

[Cite as *State v. Owens*, 2015-Ohio-1897.]

STATE OF OHIO, JEFFERSON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,)	
)	CASE NO. 14 JE 22
PLAINTIFF-APPELLEE,)	
)	
- VS -)	OPINION
)	
JAMAR OWENS,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court, Case No. 06 CR 12.

JUDGMENT: Affirmed.

APPEARANCES:
For Plaintiff-Appellee:

Attorney Jane Hanlin
Prosecuting Attorney
Jefferson County Justice Center
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No Brief Filed.

For Defendant-Appellant:

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JUDGES:
Hon. Mary DeGenaro
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: May 18, 2015

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DeGenaro, J.,

{¶1} Defendant-Appellant, Jamar Owens, appeals the May 19, 2014 judgment of the Jefferson County Court of Common Pleas denying his motion to vacate the court's judgment entry of sentence. Because Owens' assignments of error are barred by res judicata, the judgment of the trial court is affirmed.

{¶2} On March 23, 2006, Owens pleaded guilty to one count of drug trafficking, possession of drugs, tampering with evidence, two counts of drug trafficking with a school specification, and two counts of possession of a weapon while under disability. The State proposed a joint sentencing recommendation of twelve years which was affirmed by defense counsel and agreed to by Owens. Upon accepting Owens's guilty plea, the trial court imposed the jointly-recommended sentence of twelve years. *State v. Owens*, 7th Dist. No. 06 JE 50, 2008-Ohio-3071, ¶1. (*Owens I*).

{¶3} On delayed appeal, Owens challenged the constitutionality of the imposition of maximum and consecutive prison terms pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. Because Owens' sentences fell within the permissible statutory range, they were found not to be contrary to law as the trial court possessed the discretion to impose consecutive prison terms without any judicial fact finding. *Owens I* at ¶11. Further, as the sentence was authorized by law, had been recommended jointly by Owens and the State, and was imposed by a sentencing judge, the trial court's decision was affirmed. *Id.* at ¶2.

{¶4} In January 2010, Owens filed a motion for post-conviction relief and/or motion to withdraw plea on the basis that the State lost or destroyed a recording containing exculpatory evidence. *State v. Owens*, 7th Dist. No. 10 JE 5, 2011-Ohio-1175, ¶1. (*Owens II*). This Court affirmed, concluding, inter alia, that the appeal was barred by res judicata. *Id.* at ¶31.

{¶5} On March 22, 2012, Owens filed a renewed pro-se motion to vacate his guilty plea, which the trial court overruled without a hearing. *State v. Owens*, 7th Dist. No. 06 JE 50, 2013-Ohio-5639, ¶15. (*Owens III*). This Court once again affirmed the judgment of the trial court on the basis of res judicata. *Id.* at ¶19-21.

{¶6} Giving rise to the present appeal, which the State has not opposed, on

January 17, 2014 Owens filed a motion to vacate the court's judgment entry of sentence which was denied by the trial court on May 19, 2014.

{¶7} Owens' two assignments of error assert:

{¶8} "The trial court lacked subject matter jurisdiction and deprived the Appellant of due process of law in violation of his Fifth and Fourteenth Amendments to the U.S. Constitution. The trial court convicted the Appellant of charges never indicted on under O.R.C. 2925.03 C-3-b (specifically)...."

{¶9} "Ohio case law follows the Ohio Constitution which provides that no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury ("Ohio Const. Section 1 & Article 10".) The material and essential facts constituting an offense are found by the presentment of the grand jury."

{¶10} Owens' claim is barred under the doctrine of res judicata. A defendant cannot raise an issue in an original or successive motion for post-conviction relief if he could have raised or did raise it on direct appeal. *National Amusements, Inc. v. Springdale*, 53 Ohio St.3d 60, 62, 558 N.E.2d 1178 (1990). Any potential issues with the indictment existed at the time of direct appeal and should have been raised in *Owens I*.

{¶11} Accordingly, the judgment of the Jefferson County Court of Common Pleas denying Owens' motion to vacate the court's judgment entry of sentence is affirmed.

Waite, J., concurs.

Robb, J., concurs.