[Cite as *State v. Slagle*, 2015-Ohio-1503.]

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 14CA8
	:	
vs.	:	
	:	DECISION AND JUDGMENT
JOHN SLAGLE,	:	ENTRY
	:	
Defendant-Appellant.	:	**Released: 03/05/15**

APPEARANCES:

John Slagle, St. Clairsville, Ohio, Pro Se Appellant.

Anneka P. Collins, Highland County Prosecutor, and Ross Greer, Highland County Assistant Prosecutor, Hillsboro, Ohio, for Appellee.

McFarland, A.J.

{¶1} This is an appeal by John Slagle (Appellant) of the March 28, 2014 judgment entry of the Highland County Common Pleas Court denying his motion for new trial pursuant to Crim.R. 33(A) on the basis of newly discovered evidence. Appellant sets forth three assignments of error and contends the trial court's error in denying his motion has resulted in his being placed in Double Jeopardy in violation of the United States and Ohio Constitutions, and subjected him to a violation of due process and the right to fair trial. However, having reviewed the record, the pertinent law, and the

proper standard of review, we find no abuse of discretion by the trial court. We therefore overrule Appellant's assignments of error and affirm the judgment of the trial court.

FACTS

{¶2} The events serving as a backdrop to Appellant's felony convictions were set forth as follows in *State v. Slagle*, 4th Dist. Highland No. 10CA4, 10CA5, 2011-Ohio-1463.[1] On March 19, 2010, the Highland County Court of Common Pleas sentenced Appellant to a total of six years in prison after a jury found him guilty of five felony theft offenses and one count of falsification, a misdemeanor. Appellant's convictions were based upon his theft of monies held in trust for various clients, by virtue of his position as their attorney. Specifically, Appellant was convicted in Highland County Common Pleas Case Number 09CR047:

Count 1: Aggravated theft/third degree felony in violation of R.C. 2913.02(A)(1).

Count 2: Grand theft/fourth degree felony in violation of R.C. 2913.02(A)(1).

Count 3: Grant theft/fourth degree felony in violation of R.C. 2913.02(A)(1).

Count 5: Falsification/first degree misdemeanor in violation of R.C. 2921.13(A)(1).

[1] Overruled on other grounds by *State v. Pierce*, 4th Dist. Meigs No. 10CA10, 2011-Ohio-535, at fn.2.

{¶3} Appellant was also convicted in Highland County Common Pleas Case Number 09CR086:

Count 2: Grand theft/fourth degree felony in violation of R.C. 2913.02(A)(1).

Count 3: Theft from an elderly person/third degree felony in violation of R.C. 2913.02(A)(1).

{¶4} As a result of his Highland County convictions, Appellant was sentenced on March 19, 2010, to a total of six years in prison, to be served consecutively to a four-year prison term previously imposed in the Montgomery County Court of Common Pleas, for a total of ten years.[2] In *Slagle*, *supra*, Appellant appealed his cumulative prison sentence, however, we affirmed the decision and sentence in the trial court on March 11, 2011. Appellant's appeal of our decision was not accepted for review in the Supreme Court of Ohio.[3]

{¶5} On January 18, 2011, Appellant filed a motion for post-conviction relief which was denied. On July 11, 2011, we affirmed the trial court's denial of Appellant's petition.[4] On May 12, 2011, Appellant filed an application for reopening alleging his appellate counsel was ineffective for

[2] In Montgomery County, Appellant was found guilty after a bench trial of two counts of aggravated theft in violation of R.C. 2913.02(A)(3), both third degree felonies. Appellant was sentenced to a four-year prison term on each count, to be served concurrently. He was also ordered to pay restitution to the victim law firm, Pickrel, Schaeffer and Ebeling Co., L.P.A. See *State v. Slagle*, 2nd Dist. Montgomery No. 23934, 2012-Ohio-1575.
[3] *State v. Slagle*,132 Ohio St.3d 1464, 2012-Ohio-3054, 969 N.E.2d 1232.
[4] *State v. Slagle*, 4th Dist. Highland No. 11CA22, 2012-Ohio-1936.

failing to raise the issue of the statute of limitations as to count one of the indictment in case number 09CR047. Appellant's application was denied. On November 29, 2013, Appellant also filed a motion for new trial which was denied on March 28, 2014. It is from the trial court's decision denying Appellant's motion for new trial that this timely appeal has been filed.

