

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

CHRISTOPHER A. WILLIAMS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 14 CA 82

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 04 CR 219

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

March 24, 2015

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Wise, J.

{¶1} Defendant-Appellant Christopher A. Williams appeals from his conviction and sentence in the Licking County Court of Common Pleas on one count of aggravated murder, in violation of R.C. 2903.01(B), one count of aggravated robbery, in violation of R. C. 2911.01(A)(1) and/or (A)(3), one count of aggravated burglary, in violation of R.C. 2911.11(A)(1) and/or (A)(2), and one count of escape, in violation of R.C. 2921.34(A)(1) and (C)(2) following his resentencing which occurred on September 26, 2014.

{¶2} Plaintiff-Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} The facts and procedural history of this case are as follows:

{¶4} Appellant was indicted on one count of aggravated murder, in violation of R.C. §2903.01(B), one count of aggravated robbery, in violation of R. C. §2911.01(A)(1) and/or (A)(3), one count of aggravated burglary, in violation of R.C. §2911.11(A)(1) and/or (A)(2), and one count of escape, in violation of R.C. §2921.34(A)(1) and (C)(2). The aggravated murder charge arose from the murder of Rhonda Boggs. The counts of aggravated robbery and aggravated burglary also arose from Appellant's conduct at the residence of Mrs. Boggs. The count of escape arose from Appellant's unauthorized absence from a halfway house at and around the time of Mrs. Boggs' murder.

{¶5} On March 15, 2005, the matter proceeded to a jury trial. The trial concluded on March 28, 2005. The following evidence was adduced at trial.

{¶6} On the morning of April 29, 2002, Rhonda Boggs was found murdered in the kitchen of her home in Pataskala, Ohio. In addition, the house appeared to have been ransacked, and several items of property were found to be missing from the

house. In particular, two guitars, Mrs. Boggs' purse and some of Mrs. Boggs' clothes, shoes and jewelry were missing.

{¶7} In general, the murder happened sometime on April 28, 2002 or early morning on April 29, 2002. Mrs. Boggs' daughter, Amanda, was found in the house with her mother. Amanda was two years and eight months old at the time. Shortly thereafter, Amanda was interviewed by a social worker. During this interview, Amanda said that "Nick" did it. Mrs. Boggs' husband, David Boggs, was incarcerated at the time. He was also interviewed. Mr. Boggs' had a cousin named Richard Robinson, who was called "Nick." Nick had allegedly been to the Boggs house recently to repair the washing machine. According to Robinson, Mrs. Boggs had used Robinson's leatherman tool (a multi tool) which Robinson used in completing the repairs, to open a beer bottle.

{¶8} Robinson was questioned by police. Ultimately, Robinson confessed to the murder and theft offenses. In total, Robinson repeatedly confessed to authorities. As a result, Robinson was arrested, charged and indicted for the murder and related charges.

{¶9} After a period of time, the Ohio Bureau of Criminal Investigation (BCI) became involved in the investigation. As a result, Christopher A. Williams, the Defendant-Appellant, herein, was arrested and indicted for the murder of Mrs. Boggs. Charges against Robinson were dismissed.

{¶10} Evidence revealed that Robinson was accounted for as follows at or around the time of Mrs. Boggs' murder. On April 28, 2002, Robinson met a group of people at a bar called Merry Melody's in advance of a golf outing at approximately 9:30 a.m. to 10:00 a.m. Merry Melody's is in the southeast part of Columbus. He then

traveled to the golf outing finally returning to that same bar at approximately 6:00 p.m. to 6:30 p.m. According to several witnesses, he did not leave there until somewhere around 10:15 to 10:30 p.m.

{¶11} Once leaving there, witnesses indicated that Robinson arrived at the Fairview Inn (a bar) in Lancaster, Ohio, at approximately 11:00 p.m. He arrived at approximately five minutes before the end of a hockey game that concluded at 11:04 p.m. The time elapsed between leaving Merry Melody's and arriving at the Fairview Inn was just enough time to make that trip. During the trip between the two bars, Robinson had several telephone conversations with his wife, which were confirmed by telephone records.

