

[Cite as *State v. Nelson*, 2011-Ohio-326.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94580

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SHAWN (SEAN) NELSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-416032

BEFORE: Boyle, J., Kilbane, A.J., and Rocco, J.

RELEASED AND JOURNALIZED: January 27, 2011

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MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Shawn Nelson, appeals the denial of his postconviction motion to dismiss, raising a single assignment of error:

{¶ 2} “The trial court erred in denying appellant’s motion to dismiss where he was convicted under a defective indictment.”

{¶ 3} Finding no merit to the appeal, we affirm.

Procedural History and Facts

{¶ 4} In April 2002, Nelson was convicted of aggravated robbery, a violation of R.C. 2911.01, along with one- and three-year gun specifications, as well as a repeat offender specification and notice of prior conviction; unlawful possession of a dangerous ordnance, a violation of R.C. 2923.17; and having a weapon while under disability, a violation of R.C. 2923.13. He was sentenced to 12 years in prison. Nelson appealed, and this court affirmed his aggravated robbery and having a weapon while under disability convictions, but reversed his conviction of unlawful possession of a dangerous ordnance and remanded for resentencing. See *State v. Nelson* (“*Nelson I*”), 8th Dist. No. 81558, 2003-Ohio-3219.

{¶ 5} On remand, the trial court sentenced Nelson to an aggregate sentence of 12 years in prison, and this court subsequently affirmed the sentence. See *State v. Nelson* (“*Nelson II*”), 8th Dist. No. 83553, 2004-Ohio-2849.

{¶ 6} Thereafter, Nelson filed several pro se motions, including a motion to void judgment pursuant to Civ.R. 60(B), filed on November 21, 2008, wherein Nelson claimed that his conviction and sentence were unconstitutional based on *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917. Nelson appears to have filed the same motion months later on March 19, 2009. Among the many motions filed, Nelson also filed a motion for a sentencing hearing pertaining to a void sentence on November 10, 2009, claiming he was not

properly sentenced to postrelease control, which the state conceded. Consequently, the court thereafter held a sentencing hearing, where it properly imposed five years of mandatory postrelease control. At the sentencing hearing, Nelson advised the court of his pending motions, which the court indicated that it would review and enter a judgment. The trial court ultimately denied all of Nelson's postconviction motions on February 24, 2010.

{¶ 7} Following the journalization of the sentencing order on December 29, 2009, Nelson filed the instant appeal, arguing that his conviction should be dismissed under *Colon*, because his indictment failed to allege any mens rea.

Res Judicata

{¶ 8} Initially, we note that the instant appeal arises following Nelson's resentencing hearing to correct the trial court's previous failure to properly impose postrelease control after Nelson moved to correct an illegal sentence. But Nelson's sole assignment of error challenges his conviction based on an alleged defective indictment. As recently recognized by the Ohio Supreme Court in *State v. Fischer*, Slip Opinion No. 2010-Ohio-6238, paragraph four of the syllabus, "[t]he scope of an appeal from a resentencing hearing in which a mandatory term of postrelease control is imposed is limited to issues arising at the resentencing hearing." The appeal from a resentencing does not afford a defendant another attack on his or her underlying conviction because principles of res judicata still apply. *Id.* Here, Nelson is precluded from collaterally

attacking his underlying conviction in the instant proceeding when he could have raised such an argument in his direct appeal in *Nelson I*. See *State v. Turner*, 8th Dist. No. 91695, 2008-Ohio-6648. Indeed, when this court affirms the convictions in the first appeal, the propriety of those convictions becomes the law of the case, and subsequent arguments seeking to overturn them are barred. See *Fischer*, supra; *State v. Harrison*, 8th Dist. No. 88957, 2008-Ohio-921, ¶9.

{¶ 9} Moreover, we summarily note that Nelson’s argument has no merit under the law. Here, Nelson was convicted of aggravated burglary as defined under R.C. 2911.01(A)(1), which is a strict liability offense — the offense has no mens rea requirement. See *State v. Lester*, 123 Ohio St.3d 396, 2009-Ohio-4225, 916 N.E.2d 1038.

{¶ 10} Finally, to the extent that Nelson intended to appeal from the trial court’s judgment rendered on February 24, 2010, we note that his amended notice of appeal attached solely the sentencing judgment entry of December 29, 2009. Therefore, under App.R. 3(D), which requires the appellant to specify the judgment being appealed, our jurisdiction is limited to consider only those assignments of error related to the judgment appealed from. See *State v. Reed*, 8th Dist. No. 91767, 2009-Ohio-2264, ¶7, citing *State v. Stewart*, 8th Dist. No. 86411, 2006-Ohio-813, ¶52.

{¶ 11} Nelson’s sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant 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 Common Pleas Court 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.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, A.J., and
KENNETH A. ROCCO, J., CONCUR