ASSIGNMENTS OF ERROR

"I. THE TRIAL COURT ERRED BY FAILING TO ADDRESS THE ISSUES SUBMITTED REGARDING VIOLATION OF BOTH THE UNITED STATES AND THE STATE OF OHIO CONSTITUTION REGARDING DUE PROCESS, EQUAL PROTECTION, VIOLATION OF THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION AND THE FIFTH AMENDMENT THEREOF. SAID ISSUE SHOULD NOT BE REVIEWED ON AN ABUSE OF DISCRETION STANDARD. THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION FOR NEW TRIAL CONSTITUTES PLAIN ERROR AND AN ABUSE OF DISCRETION AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE SUBMITTED. THE TRIAL COURT'S REASONING WAS ARBITRARY IN NATURE AND INCORRECTLY ASSUMED CERTAIN FACTS TO BE IN EXISTENCE WHICH WERE NOT IN EXISTENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE SUBMITTED. STATE V. TOWNSEND, FRANKLIN APP. NO. 08AP-371, 2008-OHIO-6518.

II. THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION FOR NEW TRIAL DENIED APPELLANT A FAIR TRIAL AND DUE PROCESS PURSUANT TO THE U.S. CONSTITUTION AND COMPARABLE PROVISIONS TO THE OHIO CONSTITUTION. SAID DENIAL ALSO SERVED TO PLACE APPELLANT IN DOUBLE JEOPARDY, ASSUME JURISDICTION AND VENUE IT

DID NOT HAVE, AND VIOLATION OF BOTH THE OHIO AND UNITED STATES CONSTITUTIONS.

III. THE TRIAL COURT ERRED IN DETERMINING APPELLANT'S NEW TRIAL MOTION BARRED BY THE DOCTRINE OF RES JUDICATA."

A. STANDARD OF REVIEW

{¶6} "Generally, a decision on a motion for a new trial is within the discretion of the trial court." *State v. Lusher*, 982 N.E.2d 1290, 2012-Ohio-5526,(4th Dist.), ¶ 25, citing *State v. Ward*, 4th Dist. Meigs No. 05CA13, 2007-Ohio-2531, ¶ 41, citing *State v. Schiebel,* 55 Ohio St.3d 71, 564 N.E.2d 54 (1990), paragraph one of the syllabus. Accordingly, we will not reverse a trial court's decision on a motion for a new trial absent an abuse of discretion. *State v. Nichols*, 4th Dist. Adams No. 11CA912, 2012-Ohio-1608, 2012 WL 1204015, ¶ 61. An abuse of discretion implies that the trial court's judgment is arbitrary, unreasonable or unconscionable. *State v. Petrone*, 5th Dist. Stark No.2013CA-00;213, 2014-Ohio-3395, ¶ 67; *State v. Sage*, 31 Ohio St.3d 173, 510 N.E.2d 343 (1987).

B. LEGAL ANALYSIS

{¶7} Because Appellant's assignments of error all relate to the denial of his motion for a new trial on the basis of newly discovered evidence, pursuant to Crim.R. 33(A)(6), we will consider them jointly.

1. Assignments of error one and two.

{¶8} Crim.R. 33, new trial, provides as follows:

> "(A) Grounds. A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights:
>
> * * *
>
> (6) When new evidence material to the defense is discovered, which the defendant could not with reasonable diligence have discovered and produced at the trial. When a motion for new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses."

Crim.R. 33(B) imposes the following requirements for the filing of a motion for new trial as follows:

> "Motion for new trial; form time. Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, or the decision of the court where trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein.
>
> Motions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered, or the decision of the

> court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from discovering the evidence within the one hundred twenty day period."

