

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RAYMOND FOY

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 2009-CA-00239

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2006-CR-0830

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 1, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO,
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

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Inmate No. 520-180
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Hoffman, J.

{¶1} Defendant-appellant Raymond Foy appeals the September 8, 2009 Judgment Entry entered by the Stark County Court of Common Pleas, which denied his Motion for Re-Sentencing. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On June 30, 2006, the Stark County Grand Jury indicted Appellant on one count of aggravated robbery, in violation of R.C. 2911.01(A)(1), a felony of the first degree, with a firearm specification; one count of having weapons while under disability, in violation of R.C. 2923.13(A)(2), a felony of the third degree; and one count of carrying concealed weapons, in violation of R.C. 2923.12(A)(2), a felony of the fourth degree. Appellant entered a plea of not guilty to the charges at his arraignment on July 7, 2006.

{¶3} The matter proceeded to jury trial on August 7, 2006. The jury found Appellant guilty of all three counts contained in the Indictment. After accepting the jury's verdicts, the trial court sentenced Appellant to an aggregate prison term of fourteen years. Specifically, the trial court imposed an eight year term of imprisonment for the aggravated robbery charge in addition to the mandatory consecutive three year term for the firearm specification; a consecutive three year term for the having weapons under disability charge; and a concurrent fourteen month term for the carrying concealed weapons charge. Appellant subsequently filed a motion for delayed appeal, which this Court granted. This Court ultimately affirmed Appellant's conviction and sentence in *State v. Foy*, Stark App. No. 2006CA00269, 2007-Ohio-6578.

¹ A Statement of the Facts underlying Appellant's conviction is not necessary for our disposition of this appeal; therefore, such shall not be included herein.

{¶14} On February 10, 2009, Appellant filed a Motion for Re-Sentencing in the trial court, relying on the Ohio Supreme Court's decision in *State v. Pelfrey* (2007), 112 Ohio St.3d 422. The trial court denied Appellant's motion via Judgment Entry filed September 8, 2009.

{¶15} It is from that judgment entry Appellant appeals, raising the following assignment of error:

{¶16} "I. THIS IS NOT A CASE OF ERROR RATHER A CASE OF THE DEGREE OF THE OFFENSE OF WHICH DEFENDANT-APPELLANT FOY WAS CONVICTED."

I

{¶17} Herein, Appellant maintains his sentence is void because the verdict forms in his case were defective as such did not state the levels of the offenses on which he was convicted.

{¶18} While Appellant's delayed appeal was pending in this Court, the Ohio Supreme Court decided *State v. Pelfrey*, supra. Appellant had the opportunity to raise this issue on direct appeal, but, unlike the defendant in *Pelfrey*, he failed to do so. The doctrine of res judicata bars Appellant from raising this issue anew via a motion for re-sentencing.

{¶19} "Under 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 proceeding * * * 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 any appeal from that judgment." *State v. Svecfyk* (1996), 77 Ohio St.3d

93, syllabus. Because Appellant could have raised this claim on direct appeal, we find the doctrine of res judicata is applicable and the trial court did not err in denying his Motion for Re-Sentencing.

{¶10} Appellant's sole assignment of error is overruled.

{¶11} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

