

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

State of Ohio

Court of Appeals No. E-22-044
E-22-045

Appellee

Trial Court No. 2004 CR 0643
2005 CR 0103

v.

Deonta Boyd

DECISION AND JUDGMENT

Appellant

Decided: July 28, 2023

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Kristin R. Palmer, Assistant Prosecuting Attorney, for appellee.

Deonta Boyd, pro se.

* * * * *

DUHART, J.

{¶ 1} In this consolidated appeal, appellant, Deonta Boyd, appeals, pro se, from the September 15, 2022 judgments of the Erie County Court of Common Pleas denying his motions to vacate his guilty plea in case Nos. 2004-CR-0643 and 2005-CR-0103. For the reasons that follow, the trial court’s judgment is affirmed.

Statement of the Case and Relevant Facts

{¶ 2} On February 9, 2005, Boyd was indicted in case No. 2004-CR-0643 for aggravated burglary. On March 10, 2005, he was indicted in case No. 2005-CR-0103 for: (1) aggravated murder; (2) murder; (3) aggravated robbery; (4) having weapons while under a disability; and (5) attempted murder.

{¶ 3} On June 15, 2005, Boyd's trial counsel, Denise M. Demmitt, filed a motion to withdraw as counsel based upon a conflict of interest. Demmitt's motion explained that she had been hired to represent Boyd prior to the murder charges being filed against him in case No. 2005-CR-0103. After Demmitt agreed to take on the murder charges as well, she learned that another one of her clients, Sylvester Ford, who was Boyd's stepfather, was on the witness list for the state. At this point, Demmitt sought and was granted a withdrawal from representation on behalf of Ford. According to Demmitt, at the time of her withdrawal from Ford's case, the state, through Assistant Prosecutor Alkire, specified on the record that Demmitt had no prior knowledge of any dealings that Ford had with the state regarding Boyd. Demmitt further alleged that "[a]ll of Mr. Ford's communications and deals with the State relative to his testimony against Mr. Boyd occurred without Attorney Demmitt's knowledge or participation."

{¶ 4} After thoroughly reviewing the matter, it became apparent to Demmitt that Ford "was in fact a material witness in the prosecution" of Boyd in that he had tipped off police regarding the gun, which was later retrieved from the basement of the home that Ford and his stepfather occupied. Demmitt, therefore, sought to withdraw as Boyd's

counsel because there was “an inescapable conflict of interest” inasmuch as the warrantless search and seizure of the alleged murder weapon was a matter that “must be litigated.”

{¶ 5} On June 22, 2005, the trial court granted Demmitt’s motion as to both cases. Attorneys Robert Dixon and David Doughten were appointed to take over Boyd’s representation.

{¶ 6} In June 2006, Boyd pleaded guilty to reduced charges of aggravated murder with a firearm specification, felonious assault, and aggravated burglary. The trial court sentenced Boyd to consecutive terms of: (1) imprisonment for life with eligibility for parole after 20 years for the murder offense; (2) three years imprisonment for the firearm specification; (3) eight years imprisonment for the felonious assault offense; and (4) ten years imprisonment for the aggravated burglary offense. Boyd did not appeal the judgment of conviction and sentence. Instead, sometime between June and July 2006, appellant filed his first motion to withdraw guilty plea, which was denied by the trial court on August 7, 2006.¹ Boyd did not appeal this decision.

{¶ 7} On January 17, 2020, more than thirteen years after pleading guilty, Boyd filed a second Crim.R. 32.1 motion to vacate his guilty plea, arguing that his plea was not

¹ The docket sheet for case No. 2005-CR-0103 shows that on August 7, 2006, the trial court entered an order denying a motion to withdraw guilty plea that had been filed by Boyd but was not recorded on the docket. The docket sheet also shows that a response to Boyd’s motion to withdraw guilty plea was filed by the state on July 19, 2006. Logically, then, Boyd’s motion to withdraw guilty plea must have been filed sometime between June 5, 2006, when Boyd entered his guilty plea, and July 19, 2006, when the state filed its response to Boyd’s motion.

knowingly, intelligently, or voluntarily made because he did not understand the maximum penalties involved and because he had not been notified of his constitutional right to compulsory process. The trial court denied the motion on March 27, 2020, on the ground that Boyd had not demonstrated that a manifest injustice had occurred. This time, Boyd appealed the decision to this court.

