

[Cite as *State v. Davis*, 2016-Ohio-5850.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104149

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DWAYNE DAVIS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-574008-A

BEFORE: Blackmon, J., McCormack, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: September 15, 2016

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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Cuyahoga County Prosecutor

By: Brett Hammond
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PATRICIA ANN BLACKMON, J.:

{¶1} In this accelerated appeal, appellant Dwayne Davis (“Davis”) appeals pro se the trial court’s denial of his petition for postconviction relief and assigns seven errors for our review:

I. The trial court abused its discretion when it denied the appellant’s motion to withdraw his guilty plea in violation of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

II. The appellant received ineffective assistance [of counsel] at the time of his plea thereby rendering his convictions void under the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 16 of the Ohio Constitution.

III. Trial counsel failed to properly prepare.

IV. Trial counsel’s failure to investigate.

V. Trial counsel’s wrongful advice.

VI. Trial counsel’s refusal to challenge prosecution’s case and refusal to engage in adversarial process to defend appellant’s constitutional rights.

VII. Trial counsel’s coerced guilty plea.

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

{¶3} In September 2013, Davis pleaded guilty to an amended indictment to burglary in violation of R.C. 2911.12(A)(1); burglary in violation of R.C. 2911.12(B); and intimidation of a witness in violation of R.C. 2921.04(B). These charges involved

three different victims. The trial court sentenced Davis to a total sentence of ten years in prison.

{¶4} Davis filed a delayed appeal from his plea alleging: (1) he received ineffective assistance of counsel at the time he entered his plea, (2) the trial court failed to make the factual findings necessary to impose consecutive sentences under R.C. 2929.14(C), and (3) the trial court erred by denying his motion to withdraw his guilty plea. We found no merit to his claims of ineffective assistance of counsel and found that the trial court complied with R.C. 2929.14(C) in imposing consecutive sentences. We did not address Davis's assigned error pertaining to his motion to withdraw his guilty plea because it was still pending before the trial court. *State v. Davis*, 8th Dist. Cuyahoga No. 102639, 2015-Ohio-4501.

{¶5} After the decision in the direct appeal, the trial court denied Davis's motion to withdraw his guilty plea. Davis now appeals that decision.

Motion to Withdraw Guilty Plea

{¶6} We will address Davis's seven assigned errors together because they all concern his argument that the trial court erred by denying his motion to withdraw his guilty plea.

{¶7} We conclude none of the arguments raised by Davis have merit because they are barred by res judicata.

{¶8} In Davis's motion to withdraw his plea he argued that his counsel was ineffective for failing to file a motion to suppress based on the fact that the police

conducted a warrantless search and arrest without probable cause, and that his counsel was ineffective for failing to raise a competency claim before the trial court. Davis then filed an addendum to his motion to withdraw, in which he alleged that the court “intimidated” him into entering his plea by ignoring his pro se motions to dismiss the charges based on the illegal search and arrest.

{¶9} The only issue that Davis raises on appeal that he also raised in his motion to withdraw is that counsel was ineffective for failing to file a motion to suppress based on the warrantless search and arrest. However, Davis already raised the argument that counsel was ineffective for failing to file a motion to suppress in his direct appeal. This court held:

Davis’s argument as to the police’s warrantless entry and arrest is unrelated to his guilty plea and therefore provides no basis to reverse his conviction. *

* * Because Davis’s argument as to his counsel failing to file a motion to suppress does not support a claim that his guilty plea was less than knowingly, intelligently, and voluntarily made, we find his argument has no merit.

Davis, 8th Dist. Cuyahoga No. 102639, 2015-Ohio-4501, at ¶ 16.

{¶10} The doctrine of res judicata bars a defendant “from raising and litigating in any proceeding except an appeal from [a final] judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial * * * or on an appeal from that judgment.” *State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d

104 (1967). Because we have already addressed this argument on direct appeal, res judicata prevents Davis from raising this argument again.

{¶11} Davis also argues that counsel was ineffective for failing to investigate; failing to properly prepare for trial; providing incorrect advice; and, failing to challenge the state's case. None of these arguments were raised in his motion to withdraw and were arguments that Davis could have raised on direct appeal but failed to do so. Thus, res judicata prevents our review of these assigned errors. Accordingly, Davis's assigned errors are overruled.

{¶12} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas 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.

PATRICIA ANN BLACKMON, JUDGE

TIM McCORMACK, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR