

[Cite as *State v. McCarroll*, 2015-Ohio-1960.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102205

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

EZEKIAL McCARROLL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-94-306381-C

BEFORE: E.T. Gallagher, J., Celebrezze, A.J., and Keough, J.

RELEASED AND JOURNALIZED: May 21, 2015

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EILEEN T. GALLAGHER, J.:

{¶1} This cause came to be heard on the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Defendant-appellant, Ezekial McCarroll (“McCarroll”), pro se, appeals from a judgment that denied his motion for resentencing. He raises one assignment of error for our review:

Because the trial court failed to find on the record that aggravated murder has been proven beyond a reasonable doubt and failed to journalize a finding of guilt, in violation of the United States Constitution, the Ohio Constitution, former Crim.R. 11(C)(3), and former R.C. 2945.06, there has been no valid conviction and the appellant’s sentence is void.

{¶2} We find no merit to the appeal and affirm the trial court’s judgment.

I. Facts and Procedural History

{¶3} In February 1994, McCarroll was charged with two counts of aggravated murder, each with felony murder and firearm specifications. He was also charged with one count of aggravated robbery with a firearm specification. In April 1994, McCarroll pleaded guilty to one count of aggravated murder with a felony specification, and the state nolledd the remaining charges and specifications. The plea agreement included an agreed sentence of 30 years to life in prison. In accordance with the plea agreement, the court sentenced McCarroll to 30 years to life in prison, with eligibility for parole after 30 years.

Five years later, in February 1999, McCarroll filed a motion for leave to file a delayed appeal, which this court denied.

{¶4} In July 2008, McCarroll filed a motion to withdraw his guilty plea, arguing that the three-judge panel that presided over his case failed to comply with Crim.R. 11(C)(3), and violated R.C. 2945.05 and 2945.06 when it accepted his guilty plea. The trial court denied the motion and McCarroll appealed. We affirmed the trial court's judgment and held that the trial court lacked jurisdiction to grant a motion to withdraw a guilty plea after McCarroll had filed an appeal. *State v. McCarroll*, 8th Dist. Cuyahoga No. 92012, 2009-Ohio-623, ¶ 9 (“*McCarroll I*”), citing *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978); see also *State v. Craddock*, 8th Dist. Cuyahoga No. 87582, 2006-Ohio-5915, ¶ 8-9.

{¶5} In August 2009, McCarroll filed a motion for relief from judgment pursuant to Civ.R. 60(B)(5), which was treated as a petition for postconviction relief. See *State v. McCarroll*, 8th Dist. Cuyahoga No. 93956, 2010-Ohio-2107 (“*McCarroll II*”). In the motion, McCarroll again argued that the three-judge panel violated Crim.R. 11(C)(3), and R.C. 2945.06 when it accepted his guilty plea. The trial court denied the motion, and McCarroll once again appealed to this court. *Id.* We affirmed the trial court's judgment, explaining that

under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel 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*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus. Thus, any claim for postconviction relief that was or could have been raised on direct appeal is barred from consideration by the doctrine of res judicata.

State v. Williams, 157 Ohio App.3d 374, 2004-Ohio-2857, 811 N.E.2d 561 (8th Dist.), citing *State v. Perry*.

Id. at ¶ 9. This court further found that “the entire basis for defendant’s petition for postconviction relief, i.e., that the three-judge panel violated Crim.R. 11(C)(3), and R.C. 2945.06 in accepting his guilty plea, has already been considered and rejected by this court.” *Id.* at ¶ 10. Therefore, we concluded that McCarroll’s argument was barred by res judicata. *Id.*

{¶6} In October 2014, McCarroll filed a motion for resentencing, again arguing that the trial court violated Crim.R. 11(C)(3), and R.C. 2945.06, when it sentenced him to 30 years to life in prison. He also asserted that the trial court violated R.C. 2929.03(C)(1) and 2929.03(C)(2). The trial court denied the motion for resentencing pursuant to the doctrine of res judicata. McCarroll now appeals for the third time.

II. Law and Analysis

{¶7} In his sole assignment of error, McCarroll argues that because the trial court failed to find on the record that aggravated murder was proved beyond a reasonable doubt and failed to journalize its finding of guilt, it violated his rights under the United States Constitution, the Ohio Constitution, R.C. 2945.06, and former Crim.R. 11(C)(3). He further argues that because there has been no valid conviction, his sentence is void.

{¶8} This court has already considered and rejected this argument in two prior appeals. See *McCarroll I*, 2009-Ohio-623 and *McCarroll II*, 2010-Ohio-2107. As previously explained, “any claim for postconviction relief that was or could have been raised on direct appeal is barred from consideration by the doctrine of res judicata.” *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 at paragraph nine of the syllabus.

{¶9} There are cases where res judicata does not bar a claim for postconviction relief because the petitioner presents evidence outside the record that was not in existence and was not available to the petitioner in time to support a direct appeal. *State v. Williams*, 157 Ohio App.3d 374, 2004-Ohio-2857, 811 N.E.2d 561 (8th Dist.), citing *State v. Cole*, 2 Ohio St.3d 112, 114, 443 N.E.2d 169 (1982). However, that is not the case here. McCarroll's claims that the trial court violated R.C. 2945.06 and Crim.R. 11(C)(3) are issues that could have been raised in a timely filed direct appeal and were previously considered and rejected by this court.

{¶10} Therefore, the trial court properly dismissed McCarroll's motion for resentencing as barred by res judicata.

{¶11} The sole assignment of error is overruled.

{¶12} 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.

EILEEN T. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
KATHLEEN ANN KEOUGH, J., CONCUR