

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

State of Ohio

Court of Appeals No. L-11-1083

Appellee

Trial Court No. CR0201001733

v.

Johnnie L. Tilman

**DECISION AND JUDGMENT**

Appellant

Decided: February 17, 2012

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Claudia A. Ford and Brenda J. Majdalani, Assistant Prosecuting  
Attorneys, for appellee.

Johnnie L. Tilman, III, pro se

\* \* \* \* \*

**SINGER, J.**

{¶ 1} Appellant, Johnnie L. Tilman III, brings this appeal from the denial of his petition for postconviction relief. The judgment of conviction was for possession of cocaine, entered on guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91

S.Ct. 160, 27 L.Ed.2d 162 (1970), in the Lucas County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} On April 26, 2010, appellant was indicted on two counts of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(f), felonies of the first degree, and two counts of trafficking in cocaine in violation of R.C. 2925.03(A)(2) and (C)(4)(g), felonies of the first degree.

{¶ 3} On September 15, 2010, appellant entered a guilty plea pursuant to *North Carolina v. Alford, supra*, to one count of possession of cocaine. On the same day, the trial court accepted the plea and appellant was given notice of his appellate rights. He was sentenced to eight years in prison, and he did not appeal the conviction.

{¶ 4} On February 11, 2011, appellant pro se filed a postconviction petition to vacate or set aside the judgment of conviction or sentence, with a request for an evidentiary hearing. An attorney was appointed as counsel on behalf of appellant for representation on the petition. On March 29, 2011, at the petition hearing, appellant's case was dismissed with prejudice.

{¶ 5} Appellant now appeals setting forth the following Assignments of Error:

I. The appellant was denied the benefits of Statutory law, as the post-conviction Ct, [sic] erroneously denied the appellant's post-conviction petition inlight [sic] of the appellant's Due Process & Equal Protection of the law rights, State and Federal (5th & 14th) Amendments, inlight [sic] of

O.R.C. § 2953.21 & the Statutory benefits offered to the appellant thereof procedurally.

II. The appellant was denied the effective assistance of counsel, in violation of his (5th & 6th & 14th) Amendment rights guaranteed him [sic] via the U.S. Const, Notwithstanding, Art (1) § (10) of the Ohio Const.

III. The U.S. Constitutional Supremacy Clause, Art (6) § (2) was ignored by the Post-Conviction Ct, [sic] and the State of Ohio, of the case sub judice, as the Supremacy Clause, mentioned above prohibits any law, Statute or Ordinance being made or enforced which violates the U.S. or State Constitutional rights of the people or is in conflict [sic] with the aforementioned Constitutions. The law of the Land, may have been abridged by the post-conviction Ct. [sic]

IV. The doctrine of res judicata, was erroneously applied to dismiss the appellant's post-conviction petition, as the appellant only had that of limited appellate rights which pertained to sentencing errors, the appellant could not attack his conviction based on a (6th) Amendment right violation, regarding ineffective assistance of counsel. The [sic] State of Ohio, of the case sub judice, knowingly misapplied the doctrine of res judicata, in the case subjudice.

{¶ 6} In his assignments of error, appellant contends that the court erred in denying his petition for postconviction relief. Specifically, appellant contends he is

entitled to relief because his *Alford* plea was rendered involuntarily due to trial counsel's ineffectiveness. This is a matter for direct appeal.

{¶ 7} It is well-established that, "pursuant to res judicata, a defendant cannot raise an issue in a [petition] for post-conviction relief if he or she could have raised the issue on direct appeal." *State v. Gonzales*, 6th Dist. No. WD-09-078, 2010-Ohio-4703, ¶ 22, citing *State v. Reynolds*, 79 Ohio St.3d 158, 161, 679 N.E.2d 1131 (1997). As appellant could have raised his ineffective assistance argument on direct appeal, his four assignments of error are found not well-taken.

{¶ 8} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant 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.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, 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>.