

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

State of Ohio

Court of Appeals No. L-10-1182

Appellee

Trial Court No. CR0200601328

v.

Andre Delawrence Rice

DECISION AND JUDGMENT

Appellant

Decided: November 12, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Andre D. Rice, pro se.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Andre D. Rice, appeals a judgment of the Lucas County Court of Common Pleas denying his motion to dismiss his "fatally defective indictment." Appellant asserts the following assignment of error:

{¶ 2} "Appellant Rice contends that he was denied, and/or prejudiced his substantial fundamental [sic] Due Process & Equal Protection of law Amendment rights of the 5th, 6th, 8th & 14th Sec. 1 Clauses to a (Proper) Indictment by Grand Jury, Nature of Charge, Compulsory Process, Fair Trial, Crule [sic] and Unusual Punishment, and (E)ffective Assistance of Counsel; where the purproted [sic] Indictment felony counts for prosecution by **Alford** plea were fatally defective, and caused multiple errors, due to the omission of the (**vital**) material mens rea culpable mental state element of "**recklessness**," required as the **actus reas** to impose, or to show an intent to impose strict-liability in Counts 3 Involuntary Manslaughter [,] R.C. 2903.04(A)[,] and Aggravated Robbery[,] R.C. 2911.01(A)(3)[,] count 4, which also omitted the Theft Offense [,] R.C. 2913." (Emphasis in the original.)

{¶ 3} In 2006, appellant entered a plea of guilty pursuant to *North Carolina v. Alford* (1970), 400 U.S. 25, to one count of involuntary manslaughter, in violation of R.C. 2903.04(A), and one count of aggravated robbery, in violation of R.C. 2911.01(A)(3). *State v. Rice*, 6th Dist. No. L-06-1343, 2007-Ohio-6529, ¶ 2. Pursuant to a negotiated agreement, the trial court sentenced appellant to a total of 20 years in prison. *Id.* at ¶ 7. Appellant appealed the trial court's judgment and raised three assignments of error, which challenged, respectively: (1) the denial of appellant's motion to suppress; (2) an alleged sentencing error; and (3) ineffective assistance of counsel. We found all three of these assignments of error not well-taken, and affirmed the judgment of the court of common pleas. *Id.* at ¶ 29.

{¶ 4} Appellant could have, but did not, raise any alleged deficiency in the indictment in his first appeal of right. Therefore, this allegation is barred by the doctrine of res judicata. *State v. Barber*, 2d Dist.No. 22929, 2010-Ohio-831, ¶ 28; *State v. Lawwill*, 8th Dist. No. 91032, 2009-Ohio-484, ¶ 10. Accordingly, appellant's sole assignment of error is found not well-taken.

{¶ 5} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

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.

Peter M. Handwork, J.

Mark L. Pietrykowski, J.

Keila D. Cosme, J.
CONCUR.

JUDGE

JUDGE

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.
