

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
GARY D. WALKER	:	Case No. 15CA11
	:	
Defendant - Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Richland County Court of Common Pleas, Case No. 2009CR0052D
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	May 20, 2015
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APPEARANCES:

For Plaintiff-Appellee

BAMBI COUCH PAGE  
Prosecuting Attorney

By: LILLIAN R. SHUN  
Assistant Prosecuting Attorney  
38 South Park Street  
Mansfield, OH 44902

For Defendant-Appellant

GARY D. WALKER, pro se  
Inmate No. 554324  
Lebanon Correctional Institution  
3791 State Route 63  
Lebanon, OH 45036

*Baldwin, J.*

{¶1} Appellant Gary D. Walker appeals a judgment of the Richland County Common Pleas Court dismissing his petition for postconviction relief as untimely.

STATEMENT OF FACTS AND CASE

{¶2} After the commencement of a jury trial in the Richland County Court of Common Pleas, appellant indicated that he would change his pleas to forty-seven felony counts, including engaging in a pattern of corrupt activity, forgery, and theft, with forfeiture specifications. The trial court conducted a change of plea hearing outside the presence of the jury and accepted appellant's pleas of guilty. The trial court then sentenced appellant to a total of twelve years in prison. The sentencing entry included an order that appellant serve three years of mandatory post release control.

{¶3} Appellant filed a notice of appeal from his 2009 convictions and sentence on July 1, 2009. However, on September 24, 2009, this Court dismissed the appeal upon appellant's motion.

{¶4} On September 28, 2009, appellant filed a pro se "motion for sentencing," claiming the trial court had not properly advised him of the consequences of post-release control violations. On December 7, 2009, Appellant filed an "urgent motion to take judicial notice," apparently seeking resentencing.

{¶5} On December 30, 2009, the trial court conducted a video conference hearing to notify Appellant of his PRC obligations. The next day, December 31, 2009, Appellant filed a motion to withdraw his guilty pleas, citing Crim.R. 32.1. He subsequently added a memorandum in support thereof. On March 24, 2010, the trial

court denied Appellant's motion to withdraw his guilty pleas. Appellant did not appeal that denial.

{¶6} On January 14, 2010, Appellant filed a motion to dismiss counts two through thirty-four of his indictment, alleging lack of jurisdiction of the grand jury. The court did not rule on this motion.

{¶7} On April 12, 2010, Appellant filed a “motion for final judgment,” asserting that the trial court had not disposed of the odd-numbered counts in the indictment (three through forty-three), as well as two other counts in the indictment (forty-four and forty-six).

{¶8} In the interim, the trial court had yet to issue a written judgment entry addressing the results of the PRC video hearing of December 30, 2009. Accordingly, on July 28, 2010, the trial court issued a judgment entry stating, inter alia, appellant “has been notified personally of the consequences of a post-release control violation pursuant to R.C. 2929.19(B)(3)(e) \* \* \*.”

{¶9} On August 27, 2010, Appellant filed a “motion for re-sentencing to correct void sentence.” On September 7, 2010, the trial court filed an amended sentencing entry. This entry was virtually identical to the sentencing entry of June 2, 2009, but it specified, per the agreement of the parties at the 2009 change of plea hearing, that each odd-numbered count (three through forty-three) was merged into its preceding even-numbered count. Count forty-four was dismissed, while count forty-six was merged into count forty-five.

{¶10} On September 28, 2010, Appellant filed a notice of appeal of the September 7, 2010 amended sentencing entry. By Opinion and Judgment Entry of

August 10, 2011, this Court held the issues raised on appeal were barred under the doctrine of res judicata. *State v. Walker*, 5th Dist. Richland No. 10 CA 116, 2011–Ohio–4005.

{¶11} Appellant filed a motion for a revised sentencing entry on September 19, 2011, arguing that he did not have a final, appealable order. The trial court overruled the motion on December 5, 2011. Appellant appealed this order, and also filed a petition for a writ of procedendo, asking this Court to order the trial court to give him a final appealable order. His petition for a writ of procedendo was dismissed for failure to state a claim. We affirmed the trial court's December 5, 2011 judgment, find that the court's entries of June 2, 2009 and September 7, 2010 were final and appealable orders.

