

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RICHARD RAY SCHRECKENGOST

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P. J.
Hon. Patricia A. Delaney, J.
Hon. Craig R. Baldwin, J.

Case No. 2015 CA 00068

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 86-6180

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 29, 2015

APPEARANCES:

For Plaintiff-Appellee

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Wise, P. J.

{¶1} Appellant Richard Schreckengost appeals the March 16, 2015, decision of the Stark County Court of Common Pleas denying his Motion to Correct Void Sentence.

{¶2} Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} In 1986, Appellant Richard Schreckengost was charged by indictment with two counts of Aggravated Robbery, one count of Rape, two counts of Aggravated Burglary, two counts of Felonious Assault and one count of Grand Theft.

{¶4} The indictment also charged a co-defendant, Randy Keith Fowler. Appellant pled guilty to the charged offenses. Upon accepting his guilty plea and convicting him thereon, the trial court imposed the following sentences: Aggravated Robbery, 2 counts: 10 to 25 years each; Rape, 1 count: 10 to 25 years; Aggravated Burglary, 2 counts: 10 to 25 years each; Felonious Assault, 2 counts: 8 to 15 years each; Grand Theft, 1 count: 2 years.

{¶5} The sentences were ordered to run consecutively, for an aggregate indeterminate prison term of 66 to 155 years, plus an addition two-year determinate prison term for the grand theft conviction.

{¶6} On December 11, 2014, Appellant filed a motion with the trial court captioned “Defendant’s Motion to Correct Void Sentence/Clerical Mistake in Judgment of Sentence Pursuant to Criminal Rule 36, See Footnote[1] with Request for De Novo Resentencing Hearing as Though Sentencing had Never Occurred.

{¶7} In his motion, Appellant argued that when he was sentenced in 1986, he was sentenced under the wrong sentencing provision. According to him, the applicable

sentencing statute provided for an indeterminate prison term for such first-degree felonies of 4, 5, 6 or 7 years, instead of the 5, 6, 7, 8, 9 or 10 years that was applied by the trial court.

{¶8} On March 3, 2015, the State of Ohio filed its Reply to Appellant's motion arguing that the sentence was correct because Appellant was convicted of aggravated first-degree felonies, not simple first-degree felonies and further that Appellant's motion was in effect a petition for post-conviction relief.

{¶9} On March 16, 2015, the trial court denied Appellant's motion.

{¶10} Appellant now appeals, raising the following Assignment of Error for review:

{¶11} "I. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT AND VIOLATED HIS DUE COURSE AND DUE PROCESS RIGHTS GUARANTEED TO HIM BY THE FOURTEENTH AMENDMENT TO THE UNITED CONSTITUTION AND ARTICLE I, SECTION SIXTEEN OF THE OHIO CONSTITUTION, WHEN THE TRIAL COURT RECLASSIFIED DEFENDANT'S MOTION TO CORRECT VOID SENTENCE; CRIM.R. 36. MOTION BASED SOLELY UPON THE FACT THAT THE TRIAL COURT IMPOSED AN UNAUTHORIZED AND VOID TERM TO-WIT 10-25 YEARS FOR FIRST DEGREE AGGRAVATED FELONIES IN 1986."

I.

{¶12} Appellant, in his sole Assignment of Error, argues the trial court erred in denying his motion to correct sentence. We disagree.

{¶13} In the case *sub judice*, Appellant was sentenced pursuant to the pre-Senate Bill 2 sentencing scheme. Pursuant to the sentencing scheme in effect at that time, the offenses of aggravated robbery, aggravated burglary, and rape were all classified as aggravated felonies of the first degree. See R.C. §2911.01(B) ("Whoever violates this section is guilty of aggravated robbery, an aggravated felony of the first degree."); R.C. §2911.11(B) ("Whoever violates this section is guilty of aggravated burglary, an aggravated felony of the first degree."); R.C. §2907.02(B) ("Whoever violates this section is guilty of rape, an aggravated felony of the first degree.").

{¶14} Appellant, in his motion, incorrectly argues that these offenses were simple first-degree felonies.

{¶15} However, the pre-Senate Bill 2 felony sentencing statutes provided for different sentencing ranges for aggravated felonies of the first-degree as opposed to simple felonies of the first-degree. The former offenses triggered an indeterminate prison term of 5, 6, 7, 8, 9 or 10 years to 25 years:

(B) Except as provided in division (D) or (H) of this section, sections 2929.71 and 2929.72, and Chapter 2925. of the Revised Code, terms of imprisonment for felony shall be imposed as follows:

(1) For an aggravated felony of the first degree:

(a) If the offender has not previously been convicted of or pleaded guilty to any aggravated felony of the first, second, or third degree, aggravated murder or murder, or any offense set forth in any existing or former law of this state, any other state, or the United States that is substantially equivalent to any aggravated felony of the first, second, or third degree or to aggravated murder or murder, the minimum term, which may be imposed as a term of actual incarceration, shall be five, six, seven, eight, nine, or ten years, and the maximum term shall be twenty-five years;

R.C. §2929.11(13)(1)(a).

{¶16} Further, this Court finds that the trial court did not err in finding Appellant's motion to be an untimely petition for post-conviction relief as it is a motion to correct a sentence, filed after the time for a direct appeal, which seeks to void the sentence. *State v. Starks*, 8th Dist. Cuyahoga No. 100796, 2014-Ohio-5136; *See State v. Reynolds*, 79 Ohio St.3d 158, 160-161, 1997-Ohio-304, 679 N.E.2d 1131.

{¶17} Appellant's sole Assignment of Error is overruled.

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

By: Wise, P. J.

Delaney, J., and

Baldwin, J., concur.

JWW/d 0622