{¶9} Appellant's motion for new trial contained the affidavit of Jose Lopez, a licensed Ohio attorney, which stated in pertinent part:

> 2. Affiant states that in June of 2001, I was engaged to represent John W. Slagle in all matters related to his departure from the Dayton, Ohio law firm of Pickrel, Schaeffer, & Ebeling.
>
> 3. Affiant states that Paul J. Winterhalter was president of Pickrel, Schaeffer & Ebeling and continued in that capacity after June of 2001, for a number of years.
>
> 4. Affiant states that Paul J. Winterhalter, as president of Pickrel, Schaeffer & Ebeling notified both the Montgomery County Prosecutor's Office, State of Ohio and the Disciplinary Counsel of certain situations concerning alleged improper conduct by my client, Mr. Slagle.
>
> 5. Affiant states that I have personal knowledge that information was provided to the Montgomery County Prosecutor's Office by Paul J. Winterhalter and was in the possession of said office not later than early 2002.
>
> 8. Affiant states that attached hereto are true and accurate copies of the following documents that I obtained from the representation process and that I was able to locate: A. The first page of a letter from Paul J. Winterhalter to the Disciplinary Counsel dated December 4, 2001; B. One page of a multi-paged report prepared by Pickrel, Shaeffer & Ebeling (Page #7) and provided by Pickrel, Schaeffer & Ebeling to the Prosecutor's

> Office in Montgomery County, Ohio, which was used by the State to investigate my then client * * *.
>
> 9. Affiant states by the early part of the year 2002, the Montgomery County Prosecutor's Office and I were having discussions regarding all the various matters set forth in the said multi-paged report. Moreover, it was made known to me that records of the various attorneys that referred cases to Mr. Slagle were being subpoenaed and otherwise reviewed.
>
> 10. Affiant sates that, to the best of my knowledge and belief, Attorney Diane Menashe of Columbus, Ohio never contacted me regarding Mr. Slagle or his case and did not request any information or documents from me pertaining to any aspect of his case.

{¶10} At the hearing on his motion for new trial, Appellant testified Attorney Lopez represented him in civil matters only. Because Appellant was unaware of the existence of certain documents, he argues, he had no reason to tell his criminal attorney, Diane Menashe, to contact Attorney Lopez. As such, Appellant argues he was unaware of the existence of the documents referenced in Lopez's affidavit until well past the 120-day time limit for filing a delayed motion for new trial.

{¶11} Appellee first responds that Appellant's motion for new trial was filed over three years after guilty verdicts were rendered and is thus, untimely. Secondly, Appellee contends Appellant has produced no evidence to support his claim that he was unavoidably prevented from discovering his proffered new evidence. Furthermore, Appellant has failed to set forth any

evidence that he could not have learned of the existence of the evidence within the prescribed time period through the exercise of reasonable diligence.

{¶12} Appellant was found guilty on February 24, 2010. His motion for a new trial was filed on November 29, 2013. The trial court held a hearing on January 22, 2014, dealing solely with the late filing of the motion and whether the late filing should be excused. Appellant testified as follows:

> Court: Mr. Slagle, I'm going to ask you again. And I want a yes or no answer. And then you can tell me, you can explain your yes or no answer. Were you aware there was an investigation going on in Montgomery County, yes or no?
>
> Defendant: Yes.
>
> Court: Okay and were you, I mean your records were subpoenaed so you had to get your records. Is that correct and give them to Montgomery County? Is that correct?
>
> Defendant: No sir. No.
>
> Court: Well, Mr. Lopez says that he was aware of the investigation and he was aware of the subpoena. Is that correct?
>
> Defendant: I…I expect that's true.
>
> Court: And Mr. Lopez was your lawyer at the time. Is that correct?
>
> Defendant: Well, he was one of the attorneys involved.

Court: All right now Mr. Slagle, you had a trial in this Court. The issue of the Statute of Limitations came up. Did you ever ask to have Mr. Lopez or tell Ms. Menashe that Mr. Lopez had information and that he should be subpoenaed?

Defendant: No I did not.

* * *

Court: You attended the hearing didn't you, on the motion to dismiss?

Defendant: The morning of the trial, that one? Is that what you're speaking of?

