

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

State of Ohio

Court of Appeals No. L-22-1155

Appellee

Trial Court No. CR0202102680

v.

Marquan Darnell Combs

DECISION AND JUDGMENT

Appellant

Decided: July 28, 2023

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Dawn Haar and Lorrie J. Rendle, Assistant Prosecuting
Attorneys, for appellee.

Autumn D. Adams, for appellant.

* * * * *

SULEK, J.

{¶ 1} Appellant Marquan Combs appeals the June 10, 2022 judgment of the Lucas County Court of Common Pleas, convicting him, following his no contest plea, of an amended count of carrying a concealed weapon. For the reasons that follow, the trial court's judgment is affirmed.

I. Background

{¶ 2} In June 2021, the state of Michigan issued an arrest warrant for Combs on a charge of carrying a concealed firearm. On September 16, 2021, the U.S. Marshal of the Northern Ohio Violent Task Force served a fugitive arrest warrant on Combs at an apartment in Toledo, Ohio. At the time of the arrest, Combs had a firearm on his person and an additional firearm in the bedroom. A fugitive warrant hearing was held on September 17, 2021, and was continued into October 2021.

{¶ 3} Prior to October 14, 2021, Combs returned to Michigan to turn himself in to law enforcement. The Michigan case was ultimately dismissed when Combs pleaded to a lesser offense which qualified him for Michigan's Holmes Youthful Training Act (HYTA). HYTA allows for individuals between the ages of 17 and 26 who commit an eligible offense to fulfill certain duties in exchange for having the public record of the case sealed. MCL § 762.11. The fugitive warrant case was then dismissed on October 14, 2021.

{¶ 4} On October 19, 2021, the Lucas County Grand Jury indicted Combs on one count of having weapons while under disability in violation of R.C. 2923.13(A) in connection with his possession of a firearm at the time of his September 2021 arrest.

{¶ 5} Combs moved to dismiss the charge, arguing that R.C. 2923.13(A), as applied, violated his due process rights, his right to bear arms, and his right to a fair trial under the United States Constitution and Article I, Section 16 of the Ohio Constitution.

{¶ 6} In denying the motion, the trial court held that Combs asked the court to look beyond the face of the complaint and to inappropriately test the weight or sufficiency of the state’s evidence prior to trial. The court noted that although Combs may have a viable defense, the proper place to present that defense is at trial.

{¶ 7} Thereafter, on April 22, 2022, Combs pleaded no contest to a lesser charge of carrying a concealed weapon in violation of R.C. 2923.12(A)(2). The trial court found Combs guilty and sentenced him to serve 180 days in prison. The court suspended the sentence and placed Combs on two years of probation.

II. Assignment of Error

{¶ 8} Combs asserts the following assignment of error on appeal:

1. Appellant was not under a disability when he was arrested thus could not have been charged with having a weapon while under disability.

III. Law and Analysis

{¶ 9} The state secured an indictment against Combs on one count of having weapons under disability in violation of R.C. 2923.13(A)(1), which provides, “Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if * * * [t]he person is a fugitive from justice.”

{¶ 10} Combs maintains that the trial court erred in denying his motion to dismiss the indictment because he was not a “fugitive from justice” at the time of his arrest since he did not have knowledge about the Michigan warrant.

