

[Cite as *State v. Ali*, 2017-Ohio-6894.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105534

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

OSIRIS ALI

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-05-465969-A

BEFORE: Keough, A.J., McCormack, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: July 20, 2017

APPELLANT

Osiris Ali, pro se
Inmate No. 503-171
Lake Erie Correctional Institution
501 Thompson Road
Conneaut, Ohio 44030

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor

By: Mary M. Dyczek
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, A.J.:

{¶1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1. The purpose of an accelerated appeal is to allow this court to render a brief and conclusory opinion. *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1.

{¶2} In April 2006, Ali was convicted of rape, kidnapping, gross sexual imposition, and unlawful sexual conduct with a minor; he was sentenced to life in prison.

This court affirmed his convictions and sentence in *State v. Ali*, 8th Dist. Cuyahoga No. 88147, 2007-Ohio-3776, *appeal not accepted*, 122 Ohio St.3d 1458, 2009-Ohio-3131, 908 N.E.2d 947. Thereafter, Ali filed repeated challenges to his convictions and sentence, all of which have been denied or dismissed. *See, e.g., State v. Ali*, 8th Dist. Cuyahoga No. 88147, 2009-Ohio-1233 (application to reopen denied); *State ex rel. Ali v. McMonagle*, 8th Dist. Cuyahoga No. 95059, 2010-Ohio-3514 (writ of mandamus denied); *State v. Ali*, 8th Dist. Cuyahoga No. 97612, 2012-Ohio-2510 (postconviction relief denied); *State v. Ali*, 8th Dist. Cuyahoga No. 99062, 2013-Ohio-2696 (postconviction relief dismissed); *State v. Ali*, 8th Dist. Cuyahoga No. 101129, 2014-Ohio-4478 (postconviction relief denied); *State ex rel. Ali v. Clancy*, 8th Dist. Cuyahoga No. 103328, 2015-Ohio-4594 (mandamus dismissed and warned of being declared a vexatious litigator).

{¶3} In January 2017, Ali filed a motion to vacate a void sentence pursuant to Crim.R. 6(C) and (F) and R.C. 2939.22 on the grounds of prosecutorial misconduct.

Specifically, he maintained that the prosecution against him was not commenced pursuant to Crim.R. 6 because the indictment was not properly filed. The state opposed the motion, and the trial court denied the motion without a hearing.

{¶4} Ali now appeals, raising the following three assignments of error:

I. The trial court erred in denying appellant's motion based upon the fact that the prosecutor and/or his agents knowingly set forth fraud in the inducement proclaiming that a charge existed by violation Crim.R. 6(C) [and] (F), 7(B), and [R.C.] 2939.22, thus violating the appellant's right to a fair trial and due process of law.

II. The trial [court] erred in denying appellant's motion to vacate void judgment and sentence where the prosecution was not commenced pursuant to Crim.R. 6(F).

III. The trial court abused its discretion by failing to dismiss appellant's case with prejudice, based upon the fact that the indictment had never been filed in violation of appellant's fourteenth amendment right to due process of law.

{¶5} These assignments of error all maintain that the prosecution against Ali was not commenced pursuant to Crim.R. 6 because the indictment was not properly filed. Accordingly, the assignments of error will be addressed together.

{¶6} Ali's motion to vacate will be construed as a petition for postconviction relief. *See State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131 (1997) ("[W]here a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21").

{¶7} In this case, Ali supported his motion with self-serving statements claiming that he believed that the state violated Crim.R. 6. After reviewing the record, we find that Ali's beliefs are mere speculation based on the facts and disposition of an unrelated case reviewed and decided by this court — *State v. Haynes*, 8th Dist. Cuyahoga Nos. 102457, 102458, and 102459, 2015-Ohio-4582. In *Haynes*, this court concluded that based on the record, the prosecution against three defendants was not timely commenced within the relevant statute of limitations period. *Id.* at ¶ 23. The evidence and testimony showed that the procedures taken in those cases did not demonstrate that the indictments were delivered to the judge presiding over the grand jury, as required by Crim.R. 6(F); thus, the indictments were never returned and prosecution was not commenced. *Id.* at ¶ 22. Because the offenses occurred in 1994 and the evidence did not show that prosecution timely commenced prior to the expiration of the 20-year statute of limitations, this court upheld the trial court's decision to dismiss the indictments.

{¶8} Unlike *Haynes*, the case against Ali commenced within the relevant statutory period. The dates of the offenses ranged from December 2002 to January 2005, and Ali was indicted in May 2005. Therefore, no statute of limitations issue existed. Moreover, Ali assumes that the grand jury and delivery process testified to in *Haynes* occurred in his case. However, the record does not support Ali's speculative assertions that there was a defect in the grand jury proceedings and the prosecution against him was improper.

{¶9} Finally, the arguments Ali now raises could have been raised in his direct appeal or any prior petition for postconviction relief; thus, they are barred by res judicata.

See Ali, 8th Dist. Cuyahoga No. 99062, 2013-Ohio-2696, ¶ 10 (“The doctrine of res judicata precludes a convicted defendant from raising an issue in a motion for post conviction relief if he or she raised or could have raised the issue on direct appeal.”).

{¶10} Accordingly, the trial court did not abuse its discretion in denying Ali’s motion to vacate a void sentence. Ali’s assignments of error are overruled.

{¶11} 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.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

TIM McCORMACK, J., and
ANITA LASTER MAYS, J., CONCUR