Court: Well, I mean, there was a motion to dismiss based upon the Statute of Limitations. You attended that…

Defendant: That was that…

Court: You attended that hearing, didn't you?

Defendant: Yes I did.

Court: Did you tell her at that time, "Hey wait a minute. There are some documents in Montgomery County. They were totally aware of this and you ought to call Mr. Lopez because he can give you some information." Did you ever tell her that?

Defendant: No Your Honor. I was never…bear with me again, I hate to keep bringing this up. I was sick. I did not belong in that courtroom.

* * *

Court: Who was your lawyer that represented you on your appeal?

Defendant: I have to think. Ok. I don't know, someone in the Public Defender's Office. I forget her name. I'm sorry, Your Honor.

Court: Okay, did you tell her to contact Mr. Lopez and tell her to look into this whole issue while you're unavailable…while you're detained?

Defendant: No, I did not.

* * *

Court: The only reason I raise that issue, Mr. Slagle, is your own affidavit from Mr. Lopez said that your lawyer knew about all this stuff so clearly you were not prevented by anybody in the government or otherwise or the criminal justice system from having this information being made available to [counsel] or anybody else. Isn't that correct?

Defendant: No sir, not during the one hundred and twenty day time period. It wasn't relevant prior to that. And if I hadn't gotten sick my memory…I didn't get sick. I had a severe heart attack and had eight hours of open heart surgery. I can't apologize for it. It happened and it affected me. I was not given the opportunity to deal with it properly. I'm still suffering from it but be that as it may, no. Again Your Honor, if I had known about this there's no way that I would have let this pass.

* * *

Prosecutor: …What new evidence do you have?

Defendant: There's the Nelson Grover report. There is a letter from Paul Winterhalter and there's the other document which is a copulation (sic), I guess of some cases involved that the law firm and I were fighting over.

{¶13} The trial court's decision denying the motion for new trial states, in pertinent part:

> "In his motion the Defendant asserts that he has newly discovered evidence on Counts 1 and 2 (the "Cundiff matter") 'which will show that the statute of limitations had run and his attorney failed to investigate the matter of the statute of limitations.' Defendant attached three documents which he asserts is the newly discovered evidence: (1) a December 4, 2011 letter from Defendant's former partner to Jonathan Coughlan (Disciplinary Counsel); (2) a May 17, 2002 letter from Defendant's former attorney to Ms. Sigman of the Disciplinary Counsel's office; and (3) a December 17, 2002 Montgomery County Prosecutor's report of an interview with Susan Davis who is an attorney who referred cases to the Defendant in the late 1980's. Ms. Davis gave the prosecutor information regarding checks she paid to the Defendant on cases she referred to him. The Defendant submitted a Supplemental Brief (for which he did not get leave) and a second supplemental brief (for which he did not get leave). While not properly before the Court, the Court has reviewed the supplemental briefs." (The entry also contained a footnote advising the Prosecutor submitted an affidavit, which asserts that the Prosecutor did not withhold any evidence regarding the statute of limitations issue.)[5]

The trial court's entry further noted:

> "On January 22, 2014, this Court conducted a hearing with the Defendant present via a video stream from the prison. The Court inquired of the Defendant why he was "unavoidably prevented from discovering the evidence." The Defendant produced no evidence to support his claim. The "evidence" submitted with his petition was either in the possession of his lawyer(s) or was available to his lawyers upon request. In addition, the information regarding the Montgomery County

[5] The December 4, 2011 letter has been referenced in these proceedings as either "the Paul Winterhalter" letter or the "letter to Jonathan Coughlan." The December 17, 2002 interview with Susan Davis by the Montgomery County Prosecutor's Office has also been referenced as the "Nelson Grover" report.

