

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 25276

Appellee

v.

ROBERT D. COOK

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 01 02 0448

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 30, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Someone shot Marquel Wright. A police investigation led to the arrest of Robert Cook. A jury convicted Mr. Cook of attempted murder and felonious assault along with accompanying gun specifications, and, in June 2001, the trial court sentenced him to thirteen years in prison. He appealed, and this Court affirmed his convictions. In 2010, the trial court resentenced Mr. Cook in order to properly impose postrelease control. He has appealed, arguing that his original sentence was void, making his original direct appeal invalid, and that his convictions are against the manifest weight of the evidence.

FIRST APPEAL

{¶2} Mr. Cook’s first assignment of error is that, because the trial court did not properly impose postrelease control at his original sentencing, his original sentence was void and his direct appeal following that sentencing was invalid. He has argued that, because this is his

first appeal from a valid sentence, he should be able to raise any and all errors in his brief. Mr. Cook's "assignment of error" does not identify any error allegedly committed by the trial court. Accordingly, his first assignment of error is overruled. App. R. 12(A)(2), 16(A)(3)

MANIFEST WEIGHT

{¶3} Mr. Cook's second assignment of error is that his convictions for felonious assault and attempted murder are not supported by sufficient evidence and are against the manifest weight of the evidence. The Ohio Supreme Court has now held that, if a defendant has "already had the benefit of one direct appeal, [he can] not raise any and all claims of error in a second, successive appeal." *State v. Fischer*, ___ Ohio St. 3d ___, Slip Opinion No. 2010-Ohio-6238, at ¶33 (citing *State v. Fischer*, 181 Ohio App. 3d 758, 2009-Ohio-1491). Accordingly, "[a]lthough the doctrine of res judicata does not preclude review of a void sentence, res judicata still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence." *Id.* at paragraph three of the syllabus. Further, "[t]he scope of an appeal from a resentencing hearing in which a mandatory term of postrelease control is imposed is limited to issues arising at the resentencing hearing." *Id.* at paragraph four of the syllabus.

{¶4} Mr. Cook has now appealed from his resentencing hearing, at which the trial court imposed a mandatory five-year period of postrelease control. He may only raise issues arising from that resentencing hearing because issues concerning the merits of his convictions are barred by res judicata. His second assignment of error is overruled.

CONCLUSION

{¶5} On appeal from his resentencing hearing, Mr. Cook may only raise issues arising from his resentencing. His assignments of error are overruled, and the judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
BELFANCE, J.
CONCUR

APPEARANCES:

RONALD T. GATTS, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and HEAVEN R. DIMARTINO, assistant prosecuting attorney, for appellee.