

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-T-0088
OSBY CORTEZ SCOTT,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 02 CR 234.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Osby Cortez Scott, pro se, PID# A442-679, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030 (Defendant-Appellant).

DIANE V. GRENDALL, J.

{¶1} Defendant-appellant, Osby Cortez Scott, appeals the Judgment Entry of the Trumbull County Court of Common Pleas, denying his Common Law Motion to Vacate or Set Aside Void Judgment. For the following reasons, we affirm the decision of the court below.

{¶2} On April 15, 2002, the Trumbull County Grand Jury indicted Scott on the following charges: Aggravated Burglary, a felony of the first degree in violation of R.C. 2911.11(A)(1) and (B); Robbery, a felony of the second degree in violation of R.C. 2911.02(A)(2) and (B); Kidnapping, a felony of the first degree in violation of R.C. 2905.01(A)(2) and (C); Grand Theft of a Motor Vehicle, a felony of the fourth degree in violation of R.C. 2913.02(A)(1) and (B)(1) and (5); Failure to Comply with Order or Signal of Police Officer, a felony of the third degree in violation of R.C. 2921.331(B) and (C)(1) and (5)(a)(ii); and Burglary, a felony of the second degree in violation of R.C. 2911.12(A)(1) and (C).

{¶3} On February 10, 2003, Scott entered a plea of guilty to Aggravated Burglary, Failure to Comply, and Burglary. A sentencing hearing was held, following the entry of the plea.

{¶4} On February 12, 2003, the trial court issued its written Entry on Sentence, ordering Scott to serve a prison term of six years for Aggravated Burglary, of two years for Failure to Comply, and of four years for Burglary. The court ordered all sentences to be served consecutively for an aggregate prison sentence of twelve years.

{¶5} On February 14, 2003, the trial court entered an order of nolle prosequi on the remaining counts of the Indictment.

{¶6} On February 18, 2005, this court affirmed the validity of Scott's plea on appeal. *State v. Scott*, 11th Dist. No. 2003-T-0172, 2005-Ohio-689.

{¶7} On December 31, 2009, Scott filed a Common Law Motion to Vacate or Set Aside Void Judgment. Scott argued that his Indictment was defective because it failed to include a mens rea for the charge of Robbery, and that this failure constituted a

structural error requiring the reversal of his convictions. Scott stated that “[t]he sole issue is that the Court lacked jurisdiction of the subject matter for the Robbery offense upon which judgment was rendered.”

{¶8} On February 18, 2009, the trial court denied Scott’s Common Law Motion to Vacate.

{¶9} On September 16, 2009, Scott filed a Motion for Leave to File Delayed Appeal from the trial court’s February 18, 2009 Judgment Entry, which this court granted. On appeal, Scott raises the following assignment of error:

{¶10} “[1.] The trial court abused its discretion and erred in its findings by dismissing defendant-appellant’s Common Law Motion to Vacate or Set Aside Void Judgment, trial court lacked jurisdiction or subject matter upon which judgment was rendered.”

{¶11} Scott argues the Robbery count of his indictment was invalid, pursuant to *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749, and, therefore, the trial court was without subject matter jurisdiction and his convictions are void. We disagree.

{¶12} Scott pled guilty to Aggravated Burglary, Failure to Comply, and Burglary, crimes for which he was properly indicted. The allegedly defective count of Robbery was dismissed by the trial court. The alleged defect of the Indictment for Robbery does not affect the validity of the Indictment with respect to the other charges. *Turk v. State* (1836), 7 Ohio 240, 241 (“when there is one good count in an indictment, [the law] permit[s] judgment to be given on that count”).

{¶13} The sole assignment of error is without merit.

{¶14} The Judgment of the Trumbull County Court of Common Pleas, denying Scott's Common Law Motion to Vacate or Set Aside Void Judgment, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.