

[Cite as *State v. Vincent*, 2014-Ohio-5811.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA3451
vs.	:	
WESLEY CONNOR VINCENT,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

APPELLANT PRO SE:	Wesley Connor Vincent, #237-368, Chillicothe Correctional Institution, Chillicothe, Ohio 45601
COUNSEL FOR APPELLEE:	Matthew S. Schmidt, Ross County Prosecuting Attorney, 72 North Paint Street, Chillicothe, Ohio 45601

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:12-22-14

ABELE, P.J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment that dismissed a motion to vacate sentence filed by Wesley Connor Vincent, defendant below and appellant herein. Appellant assigns the following errors for review¹:

FIRST ASSIGNMENT OF ERROR:

“THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE APPELLANT’S MOTION TO VACATE IN VIOLATION OF HIS 6TH AND 14TH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.”

SECOND ASSIGNMENT OF ERROR:

“THE APPELLANT’S SENTENCE IS CONTRARY TO LAW AND VOID FOR THE FAILURE TO ADHERE TO THE SENTENCING [?] IN 1991 IN VIOLATION OF APPELLANT’S 6TH AND 14TH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION [?].”

ASSIGNMENT OF ERROR NUMBER THREE:

“THE TRIAL COURT ERRED BY FAILING TO INFORM THE DEFENDANT THAT HE HAD A RIGHT TO A THREE JUDGE PANEL IN VIOLATION OF HIS 6TH AND 14TH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION AND THE OHIO CONSTITUTION.”

{¶ 2} More than two decades ago, a Ross County grand jury returned an indictment that charged appellant with (1) two counts of aggravated murder, both with firearm specifications and a death specification on the second count, (2) one count of attempted aggravated burglary, (3) one count of failure to comply with an order or signal of a police officer, and (4) two counts of

¹ Appellant’s brief contains no separate statement of the assignments of error as App.R. 16(A)(3) requires. Thus, we take these assignments of error from scattered portions of appellant's brief.

felonious assault with firearm specifications.

{¶ 3} At a later hearing, the parties reached an agreement to dismiss the death specification and one aggravated murder count in return for appellant's guilty pleas to the remaining charges. As part of the plea agreement, the prosecution recommended that appellant receive a life sentence for the remaining aggravated murder count.²

{¶ 4} Appellant commenced the instant action on May 19, 2014 with a “Motion to Vacate Sentence” wherein he argued various errors in the sentencing process. The trial court treated appellant’s motion as a petition for postconviction relief and overruled the petition because it contained nothing more than the “same issues that have been before this court on numerous occasions before.” This appeal followed.

I

{¶ 5} Constitutional challenges to a criminal conviction are generally treated as petitions for postconviction relief. See *State v. Garrett*, 4th Dist. Gallia No. 13CA13, 2014-Ohio-3462, at ¶3; *State v. Johnson*, Adams No. 13CA988, 2014-Ohio- 3027 at ¶8. As the prosecution notes in its brief, appellant has “filed an unending stream of meritless motions” with the court system. See e.g. *State v. Vincent*, 4th Dist. Ross No. 09C3135, 2010-Ohio-3261 (appeal of denial of motion to withdraw guilty plea); *State v. Vincent*, 4th Dist. Ross No. 08CA3041, 2009-Ohio-588 (appeal of denial of motion to withdraw guilty plea); *State v. Vincent*, 4th Dist. Ross No. 03CA2713, 2003-Ohio-3998 (appeal of denial of motion to withdraw guilty plea); *State v. Vincent*, 4th Dist. No. 02CA2672, 2003- Ohio-2591 (appeal of denial of motion to withdraw guilty plea); *State v.*

² Our rendition of facts come from *State v. Vincent*, 4th Dist. Ross No. 92CA1894, 1993WL19531 (Jan. 28, 1993). The parties largely confirm these facts in their briefs.

Vincent, 4th Dist. Ross No. 02CA2654, 2003-Ohio-473 (appeal of denial of motion to withdraw guilty plea); *State v. Vincent*, 4th Dist. Ross No. 92CA1894, 1993WL19531 (appeal of denial of petition for postconviction relief).

{¶ 6} Here, the arguments that appellant raises either were raised, or could have been raised in those prior cases, including his first appeal of right. Consequently, the doctrine of res judicata now bars these arguments from being raised at this time. See generally *State v. Shaffer*, 4th Dist. Lawrence No. 14CA15, 2014-Ohio-4976, at ¶16; *State v. Johnson*, 4th Dist. Adams No. 13CA988, 2014-Ohio-3027, at ¶7.

II

{¶ 7} Moreover, even if we consider the merits of appellant's arguments, the arguments are devoid of substance. First, as the trial court pointed out, appellant's petition is decades out of rule. See R.C. 2953.21(A) that generally imposes a one hundred eighty day time frame for filing these petitions. Appellant, however, attempts to circumvent this requirement by arguing that his sentence is void ab initio because the trial court did not have the statutory authority to sentence him to life imprisonment without the possibility of parole.

{¶ 8} Our review of Ohio law reveals that courts routinely imposed life sentences before appellant was sentenced. See e.g. *State v. Patterson*, 10th Dist. Franklin No. No. 88AP-364, 1989WL33732 (Apr. 4, 1989); *State v. Lott*, 8th Dist. Cuyahoga App. No. 54537, 1989WL24927 (Mar. 16, 1989). This negates his argument that life sentences were not permitted prior to his sentencing. We also note that the version of R.C. 2929.03 that appellant cites appears to be the version of the statute amended by Am.S.B. No. 4, 1995 Ohio Laws File 24, four years after appellant's 1991 sentence. Thus, appellant has not persuaded us that his sentence was

unavailable in 1991. Thus, we conclude that appellant's first and second assignment of error are without merit and would be overruled even if not barred by res judicata.

{¶ 9} Appellant's third assignment of error appears to fault the trial court in 1991 for not informing him that he had the right to be sentenced by a three judge panel after he had pled guilty to the charges. Even assuming, arguendo, that such an error occurred, this is another issue that could have, and should have, been raised on direct appeal. Now, more that twenty years later, it is barred by res judicata. See *State v. Hayden*, 10th Dist. Franklin No. 14AP-361, 2014-Ohio-5197, at ¶9; *State v. Nooks*, 10th Dist. Franklin No. 10AP-108, 2010-Ohio-2982, at ¶8.

{¶ 10} Accordingly, for all of these reasons, we overrule appellant's assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED

JUDGMENT ENTRY

It is ordered that the trial court's judgment be affirmed and that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

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

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.