> interview of Susan Davis was in the Defendant's possession when he filed his 2001 (sic) appeal of the denial of his motion for postconviction relief.[6] (See *State v. Slagle*, Case No. 11CA22 at p.5, CA 4th 2012). Defendant asserted that his attorney, (Diane Menashe) never contacted Mr. Jose Lopez (who has filed an affidavit) and thus the information in the affidavit is newly discovered. Mr. Lopez was a lawyer for the Defendant in 2001 and any information his lawyer had would be imputed to the Defendant. In addition, the Court asked Mr. Slagle if he ever told his lawyer to contact Mr. Lopez and he said "no." * * * The Court finds that none of the evidence is newly discovered evidence because reasonable diligence would have discovered it before trial. Even if the Court were to find that the proffered evidence was newly discovered, the Defendant has failed to show by clear and convincing proof that he was unavoidably prevented from discovery of the evidence within one hundred twenty days after his verdict. Courts have consistently held that absent the proof of unavoidable prevention from discovery of evidence the Court does not have jurisdiction to entertain the motion." (Internal citations omitted.)

{¶14} Upon our review of the record, we conclude the trial court did not abuse its discretion in denying Appellant's motion for a new trial. We agree that the information in the possession of Attorney Lopez would be imputed within the knowledge of Appellant. See *City of North Ridgeville v. Roth*, 9th Dist. Lorain No. 03CA008396, 2004-Ohio-4447, ¶ 27, citing *GTE Automatic Elec. v. ARC Indus.*, 47 Ohio St.2d, 146, 153, 351 N.E.2d 113 (1976); *Argo Plastic Prods. Co. v. Cleveland*, 15 Ohio St.3d 389, 392-393, 474 N.E.2d 328 (1984).

[6] This should reference the 2011 appeal.

{¶15} We also agree the alleged "newly discovered evidence" would have been discovered with reasonable diligence even before trial. Here, Appellant was arraigned on April 9, 2009. He was allowed to sign a recognizance bond and remained free from incarceration during the pendency of the pretrial proceedings. A jury trial was first scheduled for June 2009. The jury trial date was continued various times and Appellant's health conditions caused the case to be placed on the inactive docket on September 30, 2009. The matter did not proceed to trial until February 24, 2010. Thus, Appellant was free from incarceration for a period of over ten months. There is no evidence in the record to indicate he could not have, with reasonable diligence, discovered his purported new evidence and produced it prior to trial. See *State v. Mullen*, 4th Dist. Meigs No. 96CA22, 1997 WL 457468, *2. We agree that Appellant has failed to establish by clear and convincing proof that he was unavoidably prevented from discovery of his alleged new evidence. As such, we affirm the judgment of the trial court and overrule assignments of error one and two.

2. Assignment of error three.

{¶16} Appellant's motion for new trial asserted he was moving the court for a new trial:

> "[O]n Counts I and II of the indictment against him, or any other counts in any case as may pertain to the 'Cundiff matter'

> on the basis of newly discovered evidence relative to the issue of the expiration of the statute of limitations which demonstrates that: 1. The statute of limitations expired at the time of the indictment therein and 2. The State of Ohio intentionally withheld documents and testimony that demonstrate that the Statute of Limitations expired; and 3. That his attorney failed and neglected to properly investigate this entire situation such as to provide this court with evidence of the same."

{¶17} Intertwined within Appellant's arguments under the first two assignments of error is Appellant's contention that the Highland County Prosecutor's office of the State of Ohio failed to effectively coordinate with the Montgomery County Prosecutor's office, and Appellant was wrongfully prosecuted in Highland County when the cases were all part of a continuing course of alleged criminal conduct. Specifically, Appellant argues once Montgomery County indicted him on any charge, it assumed venue and jurisdiction over all subsequent cases. He argues a new trial would reveal the complete record and the issues. Appellant concludes he was subjected to Double Jeopardy, violation of due process, and the violation of right to a fair trial. Appellant's intertwined arguments were presented in a rambling fashion and we have deciphered them as best we can in the context of the appeal of a denial of his motion for new trial.

