

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

State of Ohio

Court of Appeals No. H-13-007

Appellee

Trial Court No. CRI-2009-0916

v.

Steven Rodvold

DECISION AND JUDGMENT

Appellant

Decided: October 25, 2013

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney, for Appellee.

Steven J. Rodvold, pro se.

* * * * *

OSOWIK, J.

{¶1} This is a pro se appeal from a decision of the Huron County Court of Common Pleas that denied appellant's Petition to Vacate or Set Aside Sentence. For the following reasons, the judgment of the trial court is affirmed.

{¶2} In September 2009, appellant was indicted on one count of aggravated murder and one count of murder, both counts resulting from the shooting death of appellant's father on September 17, 2009. Following trial to a jury, appellant was found guilty of one count of murder as well as the attendant gun specification. The trial court

sentenced appellant to 15 years to life in prison along with a three-year mandatory, consecutive sentence for the gun specification.

{¶3} Appellant timely appealed his conviction and on February 17, 2012, this court affirmed the judgment of the trial court. *State v. Rodvold*, 6th Dist. Huron No. H-10-012, 2012-Ohio-619.

{¶4} While appellant's direct appeal was pending before this court, he filed the instant pro se "Petition to Vacate or Set Aside Sentence" in the trial court. Appellant essentially argued that counsel was incompetent for failing to investigate and prepare for trial adequately and for failing to retain experts which appellant deemed necessary. Although the petition was not timely filed, the trial court considered it on its merits. On March 14, 2013, the trial court dismissed the petition without oral hearing, finding appellant had set forth no substantive grounds for relief.

{¶5} Appellant sets forth the following assignments of error:

1. Counsel violated appellant's 14th and 6th U.S. Constitutional Amendment rights by failing to investigate 'Battered Person Syndrome' as the prosecutor did previously using O.R.C. 2901.06, allowing perception [sic] of lack of credibility to be seen against [sic] the defendant.

2. The improper application of the full 'Castle Doctrine' or O.R.C. 2901.09 was due to counsels [sic] failure to resurch [sic] and investigate violating his 2nd, 6th U.S. Constitutional Ammendment [sic] rights.

3. Due to counsels [sic] failure to investigate scene issues the fear element was viewed not credible per O.R.C. 2901.05 violating defendant's 2nd, and 14th U.S. Constitutional Ammendment [sic] rights.

4. O.R.C.'s 2901.22, and 2913.03(A)(E) were not applied properly due to counsels [sic] ineffectiveness allowing focus to shift from the 'mens rea' to the state's own morals and tatical [sic] opinions in clear violation of his 2nd and 14th U.S. Constitutional Ammendment [sic] rights.

5. Abuse of discession [sic] of the trial court improperly ruling on the timely filed post conviction petition favoring the state's responce [sic] that even admit the defendant is correct violating his 2nd, 6th, and 14th U.S. Constitutional Ammendment [sic]rights.

{¶6} Postconviction efforts to vacate a criminal conviction or sentence on constitutional grounds are governed by R.C. 2953.21, which provides that

Any person who has been convicted of a criminal offense * * * 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, and any person who has been convicted of a criminal offense that is a felony, who is an inmate, * * * 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).

{¶7} The trial court’s denial of a postconviction relief petition without a hearing is reviewed pursuant to the abuse of discretion standard. *State v. Wyerick*, 3d Dist. Mercer No. 10-07-23, 2008-Ohio-2257, ¶ 13. An abuse of discretion requires more than a mere error of law or judgment. It demands demonstration that the trial court’s attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶8} As his first assignment of error, appellant asserts that trial counsel was ineffective for failing to investigate “battered person syndrome” in support of his self-defense argument. We note, however, that appellant put forth this argument on direct appeal, couching it at that time as “battered child syndrome.” In response, this court found that trial counsel could have reasonably determined that expert testimony about battered child syndrome was unnecessary and irrelevant in this case. *See Rodvold*, 6th Dist. Huron No. H-10-012, 2012-Ohio-619, ¶ 42. A convicted defendant is precluded from raising any issue that was raised or could have been raised on direct appeal. *State v. Szefcyk*, 77 Ohio St.3d 93, 96, 671 N.E.2d 233 (1996), citing *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967). We therefore find that this argument is barred by the doctrine of res judicata and, accordingly, appellant’s first assignment of error is not well-taken.

{¶9} In support of his second assignment of error, appellant appears to assert that trial counsel failed to argue that he acted in self-defense and had no duty to retreat. Appellant's self-defense argument was raised on direct appeal and as such is precluded by res judicata. Further, the record reflects that trial counsel argued extensively that appellant acted in self-defense. Accordingly, appellant's second assignment of error is not well-taken.

{¶10} In his third assignment of error, appellant asserts that trial counsel failed to investigate "scene issues." The record reflects that defense counsel visited the scene of the shooting prior to trial and successfully argued for a jury view. Additionally, defense counsel had in his possession numerous photos of the scene as well as appellant's detailed drawings of the house and outside area where the shooting occurred. Appellant has not indicated how the aforesaid scene issues could or should have been addressed differently in his defense. Appellant's third assignment of error is not well-taken.

{¶11} In support of his fourth assignment of error, appellant complains that counsel was ineffective for allowing the focus at trial "to shift from the mens rea to the state's own morals and tactical opinions." The two revised code sections cited by appellant have no relevance to his petition for postconviction relief. This two-sentence argument has no merit and, accordingly, appellant's fourth assignment of error is not well-taken.

{¶12} In support of his fifth assignment of error, appellant appears to continue his self-defense argument. Because a self-defense argument was raised on direct appeal, it is now precluded by res judicata. Accordingly, appellant's fifth assignment of error is not well-taken.

{¶13} Based upon our review and consideration of this matter, we find no evidence that the trial court's denial of postconviction relief was unreasonable, arbitrary or unconscionable.

{¶14} On consideration whereof, the judgment of the Huron County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

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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

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>
