

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

HENRY J. MAST

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P. J.

Hon. Patricia A. Delaney, J.

Hon. Craig R. Baldwin, J.

Case No. 16 CA 007

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 15 CR 022

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

February 1, 2017

APPEARANCES:

For Plaintiff-Appellee

STEVE KNOWLING
PROSECUTING ATTORNEY
164 East Jackson Street
Millersburg, Ohio 44654

For Defendant-Appellant

HENRY J. MAST, PRO SE
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P.O. Box 1812
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Wise, P. J..

{¶1} Appellant Henry J. Mast appeals the August 25, 2016, decision of the Holmes County Common Pleas Court denying his “Motion to Correct the Judgment Entry of Sentencing Pursuant to Crim.R. 36 with Request for De Novo Sentencing.”

{¶2} Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} For purposes of this Opinion, which has been assigned to the accelerated docket, the relevant facts and procedural history are as follows:

{¶4} On March 2, 2015, Appellant was indicted on two counts of Rape, in violation of R.C. §2907.02(A)(1)(b), first degree felonies, and two counts of Gross Sexual Imposition, in violation of R.C. §2907.05(A)(4), third degree felonies.

{¶5} On July 9, 2015, Appellant entered a Plea of Guilty to two counts of Gross Sexual Imposition, felonies of the third degree. As part of the plea agreement, the State requested that the trial court dismiss the two Rape charges, which it did in its July 9, 2015, Journal Entry.

{¶6} By Judgment Entry filed August 26, 2015, the trial court sentenced Appellant to four (4) years on each count of Gross Sexual Imposition, to be served consecutively, for a total prison sentence of eight (8) years. Appellant was also designated as a Tier II Sexual Offender.

{¶7} Defendant-Appellant did not file a timely direct appeal from his August 26, 2015 sentence.

{¶8} On January 15, 2016, Defendant-Appellant filed a "Motion to Revised/Corrective Judgment Entry of Conviction and Sentence pursuant to Crim.R.

32(C) with Request for De Novo Sentencing Hearing as though Sentencing had Never Occurred".

{¶9} By Judgment Entry dated February 10, 2016, the trial court denied Defendant-Appellant's Motion.

{¶10} Defendant-Appellant did not appeal this Judgment Entry.

{¶11} On January 19, 2016, Defendant-Appellant filed a "Motion for Leave to File Application for Delayed Appeal with Good Cause Shown" with this Court.

{¶12} By Judgment Entry dated March 7, 2016, this Court denied Defendant-Appellant's Motion. This Court also denied Defendant-Appellant's Motion to Reconsider by Judgment Entry dated March 31, 2016.

{¶13} Defendant-Appellant's proposed "Assignment of Error 3" raised the exact same issue regarding the alleged failure to dismiss the two "Rape" counts.

{¶14} On April 20, 2016, Defendant-Appellant filed a "Complaint for Writs of Mandamus and Procedendo" with the Supreme Court of Ohio seeking relief under Crim.R. 32 raising the same issue regarding the two "Rape" counts.

{¶15} The State of Ohio filed a Motion to Dismiss Defendant-Appellant's "Complaint", which was granted by the Supreme Court of Ohio on June 29, 2016.

{¶16} On August 5, 2016, Appellant filed a "Motion to Correct the Judgment Entry of Sentencing Pursuant to Crim.R. 36 with Request for De Novo Sentencing."

{¶17} On August 1, 2016, the state of Ohio filed a Memorandum in Opposition.

{¶18} By Judgment Entry filed August 25, 2016, the trial court denied Appellant's motion.

{¶19} Appellant now appeals, assigning the following error for review:

ASSIGNMENT OF ERROR

{¶20} "I. THE TRIAL COURT ABUSED ITS DISCRETION AND CAUSED PREJUDICE TO THE APPELLANT WHEN THE TRIAL COURT DENIED APPELLANT'S MOTION TO CORRECT THE JUDGMENT ENTRY OF SENTENCING PURSUANT TO CRIM.R. 36 WITH REQUEST FOR DE NOVO SENTENCING."

I.

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

{¶22} Appellant raised the same issue that he now sets forth in a motion for a delayed appeal, which this Court denied.

{¶23} The sole issue raised by Appellant is barred by the doctrine of res judicata. "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 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. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967).

{¶24} For the foregoing reasons, the appeal of the judgment of the Court of Common Pleas of Holmes County, Ohio, is dismissed

By: Wise, P. J.

Delaney, J., and

Baldwin, J., concur.

JWW/d 0125