

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

State of Ohio

Court of Appeals No. L-14-1098

Appellee

Trial Court No. CR0201102537

v.

Tony Elwood Connin

DECISION AND JUDGMENT

Appellant

Decided: February 20, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Tony Elwood Connin, pro se.

* * * * *

OSOWIK, J.

{¶ 1} This is an accelerated pro se appeal from a judgment of the Lucas County Court of Common Pleas that denied appellant's "Motion to Vacate Void Sentences." For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} On September 27, 2011, appellant entered pleas of guilty to two counts of rape in violation of R.C. 2907.02(A)(2) and (B) and one count of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A) and (B)(3). Ten-year sentences for each of the rape convictions were ordered to be served consecutively. The five-year sentence for the unlawful sexual conduct with a minor conviction was ordered to be served concurrently with the sentences for the rape convictions for a total term of incarceration of 20 years.

{¶ 3} Appellant appealed his convictions, arguing in part that the trial court erred by imposing maximum, consecutive sentences and that the sentences were contrary to law. This court affirmed appellant's convictions and sentences in *State v. Connin*, 6th Dist. Lucas No. L-11-1312, 2012-Ohio-4989. The Supreme Court denied further review in *State v. Connin*, 135 Ohio St.3d 1458, 2013-Ohio-2285, 988 N.E.2d 578.

{¶ 4} On February 13, 2013, appellant filed a "Motion to Vacate Void Sentences" pursuant to R.C. 5145.01. By judgment entry filed April 15, 2014, the trial court found that, because appellant's sentences were affirmed on appeal, they are final. The court noted that a trial court is generally not empowered to modify a criminal sentence by reconsidering its own final judgment. *State v. Carlisle*, 131 Ohio St.3d 127, 2011-Ohio-6553, 961 N.E.2d 671. The trial court therefore found appellant's motion not well-taken and deemed moot as the court was without jurisdiction to provide the relief requested. Appellant now appeals from that judgment.

{¶ 5} Appellant sets forth the following assignment of error:

The sentence imposed against the appellant is void because the trial court never had jurisdiction to impose consecutive sentences upon the appellant pursuant to ORC 5145.01. Thereby violating the appellant's rights pursuant to the Ohio Constitution Art. IV, Sect. 4, Art. I section 10 and 16 and the United States Constitution Amds 5, 6 and 14. [sic.]

{¶ 6} We note first that a trial court's determination of whether sentences must be served concurrently or consecutively must be brought in a timely appeal. *See State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 8. As the trial court found, because appellant's sentences were affirmed on appeal, they are final. Further, we note that appellant's claims in this appeal are barred by res judicata. *See State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967).

{¶ 7} Finally, we note that, should appellant's motion be construed as a petition for postconviction relief pursuant to R.C. 2953.21, the filing would be untimely. R.C. 2953.21(A)(2) requires that a petition for postconviction relief be filed "no later than one hundred-eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction * * *." The record in this case, including the trial transcript, was filed January 23, 2013, while appellant's motion was filed February 13, 2014—clearly outside the permitted time. Appellant has demonstrated no circumstances which would justify a late filing.

{¶ 8} Based on the foregoing, we find that the trial court properly denied appellant's motion to vacate his sentences. Appellant's sole assignment of error is not well-taken.

{¶ 9} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant 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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, 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>.