

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

State of Ohio

Court of Appeals Nos. L-10-1142
L-10-1143

Appellee

Trial Court Nos. CR07-1081
CR96-5761

v.

Jamie R. Madrigal

DECISION AND JUDGMENT

Appellant

Decided: February 18, 2011

* * * * *

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

Jamie R. Madrigal Sr., pro se.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from an April 22, 2010 judgment of the Lucas County Court of Common Pleas, which denied appellant's Crim.R. 32.1 motion to withdraw guilty pleas arising from aggravated murder and aggravated robbery convictions

occurring in 1996 and 2007, respectively. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Jamie R. Madrigal, sets forth the following four assignments of error:

{¶ 3} "1). The Trial Court abused its'[sic] discretion and denied Due Process to Appellant by denying his motion(s) to withdraw his plea(s) of guilty, where his sentences are void for being contrary to the law applicable to appellant.

{¶ 4} "2). The Trial Court abused its discretion and denied Due Process to Appellant by denying his motion(s) to withdraw his plea(s) of guilty, where he was denied his Constitutional Guarantee to Effective Assistance of Counsel -- as trial counsel failed to object to the trial court's imposition of sentences that are void for being contrary to the law applicable to appellant.

{¶ 5} "3). The Trial Court abused its discretion by denying Appellant's motion(s) to withdraw his plea(s) of guilty, as the sentences imposed violate the Ex Post Facto Clause of the U.S. Constitution [Article 1 §10].

{¶ 6} "4). The Trial Court abused its discretion by denying Appellant's motion(s) to withdraw his plea(s) of guilty, as he was denied his Constitutional Guarantee to Effective Assistance of Counsel, where trial counsel failed to object to the trial court's imposition of a sentence that violates The Ex Post Facto Clause of the U.S. Constitution [Article 1 §10]."

{¶ 7} On April 12, 1996, during the course of an armed robbery, a female Kentucky Fried Chicken manager was shot at point-blank range in the back of the head and killed as she attempted to open the restaurant safe at the command of the robber.

{¶ 8} On May 13, 1996, in connection to the above crimes, appellant was indicted on one count of aggravated murder, pursuant to R.C. 2903.01(B), and one count of aggravated robbery, pursuant to R.C. 2911.01(A)(1), along with accompanying firearm specifications. Following a jury trial, appellant was found guilty and sentenced to death. The Supreme Court of Ohio affirmed the conviction and sentence. *State v. Madrigal* (2000), 87 Ohio St.3d 378.

{¶ 9} On April 30, 1995, during an armed robbery of the Pacific Crab House restaurant in Maumee, a restaurant employee was ordered to the floor by the perpetrators. Upon his refusal to lie down on the floor, the employee was immediately shot at close range and killed.

{¶ 10} On January 11, 2007, in connection to the above crimes, appellant was indicted on one count of aggravated murder, pursuant to R.C. 2903.01(B), one count of aggravated robbery, pursuant to R.C. 2911.01(A)(1), and six counts of kidnapping, pursuant to R.C. 2905.01(A)(2), along with accompanying firearm specifications.

{¶ 11} On January 12, 2007, appellant entered *Alford* pleas on the 2007 cases, in conjunction with a negotiated plea agreement. Appellant simultaneously entered guilty pleas to the 1996 cases, which had been remanded to the trial court on a successful

habeas corpus petition. In exchange for the pleas, the previously imposed death penalty, affirmed by the Supreme Court of Ohio prior to the habeas remand, was not sought.

{¶ 12} Following the 2007 negotiated plea agreement covering all of the above-described crimes, appellant was granted a delayed appeal on these cases. On delayed appeal, appellant set forth an assignment of error alleging trial court error in stacking the kidnapping sentences and an assignment of error alleging defective indictments in both cases. On December 5, 2008, in *State v. Madrigal*, 6th Dist. Nos. L-07-1417/1418, 2008-Ohio-6394, this court found the appeal to be without merit and affirmed the trial court judgment.

{¶ 13} Several years ensued. Subsequently, on January 29, 2010, appellant filed a Crim.R. 32.1 motion to withdraw his guilty pleas from the already unsuccessfully appealed 2007 cases. The substantive bases in support of the motion were identical to those raised in the instant appeal.

{¶ 14} On April 22, 2010, the trial court denied appellant's motion. The court determined in relevant part that the motion's sentencing assertions could only conceivably have merit in a scenario where appellant had not been charged with causing deaths in the course of committing the aggravated robberies and had not pled guilty to those aggravated robberies.

{¶ 15} On the contrary, appellant was charged with and convicted of committing murder during the course of committing each of the aggravated robberies. As such, no requisite manifest injustice was demonstrated in support of the motion.

{¶ 16} Regardless, appellant's motion would have nevertheless failed pursuant to the doctrine of res judicata. 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. *State v. Bryuhanova*, 6th Dist. No. F-10-002, 2010-Ohio-5504.

{¶ 17} At this juncture, appellant purports to again raise these same claims not properly raised on direct appeal and unsuccessfully proffered in support of the underlying motion.

{¶ 18} Pursuant to the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any preceding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction, or on an appeal from that judgment. *State v. Szefcyk* (1996), 77 Ohio St.3d 93, syllabus.

{¶ 19} Based upon the foregoing, appellant's claims in support of this appeal are wholly barred by the doctrine of res judicata. These claims were not raised at trial or on direct appeal. Accordingly, appellant's assignments of error are not well-taken.

{¶ 20} Wherefore, we find that substantial justice been done in this matter. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

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>.