

[Cite as *State v. Skipworth*, 2016-Ohio-3069.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103701

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MICHAEL SKIPWORTH**

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-01-407903-ZA

**BEFORE:** Blackmon, J., McCormack, P.J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** May 19, 2016

**FOR APPELLANT**

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**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

By: Daniel T. Van  
Assistant County Prosecutor  
8th Floor Justice Center  
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PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Michael Skipworth (“Skipworth”) appeals pro se the trial court’s denial of his “motion for relief from judgment, motion for reconsideration, motion for findings of facts and conclusions of law, motion for final and appealable order,” and assigns six errors for our review.<sup>1</sup>

{¶2} Having reviewed the record and relevant law, we affirm the trial court’s judgment. The apposite facts follow.

{¶3} Skipworth was indicted in a 44-count indictment. On September 4, 2001, Skipworth pleaded guilty to one count of rape, two counts of pandering obscenity involving a minor, and one count of child endangerment. The remaining counts were dismissed. The trial court sentenced Skipworth to a total term of 22 years in prison and classified Skipworth as a sexually oriented offender. On December 21, 2001, Skipworth filed a notice of appeal, which was denied as being untimely filed.

{¶4} On July 18, 2003, Skipworth filed a “motion to vacate and set aside sentence” in which he argued (1) the trial court erred by not determining whether his offenses were allied offenses, (2) the trial court erred by imposing consecutive sentences, (3) his sentence was not consistent with that imposed for similar offenders, (4) the trial court erred by imposing a \$5,000 fine, and (5) that his counsel was ineffective. The trial court denied the motion.

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<sup>1</sup>See appendix.

{¶5} Skipworth filed an appeal from the trial court’s denial. This court determined that the motion was actually a petition for postconviction relief and was untimely filed; therefore, the trial court did not err by denying the motion. *State v. Skipworth*, 8th Dist. Cuyahoga No. 84450, 2005-Ohio-882.

{¶6} On May 8, 2014, Skipworth filed a “motion to correct an illegal sentence” in which he argued that his sentence was void because it did not include the statutorily mandated term of postrelease control. The trial court only stated that “postrelease control is a part of this prison sentence for the maximum period allowed for the above felony(s) under R.C. 2967.28.” The trial court denied the motion.

{¶7} Skipworth filed an appeal from the trial court’s denial. This court agreed that the trial court failed to impose the mandatory five years of postrelease control and remanded the matter for the trial court to issue a nunc pro tunc order clarifying that five years of postrelease control was part of Skipworth’s sentence. *State v. Skipworth*, 8th Dist. Cuyahoga No. 101564, 2015-Ohio-1147.

{¶8} On April 2, 2015, Skipworth filed a motion to withdraw his guilty plea. He argued that because we remanded for correction of his sentence, his withdrawal was a presentence motion to withdraw his plea. The grounds for withdrawing his plea were (1) counsel failed to adequately investigate Skipworth’s background, which caused the court to impose a \$5,000 fine; (2) the crimes he was convicted of constituted allied offenses; (3) the consecutive sentence imposed by the trial court was “barbaric” and “unconstitutional”; (4) he was a first-time offender who should have received minimum concurrent sentences; (5) the consecutive sentence was disproportionate to the seriousness

of his conduct; (6) he did not commit the worst form of the offense; and, (7) his trial counsel was ineffective. On May 29, 2015, the trial court summarily denied the motion to withdraw the plea. Skipworth did not appeal from the denial by the trial court.

{¶9} On August 24, 2015, Skipworth filed a “motion for relief from judgment, motion for reconsideration, motion for findings of facts and conclusions of law, motion for final and appealable order.” Skipworth maintained that (1) the trial court erred by not conducting a hearing on his motion to withdraw his guilty plea; (2) the trial court must order the clerk of courts to refile the journal entries and send him certified copies of the journal entries; (3) the trial court should have addressed his motion to withdraw his plea prior to resentencing him; (4) the trial court should have merged the allied offenses when resentencing him; (5) the trial court should have conducted a “video hearing” on the resentencing order and appointed him counsel; (6) the resentencing journal entry was not a final appealable order because it did not list all the charges and how they were disposed of as required by Crim.R. 32(A); and, (7) the trial court was biased. The trial court summarily denied these motions.

### **Resentencing**

{¶10} We will address Skipworth’s first and second assigned errors together because they both concern the trial court’s resentencing of Skipworth. Skipworth contends that the trial court erred by failing to hold a video hearing of the resentencing so that he could be present and erred by refusing to assign Skipworth counsel for purposes of the resentencing.

{¶11} We conclude the trial court did not err. In our decision remanding the matter for resentencing, we ordered the trial court to issue a nunc pro tunc entry in order to state in the sentencing entry that Skipworth's postrelease control was for five years. Because only a nunc pro tunc entry was necessary, no hearing was required and there was no need for counsel. Accordingly, Skipworth's first and second assigned errors are overruled.

### **Motion to Withdraw Guilty Plea**

{¶12} We will address Skipworth's third and fourth assigned errors together because they both concern the trial court's denial of Skipworth's motion to withdraw his guilty plea.

{¶13} Skipworth contends that because the trial court was ordered to resentence Skipworth, he could file a presentence motion to withdraw his guilty plea. However, a motion to withdraw a guilty plea based on resentencing for postrelease control, is treated as a postsentence motion to withdraw a plea. *State v. Rogers*, 8th Dist. Cuyahoga No. 99246, 2013-Ohio-3246; *State v. Jackson*, 8th Dist. Cuyahoga No. 97809, 2012-Ohio-4280.