{¶12} Robinson did not leave the Fairview Inn until sometime close to 1:00 a.m., on April 29, 2002. After leaving the Fairview Inn, Robinson arrived at his home at 1:30 a.m., enough time to travel from this bar to his home, but not enough time to travel from the bar to the Boggs' home and then to Robinson's home.

{¶13} Appellant testified on his own behalf and attempted to account for his whereabouts and conduct at and around the time Mrs. Boggs was killed. Appellant had been in a half-way house as a result of violating post-release control imposed when Appellant was released from prison. According to Appellant, he left the half-way house on a 24 hour pass on April 26, 2002. Due to a series of alleged mishaps, Appellant did not return to the half-way house at the required time. However, Appellant decided to return to the half-way house on Sunday, April 28, 2002. On the way back, he decided to get high on crack cocaine.

{¶14} Appellant purchased crack cocaine in Columbus. Appellant then continued his trip back to Licking County, smoking the crack along the way. Appellant said there was a good possibility, however, that he went back and bought some more crack in Columbus. Around 5:00 or 5:30 p.m., Appellant decided to go visit his friend David Boggs and use his bathroom. Upon arriving, Appellant knocked on the door but no one responded. Appellant then walked around to the side of the house and relieved himself. Afterwards, Appellant noticed a purse sitting on the Boggs' car. Appellant took the purse to the door and knocked again. When no one answered, Appellant took the purse to his car. According to Appellant, he decided to take the money in the purse and go buy more drugs.

{¶15} Appellant drove to the house of Bob Sisco in Millersport, Ohio. Sisco was another friend of Appellant. Appellant and Sisco talked. They discussed many topics, including the band that Appellant and David Boggs used to be in together and the fact that Mr. Boggs was in jail. Appellant admitted, however, that his real purpose for stopping at Sisco's house was to purchase powdered cocaine. Appellant left around 7:00 p.m. and headed back to Columbus to buy more crack cocaine. Along the way, Appellant stopped for gasoline and used Mrs. Boggs' credit card for the purchase at around 7:30 p.m. Ultimately, Appellant purchased more crack cocaine. Afterwards, Appellant began to drive back to Licking County, driving and smoking crack and, he believes, probably drinking.

{¶16} Appellant testified that he believed that sometime between midnight and 2:00 a.m. he drove by the Boggs' residence to return Mrs. Boggs' purse. Appellant felt that Mrs. Boggs would discover that he had taken her purse and felt remorse for having

taken it, especially knowing that Mr. Boggs was in jail. Therefore, he decided to return the purse. Appellant testified he arrived at the Boggs' residence "between...10—10 to 11, somewhere around that time." (T. at 1996). (We recognize that this paragraph contains references to times that appear contradictory. However, those are the times to which Appellant testified.) Appellant saw an SUV in the driveway.

{¶17} Appellant parked his car down the road from the Boggs house and ran towards the house in an attempt to return the purse without being spotted. As he approached the house, Appellant claimed that he heard screams. Appellant ran back to his car. Appellant drove off and drove around for about 20 minutes. He then returned to the house. Appellant testified that at that point, he saw Nick Robinson coming out of the Boggs' house. He watched as Robinson got in his SUV and drove off.

{¶18} Appellant went in the Boggs' house. In the kitchen, he found Mrs. Boggs laying on the floor. Appellant claimed the he shook her and felt for a pulse. He saw a knife dangling off her neck. Appellant picked the knife up and held it. He then dropped the knife and walked through the rest of the house. At that point, Appellant "freaked out" and left.

{¶19} Appellant claimed that after this incident, he drove around getting high and drinking for two days. Eventually, about two days later, Appellant sold his car. Appellant then stole a car and drove around the rest of the week doing "more of the same." (T. at 2007). Appellant described it as being "in the middle of a drug binge." *Id.* He was "a mess" and feeling suicidal. (T. at 2008).

