

[Cite as *State v. Crockett*, 2016-Ohio-4966.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104120

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TAI-RON R. CROCKETT

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-574520-A

BEFORE: Keough, J., Jones, A.J., and Stewart, J.

RELEASED AND JOURNALIZED: July 14, 2016

APPELLANT

Tai-Ron R. Crockett
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ATTORNEYS FOR APPELLEE

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KATHLEEN ANN KEOUGH, J.:

{¶1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc.App.R. 11.1.

{¶2} Defendant-appellant, Tai-Ron Crockett, appeals the trial court’s decision denying his “motion post-petition for resentencing to be conducted before a mental health judge.” For the reasons that follow, we affirm.

{¶3} In September 2013, Crockett pleaded guilty to an amended count of murder, with a three-year firearm specification; and felonious assault. At sentencing, the trial court imposed the agreed upon sentence of 23 years to life. This court affirmed his convictions and sentence in *State v. Crockett*, 8th Dist. Cuyahoga No. 100923, 2014-Ohio-4576, *reopening denied*, 8th Dist. Cuyahoga No. 100923, 2015-Ohio-300, *appeal not allowed*, 142 Ohio St.3d 1424, 2015-Ohio-1353, 28 N.E.3d 123 (“*Crockett I*”).

{¶4} In April 2015, Crockett filed a delayed application for postconviction relief, arguing that his trial counsel was ineffective for failing to obtain his 2013 mental health records to determine whether his mental health providers would have opined that he was not competent to stand trial or was not legally sane. The trial court denied Crockett’s application. This court affirmed the trial court’s decision, finding that (1) Crockett was not unavoidably prevented from discovering his January-March 2013 mental health records prior to trial, and (2) both sanity and competency evaluations were performed prior to trial, and based on a stipulation between the parties, Crockett was determined to

be both sane at the time of the murder and competent to stand trial. *State v. Crockett*, 8th Dist. Cuyahoga No. 103199, 2016-Ohio-220 (“*Crockett II*”).

{¶5} In January 2016, Crockett filed a “motion post-petition for resentencing to be conducted before a mental health judge.” In his motion, he contends that his trial counsel was ineffective for failing to request that Crockett be sentenced by a mental health judge due to his “long history of mental illness that was never disclosed before this court.” He asserted that in September and October 2014, he received his January and February 2013 mental health records, and claimed that his counsel failed to subpoena these records and investigate whether these “other psychologists or psychiatrists would have offered a different opinion on his legal sanity to plead guilty.”

{¶6} The trial court denied his motion for resentencing. Crockett appeals, raising the following two assignments of error, which will be addressed together:

I. Defendant-appellant Tai-Ron R. Crockett was denied the effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution where his original trial counsel failed to make a motion to transfer defendant’s case to the mental health court.

II. The trial court abused its discretion when it failed to resentence appellant Tai-Ron Crockett before a mental health sentencing court to evaluate the prima-facie evidence of his mental health records that were never disclosed to the court to make a complete determination of his mental health condition, despite one having been conducted by the court through this former counsel of record, a violation of Article I, [Section] 10 of the Ohio Constitution and the XIV Amendment to the United States Constitution.

{¶7} In this case, Crockett’s motion for resentencing is a petition for postconviction relief. *See, e.g., State v. Gum*, 8th Dist. Cuyahoga No. 101496,

2015-Ohio-1539 (motion for resentencing treated as a petition when claim was for a violation of a criminal rule); *State v. Bennett*, 4th Dist. Scioto No. 15CA3682, 2015-Ohio-3832 (motion for resentencing treated as petition for postconviction relief). A postconviction relief proceeding is a collateral civil attack on a judgment that we review under the abuse of discretion standard. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 48.

{¶8} Because Crockett filed a prior petition for postconviction relief, this petition is deemed a successive petition. Under R.C. 2953.23(A), a trial court may entertain a successive petition if the petitioner initially demonstrates either (1) he was unavoidably prevented from discovering the facts necessary for the claim for relief, or (2) the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation. R.C. 2953.23(A)(1)(a). If the petitioner can satisfy one of those two conditions, he must also demonstrate that but for the constitutional error at trial no reasonable finder of fact would have found him guilty. R.C. 2953.23(A)(1)(b).

{¶9} The doctrine of res judicata places another restriction on the availability of postconviction relief. *State v. Blalock*, 8th Dist. Cuyahoga No. 94198, 2010-Ohio-4494, ¶ 19. Thus, a defendant may not raise any issue in a motion for postconviction relief if he could have raised the issue on direct appeal. *State v. Reynolds*, 79 Ohio St.3d 158, 679 N.E.2d 1131 (1997). However, the doctrine of res judicata does not apply to a void judgment. *State v. Holmes*, 8th Dist. Cuyahoga No. 100388, 2014-Ohio-3816, ¶ 13. In fact, a void judgment may be challenged at any time. *Id.*

{¶10} In this case, Crockett contends that his sentence is void because his case was not assigned to a mental health docket for sentencing, “in violation of the Ohio Revised Code.” Whether a case is transferred to a court’s mental health docket is not governed by statute, but rather by local rule. *See* Cuyahoga County Court of Common Pleas Loc.R. 30.1. Therefore, the failure to assign a case to a mental health docket does not render a sentence void as to preclude the application of res judicata. *State v. Beasley*, 14 Ohio St.3d 74, 75, 471 N.E.2d 774 (1984), *superseded by statute on other grounds as stated in State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958 (“any attempt by a court to disregard *statutory* requirements when imposing a sentence renders the attempted sentence a nullity or void” (emphasis added)).

{¶11} Crockett argued in his motion and assigns as error issues pertaining to the effectiveness of his trial counsel. Specifically, he contends that trial counsel failed to request that Crockett’s case be transferred to a mental health docket for sentencing due to his long history of mental health issues. Attached to his motion were mental health records purportedly demonstrating that long history. However, all of the events giving rise to the issues raised in his motion and on appeal could have been raised on direct appeal. Moreover, the issues Crockett raises were argued and rejected by this court in *Crockett II*. In fact, the same documents Crockett attached to the motion currently on review were also attached to his initial petition requesting postconviction relief. It is clear that Crockett is merely attempting to gain review of an identical successive petition for postconviction relief by couching his new petition as a motion for resentencing.

Regardless, res judicata applies and bars the arguments raised in his assignments of error.

Accordingly, they are 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. 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.

KATHLEEN ANN KEOUGH, JUDGE _____

LARRY A. JONES, SR., A.J., and
MELODY J. STEWART, J., CONCUR