[Cite as *State v. Rice*, 2012-Ohio-6250.]

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

State of Ohio — Court of Appeals No. L-12-1127

Appellee — Trial Court No. CR0200601328

v.

Andre Delawrence Rice — **DECISION AND JUDGMENT**

Appellant — Decided: December 31, 2012

* * * * *

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

Andre D. Rice Sr., pro se.

* * * * *

HANDWORK, J.

{¶ 1} This is an appeal from a judgment entered by the Lucas County Court of Common Pleas denying a post-appeal motion for resentencing filed by appellant, Andre D. Rice. Finding no error in the trial court's decision, we affirm its judgment.

{¶ 2} Rice was indicted in early 2006, on charges of aggravated murder, murder, aggravated robbery, and felonious assault. Pursuant to a plea agreement, Rice ultimately entered a plea of guilty to charges of involuntary manslaughter in violation of R.C. 2903.04(A) and aggravated robbery in violation of R.C. 2911.01(A)(3), both first-degree felonies. The plea was entered pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). On September 18, 2006, the trial court accepted Rice's plea, found him guilty on both counts, and imposed the jointly recommended sentence of 20 years total incarceration, i.e., a ten-year prison term on each count to run consecutively. This court affirmed that judgment in *State v. Rice*, 6th Dist. No. L-06-1343, 2007-Ohio-6529.

{¶ 3} Rice has since filed a plethora of creatively styled pro se petitions and motions for postconviction relief, the most recent of which is entitled "Motion of the Defense for a De Novo Resentencing Hearing Due to a Void Sentence and Sentencing Entry With Conference Requested." The trial court denied this motion on April 11, 2012, and Rice now appeals that judgment.

{¶ 4} In this appeal, Rice sets forth four rather lengthy and overlapping assignments of error, which ultimately come to rest on two purported improprieties in the acceptance of his plea and the imposition of his sentence. First, Rice claims that his plea was invalid because he was never informed that his sentences could or would be run consecutively. Second, he contends that consecutive sentences were improper because (a) R.C. 5145.01 requires the imposition of concurrent sentences for multiple felonies,

and (b) the charges to which he pled guilty are allied offenses of similar import and should have been merged at sentencing pursuant to R.C. 2941.25. Since the resolution of these two issues are determinative of all four assignments of error, we will not separately address each assigned error.

{¶ 5} As to Rice's first contention, this court has held that Crim.R. 11 "does not require the court to explain that sentences for multiple offenses may be run consecutively." *State v. Millhoan*, 6th Dist. Nos. L-10-1328, L-10-1329, 2011-Ohio-4741, ¶ 32. Besides, the record reveals that Rice was advised and consciously agreed that his sentences could and would be run consecutively. On September 18, 2006, Rice signed a written *Alford* plea in which he was advised that each offense to which he was pleading carried a maximum basic prison term of 10 years and that the maximum cumulative penalty could be a basic prison term of 20 years. On the same day, he entered into a written plea agreement providing that the "State of Ohio and the defense have negotiated a sentence of 20 years total to which the Court has agreed."

{¶ 6} As to Rice's contention that R.C. 5145.01 precludes the imposition of consecutive sentences, this court has already rejected that contention in *State v. Castle*, 6th Dist. No. OT-08-029, 2008-Ohio-6388. *See also State v. Hoelzer*, 6th Dist. No. L-08-1037, 2009-Ohio-6337, ¶ 8. Other courts have done likewise. *See, e.g., State v. Stalnaker*, 11th Dist. No. 2011-L-151, 2012-Ohio-3028; *State v. Terrell*, 4th Dist. No. 10CA39, 2012-Ohio-1926, ¶ 10; *State v. Shie*, 8th Dist. No. 83632, 2009-Ohio-5828, ¶ 8.

{¶ 7} With regard to Rice's allied-offenses argument, we reject that argument for two reasons. First, having failed to raise an allied-offenses argument in his direct appeal, Rice is precluded from doing so now. *See State v. Gresham*, 8th Dist. No. 98425, 2012-Ohio-5079, ¶ 13; *State v. Kelly*, 8th Dist. No. 97673, 2012-Ohio- 2930, ¶ 16-18; *State v. Strickland*, 11th Dist. No. 2012-T-0009, 2012-Ohio-5125, ¶ 13; *State v. Martin*, 2d Dist. No. 21697, 2007-Ohio-3585, ¶ 3, 15. Second, even if we considered the issue of merger, we would be obliged to apply the law in place at the time of Rice's conviction and sentence. *See, e.g., Gresham*, 2012-Ohio-5079 at ¶ 9; *Kelly*, 2012-Ohio-2930 at ¶ 14. At that time, the prevailing law in Ohio was that "[i]nvoluntary manslaughter and aggravated robbery are not allied offenses of similar import." *State v. Rance*, 85 Ohio St.3d 632, 710 N.E.2d 699 (1999), paragraph two of the syllabus.

{¶ 8} Accordingly, Rice's four assignments of error are not well-taken.

{¶ 9} Judgment of the Lucas County Court of Common Pleas is affirmed. Rice is assessed 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.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE