

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-13-1005

Appellee

Trial Court No. CR0201001733

v.

Johnnie Lee Tilman, III

DECISION AND JUDGMENT

Appellant

Decided: September 13, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Johnnie L. Tilman, III, pro se.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals the order of the Lucas County Court of Common Pleas denying his application for a declaratory judgment. Appellant asked the court to declare unconstitutional R.C. 3719.141, the statute governing the sale of controlled substances by peace officers.

{¶ 2} In 2010, appellant, Johnnie L. Tilman, was arrested for drug possession and trafficking when he purchased in excess of 1,000 grams of cocaine from an undercover narcotics agent. Appellant eventually entered a guilty plea, pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), to a single count of cocaine possession. The trial court accepted the plea and sentenced him to an eight-year term of imprisonment. Appellant did not appeal his conviction.

{¶ 3} In 2011, appellant file a pro se postconviction petition to set aside his conviction on the ground that his trial counsel was ineffective for failing to challenge the validity of his arrest. Appellant claimed police conduct during the reverse drug sale that resulted in his arrest was in violation of R.C. 3719.141. The trial court dismissed his petition and we affirmed, concluding that the issue was one that could have been raised on direct appeal and, as a result, was barred by the doctrine of res judicata. *State v. Tilman*, 6th Dist. Lucas No. L-11-1083, 2012-Ohio-621, ¶ 7.

{¶ 4} On November 30, 2012, appellant, pro se, applied for a declaratory judgment “[t]o determine the Constitutionality of O.R.C. § 3719.141.” Without comment, the trial court denied the application. Appellant appealed.

{¶ 5} Pursuant to 6th Dist.Loc.App.R. 12(A), we sua sponte transfer this matter to our accelerated docket and render our decision.

{¶ 6} The issues appellant raises in the present proceeding are the same issues he raised in his motion for postconviction relief. These issues are barred from further

consideration by the doctrine of res judicata. *Fuller v. Mohr*, 8th Dist. Cuyahoga No. 98477, 2012-Ohio-4828, ¶ 8.

{¶ 7} Further, appellant has no standing to challenge the statute because it is directed to law enforcement, not criminal defendants. *State v. Ellison*, 6th Dist. Lucas No. L-02-1292, 2003-Ohio-6748, ¶ 25. As we explained in *State v. Manning*, 6th Dist. Lucas No. L-99-1344, 2000 WL 1033035, *3 (July 28, 2000):

R.C. 3719.141 is codified in the same chapter of the revised code which regulates pharmacists handling controlled substances. There is only peripheral mention of a criminal defendant in the language of the law: the criminal suspect is referred to as “the purchaser” or the “intended recipient” of controlled substances. R.C. 3719.141(A)(1)(c) (iii); (2)(d)(i). The law focuses on the illicit drug itself and the procedures which must be adopted to prevent the drug from escaping the control of peace officers in a “reverse buy” situation. The language also suggests that the legislature intended to establish a bright line for the criminal culpability of the officers when performing what would otherwise be an unlawful act. Absent this statute, an officer dealing drugs for himself might seek to justify that act by claiming such a transaction as a police sting. This is the type of mischief the statute appears to seek to remedy. To suggest that the statute somehow confers any right on a criminal defendant would constitute an extension of the law into an area in which it was clearly not intended to apply.

{¶ 8} Moreover, whether R.C. 3719.141 is or is not constitutional would have no effect on appellant's conviction. Accordingly all of appellant's assignments of error are not well-taken.

{¶ 9} On consideration, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

Thomas J. Osowik, J.

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

JUDGE

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.