{¶ 8} On December 23, 2020, this court affirmed the judgment of the trial court denying Boyd's motion to vacate his plea. In reaching this conclusion, this court held that all of Boyd's arguments relating to the validity of his plea were barred by the doctrine of res judicata, and that the trial court had not abused its discretion by denying his motion to vacate without a hearing. Specifically, this court concluded:

[A]ppellant's arguments could have been raised on appeal. The issues could have been or were raised in his first motion to withdraw his guilty plea and could have been asserted on appeal from the judgment denying his first motion to withdraw his guilty plea. Therefore, any arguments appellant could have raised regarding the entry of his guilty plea are now barred under the doctrine of res judicata and his second motion to withdraw his guilty plea should have been dismissed on that ground.

State v. Boyd, 6th Dist. Erie No. E-20-006, 2020-Ohio-6866, ¶ 7. Boyd appealed the decision to the Ohio Supreme Court, but on March 30, 2021, the Supreme Court declined jurisdiction. *State v. Boyd*, 162 Ohio St.3d 1412, 2021-Ohio-961, 165 N.E.3d 328.

{¶ 9} In July and August 2022, Boyd again filed motions to withdraw guilty his guilty pleas in case Nos. 2004-CR-0643 and 2005-CR-0103. On September 15, 2022, the trial court denied both of these motions, concluding that the claims were barred by the doctrine of res judicata and that Boyd had failed to demonstrate that a manifest injustice had occurred. It is from these decisions that Boyd currently appeals.

Assignments of Error

{¶ 10} Boyd asserts the following assignments of error on appeal:

- I. The court abused its discretion against Appellant-Boyd; the viewpoint of discrimination [sic] here is alleging that Appellant-Boyd filed his first Post-Sentence motion in 2006. The Sixth Appellate District alleges that Appellant-Boyd filed his first Post-Sentence Crim.R. 32.1 motion in 2007. However, no such motion appears on the docket in either case no. 2004-CR-643; and/or 2005-CR-103. (State v. Boyd, 2020-Ohio-6866, P3). Thus, the court imputed information not in the case sub judice;
- II. The trial court violated Boyd's right to effective assistance of counsel as provided by the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution by not inquiring into the existence of a serious actual conflict of interest and denying him Due process and Equal protection, in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

III. Demmitt committed Fraud within the Courts through deception, that deprived and prejudiced “Defendant” of effective assistance of counsel that is in violation of Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. Therefore, violating Ohio Prof. Cond. Rule 8.3 and Prof. Cond. R. 1.7(c).

IV. The Defendant allege that Demmitt provided ineffective assistance of counsel due to a serious actual conflict of interest that caused an adverse effect that violated Boyd’s Sixth, Fifth, and Fourteenth Amendments to the United States constitution, and Ohio Constitution Sections 10 and 16 of Article I. Ohio Prof. Cond. Rule 8.3 and Prof. Cond. R. 1.7(c).

V. Mr. Boyd argues that the trial court abused its discretion in denying his motion to vacate guilty plea pursuant to Crim.R. 32.1 without a hearing, and finding that Mr. Boyd had not established a manifest injustice.

VI. The Defendant’s Demmitt provided ineffective assistance of counsel when counsel failed to file any motions to suppress all of the tainted evidence, therefore violating the defendant’s Fourth, Fifth and Fourteenth Amendment of Due Process., U.S. Constitution; Article 1, Section 10 and 14, of the Ohio Constitution.

VII. The Appellant’s counsel Dixon and Doughten provided ineffective assistance of counsel when counsel failed to file any motions to suppress the tainted evidence that police obtained during a search of his home, in

violation of the Fourth, Fifth and Fourteenth Amendment of Due Process., U.S. Constitution; Article I, Section 10 and 14, of the Ohio Constitution. VIII, The Defendants guilty plea was not made knowingly, voluntarily, and intelligently due to an unresolved “serious actual conflict of interest” with Attorneys’ Dixon and Doughten representing, in violation of the Ohio Constitution Section 10 and 16 of Article 1, and of the United States Constitution of the Fifth, Sixth and Fourteenth Amendment. Ohio Prof. Cond. Rule 8.3

IX. The trial court abused its discretion in denying the defendant a hearing due to manifest injustice. The trial Judge removed Demmitt in case No. 2004-CR-643 there was no cause to withdraw counsel as it was not a conflict in this case, nor was there any filing of counsel’s motion to withdraw as counsel in Case No. 2004-CR-643.23.