{¶14} Moreover, Skipworth's arguments that counsel should have objected to the imposition of consecutive sentences and that the sentences constituted allied offenses of similar import could have been raised in a direct appeal. Therefore, res judicata bars our review of these arguments. *See State v. Santiago*, 8th Dist. Cuyahoga No. 95564, 2011-Ohio-3059; *State v. Gilmore*, 8th Dist. Cuyahoga No. 97884, 2012-Ohio-3962. In

fact, Skipworth already attempted to raise these same arguments in a petition for postrelease control that this court found to have been untimely filed.

{¶15} As to Skipworth's contention that the trial court erred by not issuing findings of fact and conclusions of law regarding its denial of Skipworth's motion to withdraw his plea, Crim.R. 32.1 does not require such findings and conclusions. *State v. Linder*, 8th Dist. Cuyahoga No. 99350, 2013-Ohio-5018, ¶ 9. Accordingly, Skipworth's third and fourth assigned errors are overruled.

#### **Certified Copies of Journal Entries**

{¶16} In his fifth assigned error, Skipworth contends the trial court erred by not serving him with copies of the journal entries it issued on April 23, 2015, May 29, 2015, July 1, 2015, and October 6, 2015. However, the trial court has no duty to provide the appellant with copies of journal entries in a defendant's underlying criminal case because such a request must be made to the clerk of courts. As we held in *State ex rel. Simmons v. Clancy*, 8th Dist. Cuyahoga No. 102431, 2015-Ohio-1387, ¶ 4:

Requests for records must be directed to the clerk of courts. *State ex rel.*

*Whittaker v. Court of Common Pleas*, 8th Dist. Cuyahoga No. 78718, 2001

Ohio App. LEXIS 680 (Feb. 15, 2001). This court notes that the duty of

the clerk is to carefully preserve all papers delivered to him, R.C. 2303.09,

and to keep records and papers appertaining to the court, R.C. 2303.14.

Accordingly, Skipworth's fifth assigned error is overruled.

#### **Trial Court Biased**

{¶17} In his sixth assigned error, Skipworth argues that the trial court was biased as shown by the trial court's failure to adhere to the appellate court's mandate on remand.

{¶18} This court ordered the trial court to issue a nunc pro tunc entry to set forth the term of postrelease control in the sentencing entry. The trial court did this exactly. Therefore, the trial court adhered to this court's mandate. Accordingly, Skipworth's sixth assigned error is overruled.

{¶19} 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 be sent to the Cuyahoga County Court of Common Pleas 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.

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PATRICIA ANN BLACKMON, JUDGE

TIM McCORMACK, P.J., CONCURS;  
SEAN C. GALLAGHER, J., CONCURS  
IN JUDGMENT ONLY WITH SEPARATE  
OPINION

SEAN C. GALLAGHER, J., CONCURRING IN JUDGMENT ONLY:

{¶20} I concur in judgment only. The majority provides a lengthy recitation of the procedural steps Skipworth took to challenge his conviction, the most important facets



of which are (1) that Skipworth failed to timely appeal his conviction or to timely seek leave for a delayed appeal; (2) that this court affirmed the denial of Skipworth's petition for postconviction relief in *State v. Skipworth*, 8th Dist. Cuyahoga No. 84450, 2005-Ohio-882; and (3) that Skipworth already appealed the overall validity of his final sentence in *State v. Skipworth*, 8th Dist. Cuyahoga No. 101564, 2015-Ohio-1147.

{¶21} Accordingly, the trial court lacked jurisdiction to consider Skipworth's most recent motion, which only raised claims that were or could have been raised in earlier appeals. As has been repeatedly explained,

“‘[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*, 143 Ohio St.3d 150, 2014-Ohio-4562, 35 N.E.3d 493, ¶ 9.

*State v. Pruitt*, 8th Dist. Cuyahoga No. 101736, 2015-Ohio-1949, ¶ 5. The decision summarily denying Skipworth's motion was, therefore, correct. The analysis should have begun and ended there. Instead, the majority once again gives Skipworth the benefit of the doubt, eroding the principles espoused by the doctrines of res judicata and the law of the case.

{¶22} Skipworth's day in court has come and gone. By addressing the merits of his arguments on appeal, which have or could have been addressed in earlier appeals, we

are only decapitating the Lernaean Hydra. For this reason, I would also formally warn Skipworth that his conduct through filing appeals over long-ago settled issues will no longer be tolerated and may lead to the possibility of his being declared a vexatious litigator under Loc.App.R. 23(B). *Id.* at ¶ 7; citing *Henderson v. Saffold*, 8th Dist. Cuyahoga No. 100406, 2014-Ohio-306, ¶ 19. At some point in time, this court should definitively determine that Skipworth's conviction is indeed final. For these reasons, I concur in judgment only.

### **Appendix**

#### **Assignments of Error**

- I. The trial court erred when it failed to hold a video hearing for the purpose of re-sentencing the appellant pursuant to R.C. 2929.191(C).
- II. The trial court erred when it failed to assign counsel for the purpose of re-sentencing the appellant.
- III. The trial court erred when it failed to hold an evidentiary hearing on the appellant's pre-sentence motion to withdraw his guilty plea.
- IV. The trial court abused its discretion when it denied the appellant's motion to withdraw his guilt plea.
- V. The trial court erred when it failed to order the Cuyahoga County Clerk of Courts Office to serve the appellant with certified copies of the trial court's journal entries.
- VI. The trial court judge showed his own personal bias and/or prejudice towards the appellant by violating the appellant's constitutional rights to due process of law, procedural due process of law, and fundamentally fair proceedings.