

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

State of Ohio

Court of Appeals No. E-12-041

Appellee

Trial Court No. 2007-CR-666

v.

Keenan Bonner aka Grissom

DECISION AND JUDGMENT

Appellant

Decided: May 31, 2013

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

Keenan Bonner, pro se.

* * * * *

OSOWIK, J.

{¶1} This is a pro se appeal from a judgment of the Erie County Court of Common Pleas which denied appellant’s “Motion to Correct Void Portion of Sentence.” For the reasons that follow, the judgment of the trial court is affirmed.

{¶2} The record reflects that on November 21, 2008, appellant was found guilty following a jury trial of one count of aggravated burglary with a firearm specification in violation of R.C. 2911.1(A)(2), a first degree felony, and one count of aggravated robbery with a gun specification in violation of R.C. 2911.01(A)(1), a first degree felony. Appellant was sentenced on January 8, 2009, to serve five years' incarceration for each count, plus three years actual incarceration for the firearm specifications, to be run consecutively, for a total of 16 years' incarceration. Appellant timely appealed and, on September 30, 2010, this court affirmed the trial court's judgment. *State v. Bonner*, 6th Dist. No. E-09-006, 2010-Ohio-4721.

{¶3} On March 16, 2012, appellant filed a "Motion to Correct Void Portion of Sentence." Appellant's motion was denied by the trial court on July 3, 2012, and this appeal follows.

{¶4} Appellant raises the following assignments of error:

ASSIGNMENT OF ERROR NO. I: The trial court's failure to adhere to the mandatory provisions of R.C. 2941.145(A) and R.C. 2929.14(D)(1)(a)(ii)(b) renders the sentence attempted for the firearm specification(s) attached to Counts 1 and 2 void and has deprived the appellant of his state created liberty interest in being subject to no sentence other than three (3) years of actual incarceration in violation of appellant's right to due process as guaranteed by the 14th Amendment to the United

States Constitution, thus the trial court erred to the prejudice of appellant by denying his motion to correct void portion of sentence.

ASSIGNMENT OF ERROR NO. II: The trial court's failure to adhere to the mandatory provisions of R.C. 2929.14(D)(1)(b) renders the sentence attempted for the firearm specification(s) attached to Counts 1 and 2 void and has deprived the appellant of his state created liberty interest in being sentenced for only one firearm specification where the underlying felonies are committed as a part of "one transaction" in violation of appellant's right to due process as guaranteed by the 14th Amendment to the United States Constitution, thus the trial court erred to the prejudice of appellant by denying his motion to correct void portion of sentence.

{¶5} In support of his first assignment of error, appellant asserts that the trial court failed to orally sentence him to the three years of "actual incarceration" for each of the two gun specifications at his sentencing hearing and that those portions of his sentence are therefore void. A review of the record does not support this claim.

{¶6} First, the sentencing transcript reveals that the trial court advised appellant in relevant part: "Your gun specifications on both counts carry a three year mandatory time period." Additionally, the judgment entry in this matter states that appellant was sentenced to "three (3) years actual incarceration as to the firearm specification" on both counts.

{¶7} Second, this argument is barred by res judicata. As summarized above, appellant previously appealed his conviction; however, he did not raise any issues relating to his sentences. *State v. Fisher*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, held that “although the doctrine of res judicata does not preclude review of a void sentence, res judicata still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence.” Further, this court has consistently held that “the doctrine of res judicata bars a convicted defendant from raising any defense or claim which was or could have been raised at trial or on appeal, *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus.” *State v. Wooten*, 6th Dist. No. L-01-1501, 2002-Ohio-4949, ¶ 6. Appellant has provided no objective evidence to support the notion that his sentence was void so as to preclude the application of res judicata to this matter. Accordingly, appellant’s first assignment of error is not well-taken.

{¶8} In support of his second assignment of error, appellant asserts that he should have been sentenced for only one firearm specification because the underlying felonies of aggravated burglary and aggravated robbery were committed as part of the same act or transaction. Again, we emphasize that appellant has already appealed his case to this court and could have raised the issue of merger previously but failed to do so. Furthermore, this court did not recognize any error in appellant’s sentences. We also note that this court has held that aggravated burglary and aggravated robbery are not

allied offenses subject to merger. *See State v. Hakim*, 6th Dist. No. L-10-1153, 2011-Ohio-5525, ¶ 43. Based on the foregoing, appellant's second assignment of error is not well-taken.

{¶9} On consideration whereof, the judgment of the Erie 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>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.</p>