X. The trial court abused its discretion Attorney’s Dixon and Doughten provided ineffective assistance of counsel when attorney’s denied Boyd a Jury trial which violated the Sixth Amendment and Fourteenth Amendment rights of Due Process and Equal protection. Crim. Rule. 23(A) Trial by jury or by the court?

XI. Boyd argues that the trial court abused its discretion in denying his Motion to vacate guilty his guilty plea pursuant to Crim.R. 32.1 without a hearing, and finding that Boyd had not established a manifest injustice. The

trial court mistakenly denied defendant the right to trial, and instead insisted on counsel's determination on Appellant frustration, and lack of understanding of the plea leaving Appellant with no right to jury trial.

Analysis

First assignment of error

{¶ 11} Boyd asserts in his first assignment of error that *this* court improperly found in its December 23, 2020 decision denying Boyd's second motion to vacate guilty plea that Boyd had filed his first such motion in 2007. Boyd contends that, in fact, he filed his first Crim.R. 32.1 motion in 2020, and that the 2020 motion should have been granted.

{¶ 12} We initially note that the issue concerning the alleged mistaken date is not properly before this court, as it was part of Boyd's previous appeal in Case No. E-20-006. Boyd never filed application to reconsider this court's earlier decision, pursuant to App.R. 26(A)(1). Nor did he raise this issue in his latest Crim.R. 32.1 motions, the denial of which are the proper subject of this appeal. Boyd cannot now raise a new argument for the first time on appeal to this court. *See State ex rel. Gutierrez v. Trumbull Cty Bd. of Elections*, 65 Ohio St.3d 175, 177, 602 N.E.2d 622 (1992).

{¶ 13} Furthermore, Boyd's dispute over the timing of his filing of his first Crim.R. 32.1 motion is of no consequence with respect to this court's December 23, 2020 decision. Whether the motion was filed in 2006 or in 2007, this court's analysis of the merits of the case would remain the same.

{¶ 14} In fact, the determination of whether Boyd’s first Crim.R. 32.1 motion was filed in 2006, 2007 -- or even in 2020 -- ultimately makes no difference to this court’s holding in the earlier decision, because in affirming the trial court’s March 12, 2020 decision denying Boyd’s motion to vacate his guilty plea, this court held that all of Boyd’s arguments were barred by the doctrine of res judicata as they “could have been raised on appeal.” *State v. Boyd*, 6th Dist. Lucas No. E-20-006, 2020-Ohio-6866, ¶ 7. In other words, this court concluded that Boyd’s failure to raise the arguments relating to the validity of his plea on direct appeal of his conviction was sufficient to bar his claims under the doctrine of res judicata. *See State v. El-Amin*, 6th Dist. Lucas No. L-21-1175, 2022-Ohio-2905, ¶ 14 (res judicata held to bar argument that could have been raised on direct appeal); *State v. Madrigal*, 6th Dist. Lucas Nos. L-10-1142, L-10-1143, 2011-Ohio-798, ¶ 16 (“It is well established by pertinent Ohio caselaw that claims submitted in support of a Crim.R. 32.1 motion to withdraw plea that could have been raised on direct appeal, but were not raised on direct appeal, are barred by res judicata.”). Thus, irrespective of the timing of Boyd’s first motion to withdraw his guilty pleas, this court correctly determined that the claims in his 2020 Crim.R. 32.1 motion were barred by res judicata. Accordingly, Boyd’s first assignment is found not well-taken.

Second through Eleventh assignments of error

{¶ 15} Boyd’s remaining assignments of error challenge the trial court’s denial of his most recent Crim.R. 32.1 motions to withdraw his guilty plea, filed in July and

August 2022. As the issues raised in the remaining assignments of error are all resolved using a single analysis, this court will address these assignments of error together.

{¶ 16} “In reviewing a trial court’s decision of whether to grant or deny a Crim.R. 32.1 motion to withdraw a guilty plea, an appellate court is limited to determining whether the trial court’s decision constituted an abuse of discretion.” *State v. Thompson*, 6th Dist. Lucas No. L-05-1213, 2006-Ohio-1224, ¶ 25, citing *State v. Zinn*, 4th Dist. Jackson No. 04CA1, 2005-Ohio-525, ¶ 14. “An abuse of discretion involves more than a mere error of judgment; it suggests an attitude on the part of the court that is unreasonable, unconscionable, or arbitrary.” *Thomson* at ¶ 25, citing *State v. Clark*, 71 Ohio St.3d 466, 470, 644 N.E.2d 331 (1994). When applying the abuse of discretion standard, the reviewing court may not simply substitute its judgment for that of the trial court. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E. 1140 (1983).