{¶20} Evidence showed that Mrs. Boggs had been stabbed 19 times and suffered multiple superficial cutting injuries. The murder weapon was a steak knife with

a black handle. The knife was found under Mrs. Boggs' body. Appellant's DNA was found on the knife and on Mrs. Boggs hands. Robinson's DNA was not found on the knife or Mrs. Boggs. However, DNA that generally matched that of Mrs. Boggs was found on a leatherman multi-tool belonging to Robinson.

{¶21} Following deliberations, the jury returned a verdict of guilty on all counts. Appellant was sentenced to serve a prison term of 20 years to life on the count of aggravated murder; a prison term of ten years on the count of aggravated robbery; a prison term of ten years on the count of aggravated burglary; and a prison term of eight years on the count of escape. The trial court ordered that all sentences be served consecutively to all other sentences.

{¶22} Appellant filed a direct appeal of his sentence and conviction and on March 22, 2006, this Court affirmed Appellant's conviction and sentence.

{¶23} Since that date, Appellant has filed several *pro se* challenges to his conviction and sentence.¹

{¶24} On December 2, 2013, Appellant filed a motion to vacate a void sentence specifically challenging the propriety of his sentences being imposed consecutive to one another, the imposition of sentence with respect to the Escape charge and the failure of the trial court to address post-release control at the time of sentencing.

¹ Appellant's case has been to this Court on three prior occasions. See, *State v. Williams*, Licking No. 05-CA-36, 2006-Ohio-1381, ("*Williams I*") (direct appeal); *State v. Williams*, Licking No. 08-CA-23, 2008-Ohio-6842 ("*Williams II*") (appeal of denial of Post-Conviction Petition); and *State v. Williams*, Licking No. 14-CA-13, dismissed for want of prosecution, Judgment Entry, July 21, 2014, ("*Williams III*") (appeal of denial of Motion to Vacate Void Sentence).

{¶25} By judgment entry dated February 18, 2014, the trial court denied the motion with respect to the first two prongs but sustained with respect to the post-release control issue. The matter was then set for a hearing on that issue.

{¶26} On September 26, 2014, a hearing was held before the trial court. At that hearing, Appellant objected to the imposition of post-release control and to being denied the opportunity to address the issues raised in his December 2, 2013, pleadings. Specifically, Appellant requested leave to raise issues of merger and the evidence raised at trial with respect to the charge of Escape. (September 8, 2014, Hearing T. at 4).

{¶27} At the conclusion of the hearing, the trial court imposed a term of post-release control upon Appellant. (September 8, 2014, T. at 6-7). Appellant renewed his objections. (September 8, 2014, T. at 7).

{¶28} Appellant now appeals, raising the following assignments of error:

ASSIGNMENTS OF ERROR

{¶29} “I. THE TRIAL COURT COMMITTED HARMFUL ERROR IN FAILING TO GRANT THE DEFENDANT-APPELLANT LEAVE TO ADDRESS ISSUES RELATED TO HIS SENTENCING IN CONNECTION WITH THE SEPTEMBER 26, 2014, RESENTENCING HEARING.

{¶30} “II. THE TRIAL COURT COMMITTED HARMFUL ERROR IN RESENTENCING MR. WILLIAMS TO A TERM OF POST-RELEASE CONTROL.

{¶31} “III .THE DEFENDANT-APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AND DUE PROCESS HEREIN.”

I.

{¶32} In his first Assignment of Error, Appellant contends that the trial court erred in not permitting him to challenge his sentence at the re-sentencing hearing in this matter. We disagree.

{¶33} *Res judicata* bars the further litigation in a criminal case of issues that were or could have been raised previously in a direct appeal. *State v. Leek* (June 21, 2000), Cuyahoga App. No. 74338, citing *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus. Appellant could have raised challenges to his sentence on direct appeal and did, in fact, raise such issues in two post-conviction pleadings attaching his convictions and sentence.

