[Cite as *State v. Vinson*, 2015-Ohio-1647.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101870

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

THOMAS A. VINSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-07-504721-A and CR-08-510705-A

BEFORE: Jones, P.J., Kilbane, J., and Blackmon, J.

RELEASED AND JOURNALIZED: April 30, 2015

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LARRY A. JONES, SR., P.J.:

{¶1} Defendant-appellant Thomas Vinson, pro se, appeals from the trial court's August 5, 2014 judgment denying his "motion for re-sentencing based on a void judgment pursuant to Criminal Rules 47 and 57," which was entered in Cuyahoga C. P. Case No. CR-08-510705-A. We affirm.

{¶2} In December 2007, Vinson was charged in CR-07-504721-A with one count each of aggravated robbery and robbery. In February 2008, the trial court referred him to the court psychiatric clinic for a competency and sanity evaluation. The evaluation found that Vinson was competent to stand trial and was sane at the time of the crimes. A hearing was held, at which the defense stated that it did not accept the findings of the evaluation and requested an independent evaluation. The trial court granted the defense's request.

{¶3} Vinson was evaluated by an independent psychologist, whose report was filed with the trial court on May 1, 2008. The psychologist found that Vinson was competent to stand trial and was sane at the time of the crimes. A hearing was had on May 12, 2008, at which the defense stipulated to the independent psychologist's findings. The state indicated that it was going re-indict Vinson.[1]

{¶4} On May 29, 2008, the state dismissed Case No. CR-07-504721-A because Vinson had been indicted in Case No. CR-08-510705-A.

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[1]The docket in Case No. CR-07-504721-A indicates that in January 2008 the trial court became aware that the state was going to be charging Vinson with additional crimes.

{¶5} Vinson was charged with 11 crimes under the new indictment. They were alleged to have occurred on the same day as the crimes in the prior case. Counts 5 (aggravated robbery), 6 (robbery), 7 (robbery), and 8 (robbery) named, in part, the same victims from the first case. The remaining charges under the new indictment were relative to new victims. An entry on the new case's docket dated June 2, 2008 indicates that the new case was a refiled case of the first case and another case Vinson had.[2]

{¶6} In June 2008, Vinson pleaded guilty to two counts of aggravated robbery with gun specifications and one count of robbery, and in July 2008, the trial court sentenced him to a 23-year prison term.

{¶7} In March 2010, Vinson, pro se, filed an appeal, which was dismissed by this court. *See State v. Vinson*, 8th Dist. Cuyahoga No. 94870, motion no. 432343. In December 2011, Vinson, pro se, filed a motion to withdraw his guilty plea, which the trial court denied in January 2012. In June 2012, he filed a supplement to his December 2011 motion; the supplement was denied as moot.

{¶8} In July 2014, Vinson filed another pro se motion, this one for re-sentencing based on a void judgment. The trial court denied the motion in August 2014, and Vinson now appeals, assigning two errors.

{¶9} In his first assignment of error, Vinson contends that his aggravated robbery conviction should be reversed on the authority of *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917 ("*Colon I*") and *State v. Colon*, 119 Ohio St.3d 206,

[2]The other case was Cuyahoga CR-08-506296-A.

2008-Ohio-3749, 893 N.E.2d 169 ("*Colon II*"). Specifically, Vinson contends that the indictment failed to charge a mens rea for aggravated robbery, and thereby created structural error.

{¶10} In *Colon I*, the Ohio Supreme Court held that "[w]hen an indictment fails to charge a mens rea element of a crime and the defendant fails to raise that defect in the trial court, the defendant has not waived the defect in the indictment." *Id.* at syllabus. If the defective indictment "permeated" the defendant's trial, the defective indictment was structural error. *Id.* at ¶ 44.

{¶11} The court clarified in *Colon II* that *Colon I* was prospective only and that where a defective indictment was not inextricably linked to other errors, plain error analysis, rather than structural error analysis, would be appropriate. *Colon II*, ¶3, 5, 7. However, in 2010, the Ohio Supreme Court overruled *Colon I* and *Colon II*, holding that, "[a]n indictment that charges an offense by tracking the language of the criminal statute is not defective for failure to identify a culpable mental state when the statute itself fails to specify a mental state." *State v. Horner*, 126 Ohio St.3d 466, 2010-Ohio-3830, 935 N.E.2d 26, paragraph one of the syllabus.

{¶12} Vinson pleaded guilty to two counts of aggravated robbery, Counts 1 and 5. Those counts charged aggravated robbery under R.C. 2911.01(A)(1), and alleged that Vinson

> did, in attempting or committing a theft offense, as defined in Section 2913.01 and Section 2913.02 of the Revised Code, or in fleeing immediately after the attempt or offense upon [the victims], have a deadly weapon to-wit: firearm, on or about his person or under his control and

> either displayed the weapon, brandished it, indicated that he possessed it, or used it.

See complaint, Counts 1 and 5.

{¶13} At the time of Vinson's indictment and plea, R.C. 2911.01(A)(1) provided as follows:

> (A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall * * *[h]ave a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it.[3]

{¶14} Thus, the indictment against Vinson tracked the language of R.C. 2911.01(A)(1). The indictment, therefore, was not deficient for failing to specify a mens rea and, therefore, there was no error — structural, plain, or otherwise — in Vinson's indictment for aggravated robbery.

{¶15} In light of the above, the first assignment of error is overruled.

{¶16} For his second assigned error, Vinson contends that he was denied due process because there was no determination of his competency. The record belies Vinson's contention.

{¶17} When Vinson was first indicted in Case No. CR-07-504721-A, he was referred for a psychological evaluation by the court's psychiatric clinic. The evaluation took place and the findings were that Vinson was competent to stand trial and was sane at the time the acts were committed. A hearing was held, and defense counsel disagreed

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[3]The current version of R.C. 2911.01(A)(1) reads the same.

with the clinic's findings and requested an independent evaluation. The trial court granted the defense's request.

{¶18} Vinson was evaluated by an independent psychologist, whose report was filed with the court. The independent psychologist also found that Vinson was competent to stand trial and was sane at the time of the crimes. A hearing was had, and the defense stipulated to the independent psychologist's findings.

{¶19} Vinson's stipulation to his competency waived his right to appeal the issue. *State v. Smith*, 8th Dist. Cuyahoga No. 95505, 2011-Ohio-2400, ¶ 6 ("By stipulating, [the defendant] conceded the competency issue, in effect withdrawing any previously raised issues with his competency. Since his competency was no longer an issue, a further hearing was not required.")

{¶20} In light of the above, the second assignment of error is overruled.

{¶21} Judgment affirmed.

It is ordered that appellee recover from 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 common pleas court to carry this judgment into execution.

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

LARRY A. JONES, SR., PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
PATRICIA ANN BLACKMON, J., CONCUR