

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. Julie A. Edwards, P.J.
Plaintiff-Appellee	:	Hon. W. Scott Gwin, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2009 CA 0091
COREY A. CLINE	:	
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of
Common Pleas, Case No. 2002-CR-602D

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: March 16, 2010

APPEARANCES:

For Plaintiff-Appellant:

COREY A. CLINE (#464-651)
North Central Correctional Inst.
P.O. Box 1812
670 Marion-Williamsport Road
Marion, OH 43302-1812

For Defendant-Appellee:

JAMES J. MAYER, JR.
RICHLAND COUNTY PROSECUTOR

KIRSTEN L. PSCHOLKA-GARTNER
38 S. Park St.
Mansfield, OH 44902

Delaney, J.

{¶1} Defendant-Appellant, Corey A. Cline, appeals the June 15, 2009 judgment entry of the Richland County Court of Common Pleas. Plaintiff-Appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} Appellant was indicted by the Richland County Grand Jury for one count of murder with a firearm specification and one count of conspiracy to commit murder with a firearm specification for Appellant's role in the January 14, 2002 shooting death of Arnold Jones in Mansfield, Ohio.

{¶3} Pursuant to a plea agreement with the State, Appellant pleaded guilty to an amended charge of involuntary manslaughter with a firearm specification and conspiracy to commit murder with a firearm specification. The plea agreement specified that Appellant would cooperate with the prosecution of any co-defendants who were indicted. If no additional indictments were issued, the charge of conspiracy to commit murder and the attached firearm specification would be dismissed.

{¶4} On May 20, 2004, the trial court sentenced Appellant to ten years in prison for involuntary manslaughter, with an additional three years mandatory sentence for the attached firearm specification. The trial court delayed sentencing on the second charge of conspiracy to determine if additional defendants would be indicted. On November 16, 2005, Appellant's trial counsel filed a motion to withdraw.

¹ The underlying facts are unnecessary for the disposition of this appeal.

{¶5} On January 5, 2006, the trial court issued a judgment entry dismissing the charge of conspiracy to commit murder because no additional defendants had been indicted pursuant to the terms of the plea agreement. The trial court also granted the trial counsel's motion to withdraw. On May 8, 2006, the trial court issued a second judgment entry dismissing the conspiracy charge from the indictment.

{¶6} Appellant did not file an appeal of his conviction.

{¶7} Appellant filed a "Motion for Judge Recusal" on October 12, 2006. On March 20, 2009, Appellant filed a "Memorandum and Motion to Dismiss for Lack of Subject Matter Jurisdiction." In his motion, Appellant argued the trial court lacked subject matter jurisdiction to convict Appellant because the statutes under which he was charged in the indictment lacked enacting clauses.

{¶8} On June 15, 2009, the trial court overruled Appellant's Memorandum and Motion to Dismiss for Lack of Subject Matter Jurisdiction. It is from this decision Appellant now appeals.

ASSIGNMENT OF ERROR

{¶9} Appellant raises one Assignment of Error:

{¶10} "THIS CAUSE ARISES FROM THE TRIAL COURT'S DENIAL OF THE DEFENDANT-APPELLANT'S MEMORANDUM AND MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, WHILE THE JURISDICTION OF A COURT OVER THE SUBJECT MATTER HAS BEEN SAID TO BE ESSENTIAL AND NECESSARY, INDISPENSABLE AND AN ELEMENTARY PREREQUISITE TO THE EXERCISE OF JUDICIAL POWER. A COURT CANNOT PROCEED WITH A TRIAL OR MAKE A JUDGMENT WITHOUT SUCH JURISDICTION."

{¶11} Appellant argues the trial court erred in denying his Motion to Dismiss for Lack of Subject Matter Jurisdiction. We disagree.

{¶12} As in his Motion to Dismiss filed before the trial court, Appellant argues the trial court lacked subject matter jurisdiction to convict him because the Ohio Revised Code does not contain enacting clauses required for R.C. 2903.04(A), involuntary manslaughter, and R.C. 2923.01(A), the gun specification. We find this argument to be without merit based on our holding in *State v. Oatess*, Fairfield App. No. 01CA47, 2002-Ohio-2455 and, more recently, the holding of the Sixth District Court of Appeals in *State v. Lininger*, Lucas App. No. L-07-1295, 2008-Ohio-1232, ¶15:

{¶13} “In arguing that the statutes under which he was charged lack enacting clauses, appellant apparently assumes, in error, that because the text of the Ohio Revised Code does not contain the enacting clauses, the statutes contained therein are invalid. That the enacting clauses are not necessarily reprinted in the Ohio Revised Code in no way affects the validity of the statutes themselves. See *State v. Tate* (Apr. 20, 1999), 10th Dist. No. 98AP-759; see, also, *State v. Oatess*, 5th Dist. No. 01 CA47, 2002-Ohio 2455; see, also, *State v. Loop* (Dec. 20, 1999), 12th Dist. No. CA98-10-017; *State v. Miller* (Feb. 22, 2000), 12th Dist. No. CA99-02-045.”

{¶14} We further find that Appellant’s motion to dismiss must fail under the doctrine of res judicata. Under the doctrine of res judicata, a final judgment and conviction bars a convicted defendant who was represented by counsel 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 trial, which resulted in that judgment of conviction, or on appeal from that judgment.

State v. Szefck, 77 Ohio St.3d 93, 95, 1996-Ohio-337, 671 N.E.2d 233; *State v. Perry* (1967), 10 Ohio St.2d 175, 180, 226 N.E.2d 104.

{¶15} Appellant was represented by counsel at the trial court level. Appellant did not file a direct appeal of his conviction. Further, Appellant was sentenced pursuant to a negotiated plea. Appellant did not object prior to entering his guilty plea and therefore failed to preserve his claim that the indictment against him was defective. See, *State v. Carrico*, Stark App. No. 2005CA00324, 2007-Ohio-559 at ¶ 25.

{¶16} Accordingly, Appellant's Assignment of Error is overruled.

{¶17} The judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J.

Edwards, P.J. and

Gwin, J. concur.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. W. SCOTT GWIN

PAD:kgb

EDWARDS, P.J., CONCURRING OPINION

{¶18} I concur with the majority as to the disposition of this case.

{¶19} I also concur with the majority as to the analysis of this case as set forth in paragraph thirteen, but not as to the remaining analysis by the majority.

Judge Julie A. Edwards

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
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Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
COREY A. CLINE	:	
	:	
	:	Case No. 2009 CA 0091
Defendant-Appellant	:	

For the reasons stated in our accompanying Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. W. SCOTT GWIN