

[Cite as *State v. Pruitt*, 2011-Ohio-1375.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
Nos. 95456 and 95457

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MICHAEL PRUITT**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeals from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-451979

**BEFORE:** Stewart, J., Kilbane, A.J., and E. Gallagher, J.

**RELEASED AND JOURNALIZED:** March 24, 2011

**FOR APPELLANT**

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**ATTORNEYS FOR APPELLEE**

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BY: Mary McGrath  
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MELODY J. STEWART, J.:

{¶ 1} In this consolidated appeal, Michael Jarmal Pruitt appeals from the July 6, 2010 judgments of the Cuyahoga County Court of Common Pleas that denied his motions for relief from judgment or, in the alternative, to vacate his judgment and to amend nunc pro tunc his 2004 judgment of conviction. Following review of the record and for the reasons stated below, we affirm.

{¶ 2} In late 2004, Pruitt was indicted for attempted murder, two counts of felonious assault, and having a weapon while under disability. The first three counts carried one and three-year firearm specifications. Pursuant to a plea agreement, the felonious assault counts were nolle and Pruitt pleaded guilty to attempted murder with a three-year firearm specification and having a weapon while under disability. The trial court sentenced Pruitt to 11 years of imprisonment as follows: eight years of imprisonment for attempted murder; three years of imprisonment for the three-year firearm specification, to be served prior and consecutive to the sentence for attempted murder; and lastly, five years of imprisonment for having a weapon while under disability, to be served concurrently with the sentence for attempted murder, for a total of 11 years.

{¶ 3} Pruitt subsequently moved to withdraw his guilty plea, which the trial court denied. In *State v. Pruitt*, 8th Dist. Nos. 86707 and 86986, 2006-Ohio-4106 (*Pruitt I*), this court affirmed Pruitt's convictions but vacated, in part, his sentence, and remanded the matter for resentencing on the weapon charge pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. After resentencing, Pruitt appealed again, *State v. Pruitt*, 8th Dist. No. 89405, 2008-Ohio-231 (*Pruitt II*), and this court reversed and remanded for resentencing on the weapon charge for compliance with *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961.

{¶ 4} In 2008, Pruitt filed another motion to withdraw his guilty plea, which the trial court denied. Pruitt appealed the denial of that motion to withdraw. In that appeal, he argued that his plea was not knowingly, intelligently, and voluntarily entered into and therefore the trial court did not comply with Crim.R. 11(C). In *State v. Pruitt*, 8th Dist. No. 91205, 2009-Ohio-859 (*Pruitt III*), this court held that the trial court lacked jurisdiction, upon remand, to consider Pruitt's Crim.R. 32.1 motion to withdraw a guilty plea after his judgment of conviction had been affirmed. *Id.* at ¶11, citing *State v. Holloman-Cross*, 8th Dist. No. 90351, 2008-Ohio-2189, discretionary appeal not allowed by *State v. Holloman-Cross*, 119 Ohio St.3d 1504, 2008-Ohio-5467, 895 N.E.2d 566 (Table). The court also held that Pruitt's argument that his plea lies in contravention of Crim.R. 11(C) was barred by res judicata. *Id.* at ¶13.

{¶ 5} In this most recent appeal, Pruitt challenges the trial court's rulings on July 6, 2010 denying his motions for relief from judgment or, alternatively, to vacate and to amend the February 26, 2008 resentencing entry. Pruitt raises seven assignments of error, the first five of which all relate to Pruitt's claim that his convictions for the three-year firearm specification and for having a weapon while under disability are void because he failed to separately enter a plea of guilty to those offenses at the plea hearing.

{¶ 6} We find no merit to Pruitt’s claim that his convictions and sentences for the weapon while under disability offense and the firearm specification are void. “In general, a void judgment is one that has been imposed by a court that lacks subject-matter jurisdiction over the case or the authority to act. Unlike a void judgment, a voidable judgment is one rendered by a court that has both jurisdiction and authority to act, but the court’s judgment is invalid, irregular, or erroneous.” *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶27. In this case, the trial court had both subject matter jurisdiction over Pruitt’s case and the authority to accept his guilty pleas. Therefore, the 2004 judgment of conviction is not void.

{¶ 7} Pruitt’s reliance on *State v. Smith* (Mar. 28, 1991), 8th Dist. Nos. 58334, 58418, and 58443, *State v. Davis* (Sept. 7, 2000), 8th Dist. No. 76085, and *State v. Wainwright* (Nov. 17, 1977), 8th Dist. No. 36623, for the proposition that his conviction is void, is unfounded. These cases did not hold that the failure to enter a guilty plea deprived the trial court of jurisdiction to enter a conviction, they held that a conviction without a proper plea constituted reversible error. In the instant case, just as in *Smith*, *Davis*, and *Wainwright*, Pruitt’s claim that he was denied due process by being convicted on an absent or incomplete plea raises a challenge to the trial court’s exercise of jurisdiction that should have been raised in his appeal of that judgment.

{¶ 8} “Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction or on an appeal from that judgment.” *State v. Perry* (1967), 10 Ohio St.2d 175, 181, 226 N.E.2d 104.

{¶ 9} Whether a defendant has properly entered a guilty plea to an offense is determined on direct appeal by addressing the trial court’s compliance with Crim.R. 11. *State v. Curry* (Dec. 17, 1992), 8th Dist. No. 63370; *State v. Gibson* (Nov. 21, 1991), 8th Dist. No. 59541. Pruitt challenged his pleas and convictions on direct appeal, and this court affirmed. *Pruitt I*, 2006-Ohio-4106, at ¶24. Accordingly, any subsequent claim that his pleas are not valid is barred as res judicata. See *Pruitt III*, 2009-Ohio-859, at ¶13. Appellant’s first through fifth assignments of error are overruled.

{¶ 10} In his final two assignments of error, Pruitt raises challenges to his February 26, 2008 resentencing. Pruitt argues first that the trial court erroneously denied his motion to amend the February 26, 2008 entry to delete court costs, which Pruitt claims were not imposed at the resentencing hearing. Pruitt next argues that the trial court erred by failing to conduct a de novo sentencing hearing on February 26, 2008, which he claims was mandated by this court’s decision in *Pruitt II*.

{¶ 11} We are once again constrained from reviewing the merits of Pruitt's claims. Pruitt timely appealed the trial court's February 26, 2008 judgment. See *Pruitt III*. The claims he makes in this appeal relating to the procedure the trial court followed in the resentencing hearing and the sanctions imposed, are claims that could have been raised in that appeal. Therefore, principles of res judicata bar our further review. Accordingly, the sixth and seventh assignments of error are overruled.

**Judgment affirmed.**

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MELODY J. STEWART, JUDGE

MARY EILEEN KILBANE, A.J., and

EILEEN A. GALLAGHER, J., CONCUR