{¶34} In *State v. Fischer*, 128 Ohio St.3d 92, 2010–Ohio–6238, 942 N.E.2d 332, the Ohio Supreme Court clarified that, “when a judge fails to impose statutorily mandated post-release control as part of a defendant's sentence, that part of the sentence is void and must be set aside.” *Id.* at ¶ 26. However, “res judicata still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence.” *Id.* at ¶ 40. Hence, “[t]he scope of an appeal from a resentencing hearing in which a mandatory term of postrelease control is imposed is limited to issues arising at the resentencing hearing.” (Emphasis added.) *Id.*

{¶35} This Court has held that *res judicata* applies in a defendant's appeal from *Fischer*-based or R.C. §2929.191 based re-sentencing to impose post-release control where the issue being appealed did not arise from the resentencing hearing. See *State v. Oweis*, 5th Dist. No. 11 CAA060050, 2012-Ohio-443, ¶16 (additional citations omitted).

{¶36} For the foregoing reasons, Appellant's First Assignment of Error is overruled.

II.

{¶37} In his Second Assignment of Error, Appellant contends that the trial court erred in imposing a term of post-release control at his resentencing hearing. We disagree.

{¶38} More specifically, Appellant claims that such resentencing is barred by the doctrine of *res judicata* and the constitutional prohibition against cruel and unusual punishment.

{¶39} In *State v. Fischer*, 128 Ohio St.3d 92, 942 N.E.2d 332, 2010–Ohio–6238, the Ohio Supreme Court held that if a defendant is under a sentence in which post-release control was not properly rendered, the offending portion of the sentence dealing with post-release control is subject to review and correction. *Id.* The new sentencing hearing to which the offender is entitled is limited to the issue of post-release control. *Id.*

{¶40} “A sentence that does not include the statutorily mandated term of post-release control is void, is not precluded from appellate review by principles of *res judicata*, and may be reviewed at any time, on direct appeal or by collateral attack.” *State v. Fischer*, 128 Ohio St.3d 92, 2010–Ohio–6238, paragraph one of the syllabus. See also, *State v. Billiter*, 134 Ohio St.3d 103, 2012–Ohio–5144.

{¶41} In *Woods v. Telb*, 89 Ohio St.3d 504, 2000–Ohio–171, 733 N.E.2d 1103, the Ohio Supreme Court “held that the [postrelease] control statute does not violate the constitutional separation of powers and does not abridge the due process guarantees.” The *Woods* court further stated that “[t]he post-release control sanctions are sanctions

aimed at behavior modification in the attempt to reintegrate the offender safely into the community, not mere punishment for an additional crime, as in bad time.” *Id.* at 512.

{¶42} For the foregoing reasons, Appellant's Second Assignment of Error is overruled.

III.

{¶43} In his Third Assignment of Error, Appellant contends that he was denied the effective assistance of counsel. We disagree.

{¶44} Appellant claims that he was “denied the effective assistance of counsel due to the failure of his attorneys to raise issues with respect to his sentence either at the time of the original hearing or on his direct appeal.” (Appellant's brief at 14).

{¶45} As to the issues of the effectiveness of his trial counsel, Appellant is again barred from raising such issues by the doctrine of *res judicata*, as such issues could have been raised on direct appeal.

{¶46} Issues concerning the effectiveness of his appellate counsel, a claim of ineffective assistance of appellate counsel, is not cognizable in a post-conviction proceeding. *State v. Murnahan*, 63 Ohio St.3d 60 (1992), paragraph one of the syllabus. App.R. 26(B) permits a court of appeals to consider ineffective assistance of appellate counsel claims by motion filed 90 days after journalization of the judgment of the appellate court.

{¶47} Appellant's Third Assignment of Error is overruled.

{¶48} For the foregoing reasons, the judgment of Court of Common Pleas of the Licking County, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

JWW/d 0317