

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Court of Appeals No. S-08-028

Appellee

Trial Court No. 97 CR 169

v.

Joshua A. Knisely

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2009

* * * * *

Thomas L. Steirwalt, Sandusky County Prosecuting Attorney,
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Joshua A. Knisely, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the order of the Sandusky County Court of Common Pleas, denying him postconviction relief from a 1997 theft conviction. For the reasons that follow, we affirm.

{¶ 2} In 1997, a Sandusky County grand jury named appellant, Joshua A. Knisley, in a two count indictment charging him with breaking and entering and theft.

Appellant pled not guilty, but eventually negotiated a guilty plea to a single theft offense. Appellant was sentenced to a six-month period of incarceration. Appellant pursued no direct appeal. He served his sentence and was released.

{¶ 3} On August 1, 2008, appellant, now incarcerated in the London Correctional Institution for an unrelated offense, filed a "Motion to Vacate Void Sentence and to Certify to the Court Of Claims the Defendant Was Wrongfully Incarcerated and Motion to Seal the Record." In his memorandum in support, appellant insisted that his 1997 sentence was void because the trial court never made post-release control part of his sentence. Because of this, appellant reasons, his sentence was unlawful. He should be compensated by the state for wrongful imprisonment and his conviction should be sealed.

{¶ 4} In a single paragraph entry, the trial court rejected appellant's claim and denied him relief. From that judgment, appellant now brings this appeal.

{¶ 5} In four assignments of error, appellant insists that his sentence should be declared void, that his claim for wrongful imprisonment should have been certified to the Ohio Court of Claims and that the trial court should have sealed the record of his conviction.

{¶ 6} Pursuant to 6th Dist.Loc.App.R. 12(A), we sua sponte transfer this matter to our accelerated docket and, hereby, render our decision.

{¶ 7} "Any person who has been convicted of a criminal offense * * * and who claims that there was such a denial or infringement of the person's rights as to render the

judgment void or voidable under the Ohio Constitution or the Constitution of the United States, * * * may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. * * *." R.C. 2953.21(A)(1)(a).

{¶ 8} "A postconviction proceeding is not an appeal of a criminal conviction, but, rather, a collateral civil attack on the judgment." *State v. Steffen* (1994), 70 Ohio St.3d 399, 410; *State v. Milanovich* (1975), 42 Ohio St.2d 46, 49. As a result, the doctrine of res judicata applies. Res judicata bars any claim that was or could have been raised at trial or on direct appeal. *Id.*; *State v. Perry* (1967), 10 Ohio St.2d 175, paragraph nine of the syllabus.

{¶ 9} The relief appellant seeks clearly falls within the purview of the postconviction relief statute and his petition fails for many reasons. As a petition for postconviction relief it was untimely. See R.C. 2953.21(A)(2). The issue appellant raises could have been raised had appellant pursued a direct appeal and is, therefore, barred by the doctrine of res judicata. Moreover, appellant never alleged that post-release control was ever imposed upon him, nor has he contested his actual guilt of the underlying offense, so he has not alleged that he was prejudiced by the irregularities of which he complains. Absent prejudice, he is not entitled to relief. Accordingly, all four of appellant's assignments of error are not well-taken.

{¶ 10} On consideration whereof, the judgment of the Sandusky County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