{¶ 17} Motions to withdraw pleas of guilty and no contest to criminal offenses are governed by Crim.R. 32.1, which provides:

A motion to withdraw a plea of guilty or no contest may be made only before a sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.

In the present case, Boyd’s latest motions to withdraw his guilty pleas were filed more than 16 years after he pled guilty and was sentenced. Therefore, the trial court was authorized to set aside the convictions and allow appellant to withdraw his guilty pleas

only to correct a “manifest injustice.” *See* Crim.R. 32.1; *State v. Caraballo*, 17 Ohio St.3d 66, 67, 477 N.E.2d 627 (1985).

{¶ 18} A defendant seeking to withdraw a guilty plea after the imposition of a sentence has the burden of establishing the existence of a manifest injustice. *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph one of the syllabus. A “manifest injustice” is defined as a “clear or openly unjust act.” *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 207-208, 699 N.E.2d 83 (1998). “Under this standard, a post-sentence motion to withdraw should be allowed only under extraordinary circumstances.” *Thomson* at ¶ 48. “The logic behind this precept is to discourage a defendant from pleading guilty to test the weight of potential reprisal, and later withdraw the plea if the sentence was unexpectedly severe.” *Caraballo* at ¶ 67.

{¶ 19} An undue delay between the occurrence of the alleged cause for the withdrawal of the guilty plea and the filing of the Crim.R. 32.1 motion is a factor militating against the granting of the motion. *State v. Straley*, 159 Ohio St.3d 82, 2019-Ohio-5206, 147 N.E.3d 623, ¶ 15; *see also Smith* at paragraph three of the syllabus.” “And generally, res judicata bars a defendant from raising claims in a Crim.R. 32.1 postsentencing motion to withdraw a guilty plea that he raised or could have raised on direct appeal.” *Straley* at ¶ 15, citing *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 59.

{¶ 20} “Under the doctrine of res judicata, a final judgment bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding,

except an appeal from that judgment, any defense or claimed lack of due process that the defendant raised or could have raised at trial or on appeal.” *State v. Brown*, 167 Ohio App.3d 239, 2006-Ohio-3266, 854 N.E.2d 583, ¶ 7 (10th Dist.), citing *State v. Szeftcyk*, 77 Ohio St.3d 93, 671 N.E.2d 233 (1996), syllabus; *see also State v. Adams*, 6th Dist. No. L-13-1169, 2014-Ohio-4110, citing *Brown* at ¶ 7. This doctrine, “which operates to prevent repeated attacks on a final judgment, applies to any proceeding initiated after a final judgment of conviction and direct appeal * * * and to all issues that were or might have been previously litigated.” *Thomson* at ¶ 26, citing *State v. Gaston*, 8th Dist. Cuyahoga No. 82628, 2003-Ohio-5825 and *State v. Brown*, 8th Dist. Cuyahoga No. 84322, 2004-Ohio-6421, ¶ 7. Thus, “[a] Crim.R. 32.1 motion filed after the time for appeal has passed is subject to res judicata and, if applicable, may be denied on those grounds.” *Thomson* at ¶ 26, citing *Brown* at ¶ 7 and *Zinn* at ¶ 20. Furthermore, “[r]es judicata serves as a bar for successive motions to withdraw guilty pleas under Crim.R. 32.1, when the grounds to withdraw the plea were raised or could have been raised in the initial motion to withdraw.” *State v. Phillips*, 6th Dist. Lucas No. L-18-1145, 2019-Ohio-3707, ¶ 11 (citations omitted.).