{¶18} The Double Jeopardy Clauses of the Fifth Amendment to the United States Constitution and Section 10, Article 1 of the Ohio Constitution

protect the accused from being put in jeopardy twice for the same offense. *State v. Morgan,* 4th Dist. Ross No. 12CA3305, 2010-Ohio-3936, ¶ 8. The Double Jeopardy Clause embodies three basic protections: (1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense. *State v. Clelland,* 83 Ohio App.3d 474, 615 N.E.2d 276 (4th Dist. 1991) (internal citations omitted.) Appellant directs us to *State v. Urvan*, 4 Ohio App.3d 151, 446 N.E.2d 1161 (8th Dist. 1982).

{¶19}In *Urvan,* a county prosecutor filed information charging Urvan with receiving stolen property but the information was "deactivated" when Urvan was placed in a pretrial diversion program for first offenders. However, after successfully completing the diversion program, Urvan was charged in a different county with grand theft relating to the same events as the prior charge for receiving stolen goods. Urvan filed a motion to dismiss the grand theft indictment on the ground of Double Jeopardy. His motion was denied and he appealed. The 8th District Court of Appeals held in pertinent part that: (1) the State was to be considered as a single entity whether acting through one or other of counties; (2) as the offenses involved occurred in part or both counties, jurisdiction could have been exercised by

either county; and, (3) once the first county took action against defendant by indicting him for receiving stolen property, it preempted venue and jurisdiction for the whole matter.

{¶20} In response to Appellant's third assignment of error, Appellee points out that in the original trial on the merits, the trial court held a hearing on the issue of the statute of limitations as to counts one and two and declined to dismiss those counts. Appellant did not file an appeal of the trial court's ruling on the issue. When Appellant did file an application for reopening alleging that his counsel was ineffective for failing to raise the statute of limitations issue, this Court found that appellate counsel was not ineffective because the limitations period had not expired at the time of Appellant's indictment, based on the record properly before the court on appeal. (See reference to the application for reopening and court's consideration of the statute of limitations issue in *State v. Slagle,* 4th Dist. Highland No. 11CA22, 2012-Ohio-1936, at ¶ 19.)

{¶21} In particular, Appellee argues Appellant failed to establish that the State of Ohio had knowledge of Appellant's criminal conduct in Highland County prior to 2008. Therefore, as determined by both the trial court and this appellate court, the State did not discover Appellant's criminal conduct in Highland County until 2008. As such, the statute of limitations

did not begin to run until that time and the April 7, 2009 indictment against appellant was filed in a timely manner.

{¶22} To warrant the granting of a motion for new trial based on the ground of newly discovered evidence, the Supreme Court of Ohio has held that a court should allow a new trial where the new evidence:

> "(1) discloses a strong probability that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) is such as could not in the exercise of due diligence have been discovered before the trial, (4) is material to the issues, (5) is not merely cumulative to former evidence, and (6) does not merely impeach or contradict the former evidence." *State v. Rice*, 11th Dist. Ashtabula No. 2012-A-0062, 2014-Ohio-4285, ¶ 13, quoting *State v. Petro*, 148 Ohio St. 505, 76 N.E.2d 370 (1947) syllabus.

{¶23} In its decision denying Appellant's motion for a new trial, the trial court stated:

> "The Court will also note that any issue regarding the statute of limitations is barred by the doctrine of res judicata. In the original trial on the merits, the Court held a hearing on the issue of the statute of limitations on counts 1 and 2 and declined to dismiss the counts. This motion provides no new issues of fact on that ruling. The Defendant did not appeal the Court's ruling on the statute of limitations issue. In addition, the Defendant raised the same issues on his "application for reopening" and the Court of Appeals rejected the argument in dismissing the claim of ineffective assistance of counsel."

{¶24} Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding, except an appeal from that

judgment, any defense or 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. *Petrone*, *supra*, at ¶ 85; *State v. Szefcyk*, 77 Ohio St.3d 93, 1996-Ohio-337, 671 N.E.2d 233, syllabus.

{¶25} We agree that Appellant fails to demonstrate there is a strong probability that the result would change if a new trial were granted. Furthermore, Appellant's arguments regarding Double Jeopardy, due process, and the right to a fair trial are barred by the doctrine of res judicata. As such, the trial court did not abuse its discretion in denying Appellant's motion for new trial. We overrule Appellant's third assignment of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Harsha, J. & Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland, 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.