{¶12} Appellant filed an amended petition for postconviction relief on November 6, 2014. He argued that his January 14, 2010 petition was not answered by the prosecutor nor ruled on by the trial court, and he therefore could amend the petition without leave of court. The court dismissed the petition as untimely.

{¶13} Appellant assigns three errors:

{¶14} I. THE TRIAL COURT ABUSED ITS DISCRETION AND DENIED THE APPELLANT DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN IT FAILED TO PERMIT APPELLANT THE RIGHT TO AMEND HIS POST CONVICTION RELIEF PURSUANT TO OHIO REVISED CODE §2953.21(F), AND OHIO CIV. R. 15 AND DECIDED THE AMENDED PETITION FOR POST CONVICTION RELIEF IS UNTIMELY.

{¶15} II. TRIAL COURT ABUSED ITS DISCRETION AND DENIED THE APPELLANT DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN IT DETERMINED APPELLANT'S 'AMENDED PETITION FOR POST CONVICTION RELIEF' FILED PURSUANT TO OHIO REVISED CODE §2953.21(F) AND OHIO CIV. R. 15(A) WAS THE COMMENCEMENT OF A NEW PROCEEDING AND UNTIMELY.

{¶16} III. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO GRANT THE APPELLANT'S MOTION TO STRIKE AND MOTION FOR SUMMARY JUDGMENT."

{¶17} The instant case comes to us on the accelerated calendar. App.R. 11.1 governs accelerated-calendar cases and states in pertinent part:

{¶18} "(E) Determination and judgment on appeal. The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusory form."

{¶19} One of the most important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (1983).

I., II.

{¶20} Appellant argues that the court erred in finding his amendment to his postconviction relief petition was a successive petition, and untimely. He argues that

pursuant to R.C. 2953.21(F) and Civ. R. 15(A), he was entitled to amend his timely January 14, 2010, petition, which was not answered by the prosecutor nor ruled upon by the trial court.

{¶21} Assuming arguendo that appellant's November 6, 2014 amended petition was an amendment to his timely filed January 14, 2010 petition, all of appellant's claims are either barred by res judicata, or appellant has not demonstrated grounds for relief such that an evidentiary hearing was required.

{¶22} “Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant 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.” *State v. Perry*, 10 Ohio St.2d 175, 180–181, 226 N.E.2d 104 (1967).

{¶23} Appellant's first claim for relief involves the jurisdiction of the grand jury and the trial court, and could have been raised on direct appeal.

{¶24} Appellant's second through tenth claims for relief argue that counsel was ineffective in the plea process. All of these claims either could have been raised on direct appeal or in his prior motion to withdraw his guilty pleas. Further, this Court has previously found issues of ineffective assistance of counsel surrounding the plea proceedings to be res judicata by appellant's failure to file a direct appeal from his motion to withdraw his guilty pleas. *State v. Walker*, 5th Dist. Richland No. 10CA116, 2011-Ohio-4005.

{¶25} In his eleventh claim for relief, appellant argues that the trial judge was biased against him because he mentioned during a co-defendant's change of plea hearing that appellant had an extensive criminal history. Appellant has not supported this claim with evidence, nor has he demonstrated how this statement of fact concerning his past criminal history demonstrated bias in his sentencing proceeding.

{¶26} In his final claim for relief, appellant argued that counsel was ineffective for failing to object to a defect in the indictment. Again, this claim is barred by res judicata, as it could have been raised on direct appeal.

{¶27} The first and second assignments of error are overruled.

### III.

{¶28} In his third assignment of error, appellant argues that the court erred in not granting him default judgment and summary judgment on his petition. For the reasons stated in Assignments of error one and two, the third assignment of error is overruled.

{¶29} The judgment of the Richland County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Farmer, J. concur.