{¶ 21} In this case, a judgment of conviction was entered against Boyd in June 2006. All of the arguments raised in Boyd’s Assignments of Error Nos. Two through Eleven -- each of which involve alleged misconduct and/or error on the part of retained and appointed counsel, the state, and the trial court -- all could have been raised on direct appeal from that conviction had Boyd timely sought such an appeal. Furthermore, despite

Boyd's protests to the contrary, the record demonstrates that he has filed not one, but two previous motions to withdraw guilty plea. To the extent his claims are based on off-the-record evidence, those claims could have been, and should have been, included in his first and/or second such motions. *See Adams* at ¶ 9, quoting *State v. Walters*, 4th Dist. Scioto No. 12CA3482, 2013-Ohio-695, ¶ 13 (“[R]es judicata bars [an appellant] from raising claims of ineffective assistance that occurred both ‘on-the-record’ (direct appeal) and ‘off-the-record’ (postconviction relief) in [a] Crim.R. 32.1 motion.”) Accordingly, appellant is precluded by the doctrine of res judicata from litigating these issues now, in precisely the sort of repeated attacks on a final judgment that the doctrine of res judicata is intended to prevent. *See Thompson* at ¶ 26.

{¶ 22} Appellant contends that res judicata should not apply, because he “was unaware in June 2005 that the removal of retained counsel of choice prior to trial in a criminal case was a final, appealable order.” “[C]ourts have recognized ‘that in some cases “circumstances render the application of res judicata unjust.”’” *State v. Jones*, 4th Dist. Gallia No. 19CA9, 2020-Ohio-7037, ¶ 33, citing *State v. Houston*. However, as the Supreme Court of Ohio has noted, “[l]ack of effort or imagination, and ignorance of the law * * * do not automatically establish good cause for failure to seek timely relief.” *State v. Reddick*, 72 Ohio St.3d 88, 91, 647 N.E.2d 784 (1995). In the present case, appellant fails to show good cause as to why he did not take advantage of any earlier opportunities to challenge the removal of his original counsel, whether in a direct appeal or in an earlier motion to withdraw guilty plea. Because Boyd could have raised the issue

many years previously, we find that his challenge to the removal of his retained counsel is properly barred by res judicata.

{¶ 23} Even assuming arguendo that appellant's claims were not barred by res judicata, they are substantively meritless, as appellant has failed to demonstrate manifest injustice to justify the extraordinary remedy of allowing him to withdraw his guilty pleas after sentencing. Appellant pled guilty in June 2006 and filed motions to withdraw his guilty plea in 2006 and 2020, both of which were denied. Now, more than 16 years after pleading guilty and being sentenced, appellant asks the court to review a number of (apparently new) claims, including claims of fraud on the part of his retained counsel; a claim that the trial court erred in failing to inquire into whether appellant's retained counsel had an actual conflict of interest prior to making the decision to appoint new counsel; claims of ineffective assistance of counsel - by both retained and appointed counsel; a claim of prosecutorial misconduct; (paradoxically) a claim challenging the removal of retained counsel; and a claim - previously made and rejected - that his plea was not knowingly, intelligently, and voluntarily made. The undue delay in the amount of time that has passed since appellant's guilty plea was made weighs heavily against the granting of relief under Crim.R. 32.1 in this case. In addition, Boyd fails to demonstrate the type of manifest injustice required to permit him to withdraw his guilty pleas more than sixteen years after sentencing. Accordingly, the trial court did not abuse its discretion by denying appellant's Crim.R. 32.1 motions for failing to demonstrate manifest injustice.

{¶ 24} To the extent that appellant suggests that the trial court abused its discretion by ruling on his motion without first granting him a hearing, we find that this claim is also without merit. “No hearing is required on postsentence motions under Crim.R. 32.1 unless the facts as alleged by the appellant, taken as true, would require the trial court to permit withdrawal of the plea.” *State v. Beachum*, 6th Dist. Sandusky Nos. S-10-041, S-10-042, 2012-Ohio-285, ¶ 22, citing *State v. Blatnik*, 17 Ohio App.3d 201, 204, 478 N.E.2d 1016 (6th Dist.1984) and *State v. Burkhardt*, 2d Dist. Champaign No. 07-CA-26, 2008-Ohio-4387, ¶ 12. “Moreover, an evidentiary hearing is not required if the arguments presented by the petitioner are barred by the doctrine of res judicata.” *Thompson* at ¶ 58.

{¶ 25} For all of the foregoing reasons, appellant’s second through eleventh assignments of error are found not well-taken.

Conclusion

{¶ 26} The judgment of the Erie County Court of Common Pleas is affirmed. Appellant is to pay the 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.

Gene A. Zmuda, J.

JUDGE

Myron C. Duhart, P.J.

Charles E. Sulek, J.
CONCUR.

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.supremecourt.ohio.gov/ROD/docs/>.