

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

State of Ohio

Court of Appeals No. L-14-1010

Appellee

Trial Court No. CR0201102670

v.

William Ewearitt, Jr.

DECISION AND JUDGMENT

Appellant

Decided: May 9, 2014

* * * * *

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

William Ewearitt, Jr., pro se.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This case is before the court as an accelerated appeal. Appellant, William Ewearitt, Jr., appeals the judgment of the Lucas County Court of Common Pleas, denying

his “Motion for the Return of Seized Monies” on the basis that the motion was barred under the doctrine of res judicata. For the following reasons, we affirm.

A. Facts and Procedural Background

{¶ 2} On October 19, 2011, appellant was indicted by the Lucas County Grand Jury on two counts of aggravated possession of drugs in violation of R.C. 2925.11(A) and (C)(1)(b), two counts of aggravated trafficking in drugs in violation of R.C. 2925.03(A)(2) and (C)(1)(c), one count of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(a), one count of trafficking in cocaine in violation of R.C. 2925.03(A)(2) and (C)(4)(a), one count of trafficking in marijuana in violation of R.C. 2925.03(A)(2) and (C)(3)(a), one count of having weapons while under disability in violation of R.C. 2923.13(A)(3), and one count of tampering with evidence in violation of R.C. 2921.12(A)(1) and (B). The indictment was filed following the execution of a search warrant at appellant’s residence on August 4, 2011. During the execution of the warrant, Toledo police confiscated \$382.98 from appellant’s bedroom. After transporting appellant to the Lucas County jail, police seized another \$659 from his pocket.

{¶ 3} At his arraignment on October 27, 2011, appellant entered a plea of not guilty. However, on November 29, 2011, appellant withdrew his not guilty plea and entered a plea of guilty to having weapons while under disability and one count of aggravated possession of drugs. The state dismissed the remaining charges, and the matter was continued for sentencing upon completion of a presentence investigation report.

{¶ 4} At sentencing, appellant was ordered to serve a total prison term of 48 months. Additionally, he was ordered to pay a \$5,000 fine. In its entry, the court stated: “Monies seized at time of arrest in the amount of \$1,073.98 ordered applied to the costs of this case and any remaining monies ordered applied toward the mandatory fine.”

{¶ 5} Almost two years after sentencing, appellant filed his “Motion for the Return of Seized Monies.” In his motion, appellant argued that the money was “seized and ultimately forfeited contrary to law and not in compliance with the forfeiture statutes of the Ohio Revised Code.” More specifically, appellant argued that the trial court had no authority to order his money forfeited because the indictment failed to specify that the money was subject to forfeiture. Additionally, appellant asserted that the trial court failed to provide proper notice prior to ordering forfeiture of the money, and also failed to comply with the procedural requirements set forth in Chapter 2981 of the Revised Code. Finally, appellant argued that the state failed to meet its burden of establishing a nexus between the money and the criminal activity for which he was convicted.

{¶ 6} In its response to appellant’s motion, the state argued: “Regardless of any merit his legal argument might have, the simple fact is that [appellant’s] formal objection to the Court’s order has been untimely filed and should be dismissed. [Appellant’s] appropriate avenue of relief from the Court’s decision would have been to file a timely notice of appeal to the Court of Appeals.” Ultimately, the state concluded that the trial court’s ruling was res judicata and could not be contested via appellant’s untimely motion.

{¶ 7} Upon consideration of the parties’ arguments, the trial court denied appellant’s motion. In its entry, the court concluded that “[appellant’s] proper course of action was to avail himself of the appellate process. His untimely motion does not constitute a substitution for an appeal, and any issue raised therein is barred by res judicata.”

B. Assignment of Error

{¶ 8} Appellant has filed a timely notice of appeal, and asserts the following as his sole assignment of error:

THE TRIAL COURT ERRED IN ORDERING THE FORFEITURE OF MONIES CONFISCATED FROM APPELLANT * * *, WHEN THE TRIAL COURT FAILED TO ABIDE BY THE STATUTORY GUIDELINES SET FORTH UNDER R.C. CHAPTER 2981 ET SEQ.

II. Analysis

{¶ 9} In his sole assignment of error, appellant recites the same arguments he proffered before the trial court. Likewise, the state contends, as it did before the trial court, that the motion was properly dismissed on the basis that it was untimely filed and barred under the doctrine of res judicata. The state also alleges that appellant was provided with proper notice of the forfeiture.

{¶ 10} Relevant to our analysis, the Supreme Court of Ohio has stated: “It is established that, pursuant to res judicata, a defendant cannot raise an issue in a motion for

postconviction relief if he or she could have raised the issue on direct appeal.” *State v. Reynolds*, 79 Ohio St.3d 158, 161, 679 N.E.2d 1131 (1997).

{¶ 11} In the present case, appellant could have raised the forfeiture issue in a direct appeal to this court. Having failed to appeal the trial court’s decision, appellant is now barred under the doctrine of res judicata from raising the issue in a subsequent motion almost two years after the sentencing entry was filed. *See State v. Slocum*, 6th Dist. Wood No. WD-10-069, 2011-Ohio-2442, ¶ 10 (finding that res judicata bars a defendant’s argument concerning the imposition of court costs where the defendant failed to raise the issue in a direct appeal). Because we conclude that the motion was barred by res judicata, we need not reach appellant’s remaining arguments.

{¶ 12} Accordingly, appellant’s sole assignment of error is not well-taken.

III. Conclusion

{¶ 13} Based on the foregoing, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs are hereby assessed to appellant in accordance with 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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, P.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:
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