

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-473
Robert A. Dixon,	:	(C.P.C. No. 94CR-04-2045)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on November 17, 2009

Ron O'Brien, Prosecuting Attorney, and *Seth A. Gilbert*, for appellee.

Robert A. Dixon, pro se.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Robert A. Dixon is appealing from the denial of his petition for post-conviction relief. He assigns a single compound error for our consideration:

The trial court lacked subject-matter jurisdiction to convict appellant of aggravated murder pursuant to R.C. § 2903.01(B) and committed plain error, as the indictment stated the offense was committed: "While committing or attempting to commit aggravated robbery..." as an essential element of the offense, of which appellant was never

convicted. Nor was the required mens rea elements of "recklessness" and "knowingly" included to prove the aggravated robbery aspect of the offense. Wherefore, appellant could not have made a knowing, intelligent and voluntary guilty plea, for appellant was not informed of all the elements that were required to be proven to convict appellant of aggravated murder, nor did appellant's council inform appellant that he could not be convicted of the aggravated murder charge without also being convicted of the aggravated robbery charge. Further, that there was insufficient evidence to sustain a conviction upon the aggravated murder charge pursuant to R.C. § 2903.01(B), as no rational trier of fact could find all the essential elements to convict without the aggravated robbery offense having been proven also. All of which is in violation of Article I, Section 16 of the Ohio Constitution; the Fifth, Sixth and Fourteenth Amendments of the United States Constitution; O.R.C. § 2901.21, 2901.22, 2903.01(B), and Criminal Rule 7(B), which renders appellant's conviction on count two of the indictment for aggravated murder void.

{¶2} In 1992, Dixon was indicted on two counts of aggravated murder with death specifications, one count of aggravated robbery and one count of having a weapon while under disability. In 1994, he entered into a plea bargain under the terms of which he pled guilty to a single charge of aggravated murder with firearm specifications and received a sentence of incarceration for 23 years to life.

{¶3} In August 2008, Dixon filed a petition for post-conviction relief, seeking to overturn the judgment and sentence he received as a result of his acceptance of the plea bargain. The trial court denied the petition.

{¶4} The trial court was correct to deny the petition since the petition was not filed within the time mandated by R.C. 2953.21(A).

{¶5} Dixon argues that the trial court lacked subject-matter jurisdiction because of alleged defects in the indictment charging him. This argument fails. The indictment

specifically lists the statutes Dixon was accused of violating. As a result, Dixon was on notice of the charges against him and the elements of those charges. The indictment was valid. Additional information about the elements of the statutes and the evidence against Dixon were available through pursuit of a bill of particulars and criminal discovery.

{¶6} Since the indictment was valid, the trial court had subject-matter jurisdiction and Dixon has no valid basis to try to overturn his plea bargain now.

{¶7} The sole assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and KLINE, JJ., concur.

KLINE, J., of the Fourth Appellate District, sitting by
assignment in the Tenth Appellate District.
