

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JUSTIN ADAMS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Julie A. Edwards, J.

Case No. CT2011-0036

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court
of Common Pleas, Case No. CR2010-0003

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

January 3, 2012

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

RON WELCH

Assistant Prosecuting Attorney

Muskingum County, Ohio

27 North Fifth Street

Zanesville, Ohio 43701

JUSTIN ADAMS, PRO SE

Noble Correctional Institution

15708 McConnellsville Rd

Caldwell, Ohio 43724

Hoffman, P.J.

(¶1) Defendant-appellant Justin Adams appeals the July 19, 2011 Judgment Entry entered by the Muskingum County Court of Common Pleas denying his motion to correct illegal sentence. Plaintiff-appellant is the State of Ohio.

STATEMENT OF THE CASE

(¶2) Following an investigation by the Muskingum County Sheriff's Office involving a confidential informant, the Muskingum County Grand Jury indicted Appellant on the following Counts: 1.) trafficking in drugs (cocaine) with a forfeiture specification, in violation of R.C. 2925.03(A)(1), a felony of the third degree; 2.) trafficking in drugs (cocaine), with a forfeiture specification, in violation of R.C. 2925.03(A)(1), a felony of the second degree; 3.) trafficking in drugs (cocaine), with a forfeiture specification, in violation of R.C. 2925.03(A)(1), a felony of the second degree; 4.) trafficking in drugs (cocaine), in violation of R.C. 2925.03(A)(1), a felony of the third degree; 5.) trafficking in drugs (cocaine), in violation of R.C. 2925.03(A)(1), a felony of the first degree; 6.) having a weapon under disability, in violation of R.C. 2923.13(A)(2), a felony of the third degree; 7.) engaging in a pattern of corrupt activity, in violation of R.C. 2923.32(A)(1), a felony of the first degree; 8.) possession of drug paraphernalia, in violation of R.C. 2925.14(C)(1), a fourth degree misdemeanor.

(¶3) On October 22, 2009, the confidential informant purchased cocaine from Appellant. On October 29, 2009, Appellant asked the confidential informant to transport him to pick up monies owed to him, stating he would be restocking his supply of narcotics. On November 6, 2009, the confidential informant arranged to purchase four ounces of cocaine from Appellant. On November 12, 2009, the confidential informant

purchased four and one-half ounces of cocaine from Appellant. On December 14, 2009, the confidential informant purchased cocaine from Appellant. On December 29, 2009, Appellant sold nine ounces of cocaine to the confidential informant in a recorded conversation.

(¶4) On May 17, 2010, Appellant entered a plea of guilty to counts one, four, five and eight, and to an amended count two and three. The State agreed to make no recommendation and leave sentencing to the discretion of the trial court. The State further agreed to nolle counts six and seven at the time of sentencing. Appellant agreed to all forfeiture items set forth in the specifications.

(¶5) On July 12, 2010, the trial court sentenced Appellant to an aggregate term of twelve years in prison, and ordered he pay \$30,000 in fines. The trial court further advised Appellant a term of post-release control would be mandatory for five years.

(¶6) On July 15, 2011, Appellant filed a motion to correct illegal sentence. Via Judgment Entry of July 19, 2011, the trial court denied the motion.

(¶7) Appellant now appeals, assigning as error:

(¶8) "I. TRIAL COURT COMMITTED PLAIN ERROR IN SENTENCING APPELLANT TO ON [SIC] MULTIPLE CONVICTIONS THAT WERE ALLIED OFFENSES IN VIOLATION OF R.C. 2941.25, OHIO SUPREME COURT RULING IN STATE V. JOHNSON 2010-OHIO-6314, U.S. SUPREME COURT RULING IN MAUMEE V. GEIGER (1976), 45 OHIO ST.2d 238, 244, THE FIFTH AMENDMENT OF THE UNITED STATES AND THE OHIO CONSTITUTION ARTICLE 1 SECTION 10."

(¶9) As set forth in the Statement of the Case, supra, Appellant appeals the July 19, 2011 Judgment Entry of the trial court denying his motion to correct an illegal

sentence. Appellant did not file a direct appeal from his July 12, 2010 sentence herein. Appellant's motion to correct the illegal sentence is not a substitute for a direct appeal. Upon review, we find the trial court properly denied the motion to correct illegal sentence as Appellant's sentence is not illegal.¹

(¶10) Appellant raises an argument that was capable of being raised on direct appeal. His argument is barred by res judicata. 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 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. *State v. Szefcyk* (1996), 77 Ohio St.3d 93, 95 (Emphasis added).

(¶11) Appellant's sole assignment of error is overruled.

¹ Assuming, arguendo, Appellant's assigned error was not barred by res judicata, we would overrule the argument on the merits because the offenses were not allied offenses of similar import as they occurred on different dates and did not involve the same conduct. *State v. Johnson*, 2010-Ohio-6314.

(¶12) The July 19, 2011 Judgment Entry of the Muskingum County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Edwards, J. concur

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer

HON. SHEILA G. FARMER

s/ Julie A. Edwards

HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JUSTIN ADAMS

Defendant-Appellant

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JUDGMENT ENTRY

Case No. CT2011-0036

For the reasons stated in our accompanying Opinion, the July 19, 2011 Judgment Entry of the Muskingum County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Julie A. Edwards
HON. JULIE A. EDWARDS