A. Motion to Dismiss

{¶ 11} To the extent that Combs claims that the trial court erred in denying his motion to dismiss, the argument lacks merit. A pretrial motion to dismiss under Crim.R. 12(C) “can only raise matters which are capable of determination without a trial on the general issue. The Ohio Rules of Criminal Procedure do not provide for the equivalent of a civil motion for summary judgment.” *State v. Owens*, 2017-Ohio-2909, 91 N.E.3d 103, ¶13 (6th Dist.), quoting *State v. Gaines*, 193 Ohio App.3d 260, 2011-Ohio-1475, 951 N.E.2d 814, ¶16 (12th Dist.). “The proper determination under Crim.R. 12(C) is whether the language within the charging instrument alleges the offense.” *Vermilion v. Meinke*, 6th Dist. Erie No. E-12-037, 2013-Ohio-2250, ¶ 6, citing *Gaines* at ¶ 16. If it does, “it is premature for the trial court to determine, in advance of trial, whether the State could satisfy its burden of proof with respect to those charges. A motion to dismiss an indictment cannot properly be granted where the indictment is valid on its face.” *State v. Kilis*, 6th Dist. Ottawa No. OT-11-007, 2011-Ohio-4739, ¶ 6, quoting *State v. Eppinger*, 162 Ohio App.3d 795, 2005-Ohio-4155, 835 N.E.2d 746, ¶ 37 (8th Dist.); *see also State v. Hopings*, 6th Dist. Lucas No. L-20-1075, 2022-Ohio-1532, ¶ 46 (pretrial motion to dismiss properly denied where the motion alleged that the state could not demonstrate all

of the elements of a crime because proving the elements was a matter to be decided at trial).

{¶ 12} Here, Combs’s indictment alleged that on or about September 16, 2021, Combs “did knowingly acquire, have, carry, or use [a] firearm or dangerous ordnance, and the defendant was a fugitive from justice.” This language precisely tracks the statute and constitutes a criminal offense under R.C. 2923.13(A). In Combs’s motion to dismiss, he argued that he had no knowledge of the warrant out of Michigan, and therefore could not be a “fugitive from justice.” Although Combs’s argument may have been relevant to his defense at a subsequent trial where the state was required to prove each element of the crime, the indictment sufficiently alleged the offense and thus was valid on its face. The trial court, therefore, properly denied Combs’s Crim.R. 12 pretrial motion to dismiss.

B. Sufficiency of the Conviction

{¶ 13} Alternatively, to the extent that Combs argues that his conviction is based upon insufficient evidence, his argument is moot. “The plea of no contest is not an admission of defendant’s guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint * * *.” Crim.R. 11(B)(2). A no contest plea generally waives non-jurisdictional issues; however, the plea leaves open a challenge to the sufficiency of a conviction. *State v. Jones*, 6th Dist. Lucas No. L-12-1267, 2013-Ohio-4745, ¶ 8, citing *State v. Watson*, 12th Dist. Clinton No. CA2007-04-020, 2008-Ohio-629, ¶ 11.

{¶ 14} Here, Combs pleaded no contest to carrying a concealed weapon in violation of R.C. 2923.12(A)(2). Under R.C. 2923.12(A)(2), “[n]o person shall knowingly carry or have, concealed on the person’s person or concealed ready at hand, * * [a] handgun other than a dangerous ordnance.” This offense does not require the prosecution to prove that an individual was a fugitive from justice. Therefore, Combs’s arguments that he was not a fugitive from justice are moot. *See State ex rel. Cincinnati Enquirer v. Hunter*, 141 Ohio St.3d 419, 2014-Ohio-5457, 24 N.E.3d 1170, ¶ 4 (“A moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason cannot have any practical legal effect upon a then-existing controversy.”). “In general, courts will not resolve issues that are moot.” *Smetzer v. Catawba Island Twp. Bd. of Zoning Appeals*, 6th Dist. Ottawa No. OT-17-033, 2018-Ohio-4238, ¶ 10; *State v. Marcum*, 2015-Ohio-5237, 54 N.E.3d 719, ¶ 6 (10th Dist.).

C. Summary

{¶ 15} In summary, the trial court did not err in denying Combs’s motion to dismiss and Combs’s arguments pertaining to the sufficiency of his conviction based on whether he was a “fugitive from justice” are moot. Combs’s sole assignment of error is not well taken.

IV. Conclusion

{¶ 16} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Combs is ordered 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.

Christine E. Mayle, J.

JUDGE

Myron C. Duhart, P.J.

Charles E. Sulek, J.
CONCUR.

JUDGE

JUDGE

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