[Cite as *State v. Jennison*, 2015-Ohio-3204.]

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- FLOYD E. JENNISON Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P.J. Hon. John W. Wise, J. Hon. Craig R. Baldwin, J. Case No. 2015-CA-0003 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Coshocton County Common Pleas Court, Case No. 2011CR0072
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	August 6, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
BENJAMIN E. HALL Assistant Prosecuting Attorney Coshocton County 318 Chestnut Street Coshocton, Ohio 43812	JEFFREY A. MULLEN Coshocton County Public Defender 239 N. Fourth Street Coshocton, Ohio 43812

Hoffman, P.J.

{¶1} Defendant-appellant Floyd E. Jennison appeals the March 4, 2015 Judgment Entry entered by the Coshocton County Court of Common Pleas, which dismissed his petition for post-conviction relief as untimely. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE[1]

{¶2} On July 18, 2011, the Coshocton County Grand Jury indicted Appellant on 6 counts of rape, in violation of R.C. 2907.02(A)(2), felonies of the first degree; and 17 counts of gross sexual imposition, in violation of R.C. 2907.05(A)(1), felonies of the fourth degree. On February 27, 2012, Appellant reached a plea agreement with the state. The state agreed to amend all of the rape counts to sexual battery, felonies of the third degee; and to nolle prosequi 10 of the gross sexual imposition counts. The state further agreed to take no position at sentencing, no position on judicial release, and not to object to a pre-sentence investigation. In exchange, Appellant entered guilty pleas to 6 counts of sexual battery and 7 counts of gross sexual imposition. On April 9, 2012, the trial court sentenced Appellant to an aggregate term of 31 years. Appellant did not appeal his sentence.

{¶3} On January 30, 2015, Appellant filed a motion to merge the sentences on the six counts of sexual battery, and to merge the sentences on the 7 counts of gross sexual imposition. Via Judgment Entry filed March 4, 2015, the trial court deemed the motion to be a petition for post-conviction relief, found the time for filing such had expired, and dismissed the same as untimely.

[1] A Statement of the Facts is not necessary to our disposition of this Appeal.

{¶4} It is from this judgment entry Appellant appeals, assigning as error:

{¶5} "I. THE COURT CALCULATED THE INCORRECT DATE FOR FILING A MOTION FOR POST-CONVICTION RELIEF."

{¶6} Herein, Appellant argues, pursuant to R.C. 2953.21(A)(2), he had 365 days after the expiration for the time for filing an appeal to file his motion. Appellant explains the time for filing his appeal expired on May 11, 2012; therefore, he had until May 11, 2013, to file his motion. Appellant concludes the trial court erred in finding the time for filing his petition for post-conviction relief expired on November 7, 2012, 180 days from the date on which he was sentenced.

{¶7} Appellant relies on R.C. 2953.21, which was amended, effective March 23, 2015, and changed the deadline for filing petitions for post-conviction relief from 180 days to 365 days.

{¶8} We need not determine whether the statute applies retroactively in the instant action. Appellant's petition for post-conviction relief was untimely under either version of the statute.

{¶9} Furthermore, we find Appellant's argument is barred by the doctrine of res judicata. Under the doctrine of res judicata, "a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *State v. Patrick,* 8th Dist. Cuyahoga No. 99418, 2013–Ohio–5020, ¶ 7, citing *Grava v. Parkman Twp.,* 73 Ohio St.3d 379, 382, 653 N.E.2d 226 (1995). When a petitioner seeks postconviction relief on an issue that was raised or could have been raised on direct appeal, the petition is properly denied by the application of the doctrine of res judicata. *State v.*

Tucker, 8th Dist. Cuyahoga No. 84595, 2005–Ohio–109, ¶ 11, citing *State v. Edwards,* 8th Dist. Cuyahoga No. 73915, 1999 Ohio App. LEXIS 894 (Mar. 11, 1999).

{¶10} Appellant could have raised the issues of merger on direct appeal. Because Appellant failed to do file a direct appeal, he has waived those claims and they are barred by res judicata.

{¶11} Appellant's sole assignment of error is overruled.

{¶12} The judgment of the Coshocton County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Baldwin, J. concur