

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

State of Ohio

Court of Appeals No. WD-13-062

Appellee

Trial Court No. 2011CR0483

v.

Luis Sierra, Jr.

DECISION AND JUDGMENT

Appellant

Decided: May 16, 2014

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Jacqueline M. Kirian, Assistant Prosecuting Attorney, for appellee.

Luis Sierra, Jr., pro se.

* * * * *

OSOWIK, J.

{¶ 1} This is a pro se appeal from a judgment of the Wood County Court of Common Pleas that denied appellant’s “Motion to Correct Sentence.” For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} On September 8, 2011, appellant, then age 31, was indicted on one count of interference with custody in violation of R.C. 2919.23(A) and (D)(2) following his arrest in Georgia after he fled Ohio with a 15-year-old female. Appellant entered a plea of not guilty but on February 13, 2012, he withdrew that plea, waived his right to trial and entered a plea of guilty. The trial court accepted appellant's plea and found him guilty. On April 16, 2012, the trial court imposed a prison term of 11 months, to be served consecutively to a four-year prison term imposed for a conviction on one count of unlawful sexual conduct with a minor in related case No. 2011CR0646.

{¶ 3} On July 22, 2013, appellant filed a motion for judicial release which the trial court denied. On August 19, 2013, appellant filed a "Motion to Correct Sentence" and a memorandum in support. The trial court denied the motion on September 5, 2013. Appellant filed a timely appeal from that judgment.

{¶ 4} Appellant sets forth the following assignments of error:

Assignment of Error I: Whether the trial court abused its discretion in imposing consecutive sentences.

Assignment of Error II: Whether the trial court abused its discretion by failing to impose a consistent sentence.

Assignment of Error III: Whether the trial court abused its discretion by failing to merge sentences.

{¶ 5} Appellant's three assignments of error will be addressed together as they all raise sentencing issues. Appellant challenges the consecutive nature and "consistency" of

his two sentences as well as the trial court's failure to merge alleged allied offenses. Although the trial court addressed the substantive nature of appellant's arguments, this court finds that appellant's petition to the trial court was barred by the doctrine of res judicata.

{¶ 6} Appellant did not file a direct appeal from the imposition of his sentence. On August 19, 2013, 16 months after his sentence was imposed, he filed a pro se "Motion to Correct Sentence" and memorandum in support. Appellant essentially argued that he should not have received consecutive sentences and that his sentence was not consistent with those imposed for similar crimes committed by similar offenders. Appellant also argued that the trial court should have considered whether the offenses for which he was convicted in this case and case No. 2011CR646 were allied offenses of similar import.

{¶ 7} Upon our review, we find that appellant's motion to correct his sentence should be construed as a petition for postconviction relief and dismissed on the basis of res judicata, because appellant could have raised his claims on direct appeal. As stated by the Supreme Court of Ohio in *State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967), paragraphs eight and nine of the syllabus:

Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or 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.

{¶ 8} We note that the res judicata bar applies even where, as here, no direct appeal was taken. *See, e.g., State v. Barfield*, 6th Dist. Lucas Nos. L-06-1262, L-06-1263, 2007-Ohio-1037.

{¶ 9} Based on the foregoing, we find that the trial court did not err by denying appellant's motion to correct sentence and, accordingly, appellant's first, second and third assignments of error are not well-taken.

{¶ 10} On consideration whereof, the judgment of the Wood 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.

Arlene Singer, 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>.