

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

State of Ohio

Court of Appeals No. L-13-1177

Appellee

Trial Court No. CR0200502482

v.

Juan Rivera

DECISION AND JUDGMENT

Appellant

Decided: June 20, 2014

* * * * *

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

Diana L. Bittner, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Defendant-Appellant, Juan Rivera, appeals the September 13, 2013 judgment of the Lucas County Court of Common Pleas. For the reasons that follow, we affirm the trial court's judgment.

A. Background

{¶ 2} On July 5, 2005, defendant-appellant, Juan Rivera, was charged with multiple counts of rape and gross sexual imposition. On October 3, 2005, he entered guilty pleas, under *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), to two counts of rape and two counts of gross sexual imposition. The rape counts charged violations of R.C. 2907.02(A)(1)(b), first degree felonies. The gross sexual imposition counts charged violations of R.C. 2907.05(A)(4), third degree felonies.

{¶ 3} On November 3, 2005, the trial court sentenced Rivera to seven years' imprisonment on each rape conviction, and one year on each of the gross sexual imposition convictions. It ordered the sentences on the rape convictions to be served consecutively to each other, but concurrently with the sentences imposed for the gross sexual imposition convictions, which, too, would run concurrently with each other. Rivera appealed his sentence. Based upon *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, we reversed and remanded for resentencing. *State v. Rivera*, 6th Dist. Lucas No. L-05-1356, 2006-Ohio-3185. Upon resentencing, the court imposed an identical term of imprisonment, journalized in an entry dated September 1, 2006.

{¶ 4} Rivera did not appeal from the September 1, 2006 judgment, however, he has since filed a number of motions and petitions for postconviction relief. This court has had occasion to review the denial of several of those petitions and motions. *See State v. Rivera*, 2013-Ohio-1591, 991 N.E.2d 275 (6th Dist.); *State v. Rivera*, 6th Dist. Lucas No. L-13-1170, 2014-Ohio-742. Rivera has been resentenced several times to correct errors

relating to the imposition of consecutive sentences and postrelease control. Most recently, on July 11, 2013, a hearing was held to modify the terms of Rivera's postrelease control on the two counts of gross sexual imposition, increasing the term from three years to a mandatory five years pursuant to R.C. 2967.28(B)(1).

{¶ 5} Following the July 11, 2013 hearing modifying Rivera's postrelease control, Rivera filed a pro se notice of appeal on August 5, 2013. On November 15, 2013, we sua sponte appointed counsel to represent Rivera. Through his attorney, Rivera filed an amended notice of appeal on November 25, 2013. He assigns two errors for our review:

I. THE LUCAS COUNTY, OHIO COURT OF COMMON PLEAS
WAS WITHOUT PROPER JURISDICTION TO INDICT DEFENDANT-
APPELLANT, AS THE OFFENSES OCCURRED IN OTTAWA
COUNTY, OHIO.

II. THE JUDGMENT ENTRY OF DEFENDANT-APPELLANT'S
RESENTENCING IS VOID BECAUSE IT (1) DID NOT INCLUDE THE
CONSEQUENCES OF A VIOLATION OF POST-RELEASE CONTROL,
AND (2) WAS NOT JOURNALIZED WITHIN THIRTY DAYS OF THE
DECISION.

B. Law and Analysis

{¶ 6} In his first assignment of error, Rivera argues that the Lucas County Court of Common Pleas lacked jurisdiction because the offenses giving rise to his convictions allegedly occurred in Ottawa County, not Lucas County. He claims that 954 Platt Street,

where Rivera resided with the victim's mother and at which the offenses allegedly occurred, is located in Martin, Ottawa County, Ohio. The state counters that Platt Street is located in Jerusalem Township, Lucas County, Ohio. Without engaging in a discussion about which county encompasses Platt Street, we reject Rivera's argument.

{¶ 7} First, Rivera's claim is barred by the doctrine of res judicata. Rivera failed to challenge the issue in the trial court and he failed to address the issue on direct appeal. Because he could have, but failed to do so, he is barred from raising it now. *State ex rel. Handwork v. Goodrich*, 11th Dist. Ashtabula No. 2012-A-0018, 2012-Ohio-2835, ¶ 13.

{¶ 8} In any event, because Rivera alleges only that the offenses occurred in a different county, not a different state, his challenge is actually to venue, not jurisdiction. *Id.* at ¶ 13 (“Because relator is alleging his crimes were committed in a different county, not a different state, he is really challenging venue in the trial court, not the court's jurisdiction.”). Venue can be, and was, waived.

{¶ 9} Although a defendant generally has the right to be tried in the vicinity of where the offense occurred, “venue is not a material element of any offense charged.” *State v. Sparks*, 12th Dist. Warren Nos. CA2013-02-010, CA2013-02-015, 2014-Ohio-1130, ¶ 12-13. The state need not prove that the alleged crime was committed in the county where the proceedings are held if the accused has waived venue. (Internal citations omitted.) *Id.* at ¶ 13. As this court recognized in a case factually similar to the present case, “[a] defendant's plea of guilty precludes his right to challenge the factual issue of venue.” (Citation omitted). *State v. Peters*, 6th Dist. Sandusky No. S-95-010,

1995 WL 668915 (Nov. 9, 1995). Rivera waived any alleged error in venue when he entered a plea of guilty on October 3, 2005. We, therefore, find Rivera's first assignment of error not well-taken.

{¶ 10} In his second assignment of error, Rivera argues that his resentencing judgment is void because it (1) did not set forth the consequences of a violation of the conditions of postrelease control, and (2) was not journalized within thirty days of the decision. Rivera is incorrect.

{¶ 11} First, the trial court's judgment entry does set forth the consequences of a violation of the conditions of postrelease control. It provides:

Defendant notified that if post release control conditions are violated the adult parole authority or parole board may impose a more restrictive or longer control sanction or return a defendant to prison for up to nine months for each violation, up to a maximum 50% of the stated term originally imposed. Defendant further notified that if the violation of post release control conditions is a new felony, a defendant may be both returned to prison for the greater of one year or the time remaining on post-release control, plus receive a prison term for the new felony.

Rivera's contention that the judgment entry of resentencing did not include the consequences of a violation of postrelease control conditions is without merit.

{¶ 12} Turning to his second argument, Rivera argues that the resentencing judgment is void because it was not journalized within 30 days of the decision. The

judgment entry reflects that Rivera was resentenced on July 11, 2013. The entry was file-stamped on September 11, 2013, and it was journalized September 13, 2013. While it is true that “the trial court has the primary duty to journalize its decision within thirty days after rendering the same,” its failure to do so does not render the judgment void.

Kennedy v. Cleveland, 16 Ohio App.3d 399, 401-02, 476 N.E.2d 683 (8th Dist.1984). To the contrary, it is incumbent on the parties to request that the court enter its judgment and if the court refuses, either party may seek to compel the court to do so by filing a writ of mandamus or a writ of procedendo. *Id.*

{¶ 13} In the present case, the court was apparently alerted to the fact that its judgment entry had not been journalized and it corrected this omission. Rivera’s second assignment of error is, therefore, not well-taken.

C. Conclusion

{¶ 14} We find Rivera’s two assignments of error not well-taken and affirm the September 13, 2013 judgment of the Lucas County Court of Common Pleas. The costs of this appeal are assessed to Rivera 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.

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, 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>.