

[Cite as *State v. Pruitt*, 2015-Ohio-1949.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101736

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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 Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-04-451979-ZA

**BEFORE:** S. Gallagher, J., Boyle, P.J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** May 21, 2015

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SEAN C. GALLAGHER, J.:

{¶1} Defendant Michael Pruitt appeals from the trial court's decision denying his motion to vacate his firearm specification. For the following reasons, we not only affirm the trial court's decision, but also warn Pruitt that his conduct, through the continued filing of appeals and original actions, may result in his being declared a vexatious litigator pursuant to Loc.App.R. 23(A).

{¶2} This is Pruitt's sixth appeal stemming from a 2004 conviction. *See State ex rel. Pruitt v. Donnelly*, 8th Dist. Cuyahoga No. 95518, 2011-Ohio-1252, ¶ 5. In this appeal, Pruitt claims that his plea to the firearm specification was invalid because of the trial court's omission at the original sentencing hearing. In response to this identical argument, that Pruitt never actually pleaded guilty to his conviction for the weapons while under disability offense and the firearm specification attached to Count 1 of the indictment (attempted murder), a panel of this court has already held that

[w]hether 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. Pruitt challenged his pleas and convictions on direct appeal, and this court affirmed. Accordingly, any subsequent claim that his pleas are not valid is barred as res judicata.

(Internal citations omitted.) *State v. Pruitt*, 8th Dist. Cuyahoga Nos. 95456 and 95457, 2011-Ohio-1375, ¶ 9. Pruitt had ample opportunity to litigate his perceived error and, in fact, unsuccessfully argued that the trial court failed to adhere to Crim.R. 11 in allowing Pruitt to plead guilty to the firearm specification attached to the attempted murder count and the separate count of having a weapon while under disability in the 2011 appeal. *Id.*

This court could not have been more clear: the doctrine of res judicata precludes Pruitt from collaterally attacking his conviction with the argument that he failed to separately plead to certain counts and specifications. *See also Donnelly* at ¶ 16 (Pruitt had an adequate remedy in unsuccessfully appealing the trial court's denial of his motion to vacate a void order). That should have been the end of it.

{¶3} Instead, and despite the clear affirmance of Pruitt's entire conviction, the state moved to dismiss the weapon while under disability count in the indictment pursuant to Crim.R. 48. The trial court, without jurisdiction to upset a final judgment of conviction affirmed on appeal, granted the motion. Emboldened, Pruitt filed his current motion to vacate the firearm specification attached to the attempted murder count, again claiming his guilty plea was insufficient. This court already addressed this precise issue, and we need not spill more ink on Pruitt's arguments; they are overruled.

{¶4} We are compelled to note that it seems unfathomable that the state sought to vacate a valid conviction and dismissal of a count without addressing the trial court's jurisdiction to dismiss a count of an indictment after the final judgment of conviction, especially a final judgment of conviction this court deemed not to be void. *Pruitt* at ¶ 6.

{¶5} As yet another panel of this court explained in this case alone, "[a] trial court lacks jurisdiction, upon remand, to consider a Crim.R. 32.1 motion to withdraw a guilty plea after affirmance by the appellate court of a judgment of conviction." *State v. Pruitt*, 8th Dist. Cuyahoga No. 91205, 2009-Ohio-859, ¶ 11, quoting *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 378 N.E.2d 162

(1978). Further, “absent statutory authority, a trial court is generally not empowered to modify a criminal sentence by reconsidering its own final judgment.” *State v. Ellington*, 8th Dist. Cuyahoga No. 101404, 2015-Ohio-601, ¶ 2, quoting *State v. Carlisle*, 131 Ohio St.3d 127, 2011-Ohio-6553, 961 N.E.2d 671, ¶ 1. “The rationale behind this rule is that ‘[o]nce a final judgment has been issued pursuant to Crim.R. 32, the trial court’s jurisdiction ends.’” *Id.*, quoting *State v. Gilbert*, Slip Opinion No. 2014-Ohio-4562, ¶ 9.

As this court explained, Pruitt challenged the basis of his conviction by collaterally attacking the plea. *Pruitt*, 8th Dist. Cuyahoga Nos. 95456 and 95457, 2011-Ohio-1375, ¶ 6. The trial court’s compliance with Crim.R. 11, or more aptly, the lack thereof, does not render the conviction void. *Id.* at ¶ 9.

{¶6} This court determined that a valid, final judgment of conviction had been entered. *Id.* at ¶ 6. The only mechanism available to dismiss a count of an indictment, information, or complaint, after a final judgment of conviction, is to first vacate the conviction on that count. The trial court lacked authority to overturn our decision deeming Pruitt’s entire conviction valid. The trial court’s decision granting the state’s motion to dismiss the weapon while under disability count was, at best, a nullity. Any relief from this court’s determination that Pruitt’s conviction was valid, and not void, lay with an appeal to the Ohio Supreme Court or, if available, an App.R. 26 petition to reopen that panel’s decision. The remedy certainly was not to file a motion with the trial court.

{¶7} Pruitt’s conduct, through the continued filing of appeals, original actions, and motions has perpetuated long-ago settled issues that taxed scarce judicial resources and,

therefore, may result in his being declared a vexatious litigator. *See, e.g., Henderson v. Saffold*, 8th Dist. Cuyahoga No. 100406, 2014-Ohio-306, ¶ 19; *State v. Henderson*, 8th Dist. Cuyahoga No. 100374, 2014-Ohio-2274, (declaring Henderson a vexatious litigator based on the subsequent appeal raising the same arguments). “[A]n appeal or original action shall be considered frivolous if it is not reasonably grounded in fact or warranted by existing law.” *Id.* “Loc.App.R. 23(B) further provides that a party that habitually, persistently, and without reasonable cause engages in frivolous conduct, may be declared a vexatious litigator subject to filing restrictions.” *Id.* Pruitt filed nothing short of 24 motions in the trial and appellate courts since his final conviction, and has been before seven other panels of this court, several times raising identical issues. Any further filings of appeals or original actions that are not reasonably grounded in fact or warranted by existing law shall result in this court declaring Pruitt a vexatious litigator pursuant to Loc.App.R. 23.

{¶8} The decision of the trial court is 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. 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.

SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and  
ANITA LASTER MAYS, J., CONCUR