*, 2d Dist. Montgomery No. 25790, 2014-Ohio-1282, ¶ 7-9. In *Reid* we stated that:

“Pursuant to the doctrine of res judicata, a valid final judgment on the merits bars all subsequent actions based on any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *State v. Collins*, 2d Dist. Montgomery No. 25612, 2013-Ohio-3645, ¶ 9, citing *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 653 N.E.2d 226 (1995). Moreover, “[a]rguments challenging the imposition of a sentence that is voidable are barred by the doctrine of res judicata if not raised on direct appeal.” *State v. Simons*, 2d Dist. Champaign No. 2013 CA 5, 2013-Ohio-3654, ¶ 42, citing *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 30. (Other citation omitted.) In other words, “ ‘defendants with a voidable sentence are entitled to re-sentencing only upon a successful challenge on direct appeal.’ ” *Id.* at ¶ 40, quoting *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 30.

“ ‘[A] voidable judgment is one rendered by a court that has both jurisdiction and authority to act, but the court's judgment is invalid, irregular, or erroneous.’ ” *Id.*, quoting *Simpkins* at ¶ 12. A trial court's failure to merge allied offenses of similar import renders a defendant's sentence merely voidable. *Id.* at ¶ 41; *State v. Parson*, 2d Dist. Montgomery No.

24641, 2012-Ohio-730, ¶ 9.

Reid at ¶ 7-8. Accordingly, Lane was required to raise his allied offense argument on direct appeal and is now barred from collaterally challenging his sentence on allied-offense grounds through his post-conviction motion.

{¶ 9} Finally, even if his claims were not otherwise barred, Lane's crimes were not allied offenses. It is well established that offenses committed by separate conduct are not allied offenses subject to merger. *State v. Ruff*, Slip Opinion No. 2015-Ohio-995, ¶ 31; *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, ¶ 49-51. In this case, Lane's abduction and robbery offenses were committed on two different dates, March 16, 2008 and March 19, 2008. The jury found that Lane committed robbery on March 16, 2008, when he forced his elderly victim to the floor and took \$20 from the victim's pants pocket. The jury also found that Lane committed abduction on March 19, 2008, when he prevented the same victim from leaving their residence by grabbing the victim and putting his hand over the victim's mouth. Therefore, it is clear that the offenses were committed by separate conduct and are not allied offenses subject to merger.

{¶ 10} Lane's First Assignment of Error is overruled.

Second Assignment of Error

{¶ 11} Lane's Second Assignment of Error is as follows:

IT IS INEFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILS TO OBJECT TO A SENTENCE WHICH VIOLATES OHIO REVISED CODE 2941.25.

{¶ 12} Under his Second Assignment of Error, Lane claims his trial counsel was ineffective in failing to object to the trial court's failure to merge his offenses as allied offenses of similar import. We disagree.

{¶ 13} Once again, Lane's argument fails because it is contained in an untimely petition for post-conviction relief and is barred by res judicata. Any ineffective assistance claim relating to matters contained within the record should be brought through a direct appeal. *State v. Wilson*, 2d Dist. Montgomery No. 23129, 2013-Ohio-180, ¶ 47-48. "If an alleged constitutional error [such as ineffective assistance of counsel] could have been raised and fully litigated on direct appeal, the issue is res judicata and may not be litigated in a post[-]conviction proceeding." (Emphasis deleted.) *State v. Franklin*, 2d Dist. Montgomery No. 19041, 2002-Ohio-2370, ¶ 9, citing *State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967).

{¶ 14} In addition, as noted under the First Assignment of Error, Lane's crimes are not allied offenses of similar import because the offenses were committed through separate conduct. Accordingly, there was no reason for his trial counsel to object on allied-offense grounds, which renders his ineffective assistance claim meritless.

{¶ 15} Lane's Second Assignment of Error is overruled.

Conclusion

{¶ 16} Having overruled both assignments of error raised by Lane, the judgment of the trial court is affirmed.

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DONOVAN, J. and HALL, J., concur.

Copies mailed to:

Elizabeth A. Ellis
Cameron R. Lane
Hon. Michael A. Buckwalter