

[Cite as *State v. Parks*, 2009-Ohio-4817.]

STATE OF OHIO, CARROLL COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

JAMES M. PARKS

DEFENDANT-APPELLANT

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CASE NO. 08 CA 857

OPINION

CHARACTER OF PROCEEDINGS:

Criminal Appeals from the Court of
Common Pleas of Carroll County, Ohio
Case No. 03 CR 4477

JUDGMENT:

Affirmed.

APPEARANCES:

For Plaintiff-Appellee:

Atty. Donald R. Burns, Jr.
Carroll County Prosecutor
Atty. John C. Childers
Assistant Prosecuting Attorney
11 East Main Street
Carrollton, Ohio 44615

For Defendant-Appellant:

James M. Parks, Pro-se
#463-038
Trumbull Correctional Institution
P.O. Box 901
Leavittsburg, Ohio 44430

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: September 10, 2009

[Cite as *State v. Parks*, 2009-Ohio-4817.]
WAITE, J.

{¶1} Appellant James M. Parks, pro se, argues that the Carroll County Court of Common Pleas should not have dismissed two motions to withdraw a guilty plea without first conducting a hearing. The motions to withdraw had been pending in the trial court since April of 2004 and November of 2007. Appellant had previously filed a petition for writ of procedendo in this Court to force the trial court to rule on the motions. We did request the trial court to rule on the motions to withdraw, and the court denied the two motions. Since Appellant's case has been through the entire appeal process, including multiple denials of certiorari to the Ohio Supreme Court, the trial court no longer retained jurisdiction to grant a motion to withdraw a guilty plea, and the motions were properly denied. The judgment of the trial court is affirmed.

{¶2} Appellant was indicted in Carroll County on July 1, 2003, on six counts of rape. Each count was a first degree felony. The victim of each count was the same young boy, who was seven years old at the time the first offense occurred. The case was set for jury trial on February 9, 2004. As trial was commencing, Appellant decided to enter a plea of guilty to all six charges. After an extensive plea hearing, the court accepted the guilty pleas and scheduled sentencing for March 4, 2004. The court filed its judgment entry on March 5, 2004, sentencing Appellant to six life sentences. Appellant filed a direct appeal on April 2, 2004, and on the same day filed a motion to withdraw his plea. We issued our Opinion on December 23, 2005, affirming the conviction and sentence in full. *State v. Parks*, 7th Dist. Nos. 04 CO 19, 04 CA 803, 2005-Ohio-6926, appeal not allowed, 110 Ohio St.3d 1468, 2006-

Ohio-4288, 852 N.E.2d 1215. On the date that we issued our Opinion, the trial court had not yet ruled on the motion to withdraw the plea.

{¶3} On November 5, 2007, Appellant filed a supplemental motion to withdraw his plea.

{¶4} On June 9, 2008, Appellant filed a petition for writ of procedendo with us, requesting an order compelling the trial court to rule on the two pending motions to withdraw his plea. In response, the state argued that the trial court had no jurisdiction over the motions because we had already heard and issued our final ruling on the direct appeal, citing *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas* (1978), 55 Ohio St.2d 94, 378 N.E.2d 162, in support. In that case, the Ohio Supreme Court clearly held that, “Crim.R. 32.1 does not vest jurisdiction in the trial court to maintain and determine a motion to withdraw the guilty plea subsequent to an appeal and an affirmance by the appellate court.” *Id.* at 97. The Supreme Court further held that “the trial court lost its jurisdiction when the appeal was taken, and, absent a remand, it did not regain jurisdiction subsequent to the Court of Appeals’ decision.” *Id.*

{¶5} In the procedendo action, we determined, though, that: “A litigant should be given the courtesy of a judgment entry expressing the trial court’s belief that it does not have jurisdiction to address a particular issue so that the litigant can challenge that entry on appeal, if the litigant chooses to do so.” *State ex rel. Parks v. Olivito*, 7th Dist. No. 08 CA 855, 2008-Ohio-4319, ¶5. Thus, we determined that the trial judge should issue a judgment, even if the judgment stated only that the court

had no jurisdiction over the motions. The trial court issued its judgment on September 25, 2008, denying the motions. Appellant is now appealing that decision.

ASSIGNMENT OF ERROR

{¶16} “THE TRIAL COURT ERRED WHEN IT FAILED TO CONDUCT AN EVIDENTIARY HEARING BECAUSE THE APPELLANT DEMONSTRATED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL RENDERING HIS GUILTY PLEA INVALID.”

{¶17} Appellant contends that the trial court should have granted him a hearing on his Crim.R. 32.1 motions to withdraw his guilty pleas. Appellee responds that the trial court did not have jurisdiction to grant the motions and that the trial court properly dismissed the motions without a hearing. Appellee is correct. As noted above, the Ohio Supreme Court has held that a trial court has no jurisdiction over a Crim.R. 32.1 motion once a direct appeal is filed and a decision is rendered, and the trial court does not regain jurisdiction unless the case is remanded to it for further proceedings. *State ex rel. Special Prosecutors*, supra, 55 Ohio St.2d at 97, 378 N.E.2d 162. We issued our final ruling on the direct appeal on December 23, 2005, affirming the conviction and sentence in full. The trial court could not have issued any valid ruling after that date to vacate any part of the conviction or sentence. In fact, the general rule is that a trial court loses jurisdiction to rule on a Crim.R. 32.1 motion the moment the direct appeal is filed. *State v. Champion*, 2nd Dist. No. 22312, 2008-Ohio-3611, ¶12. Appellant filed his Crim.R. 32.1 motion on the same day he filed his appeal, so there was no period of time in which the trial court had

jurisdiction to grant the motion. Because it was impossible for the trial court to grant Appellant's motion, any hearing the court might have scheduled pursuant to this motion would have been frivolous and a waste of the court's resources.

{¶18} Furthermore, Appellant failed to raise on direct appeal any questions relating to the validity of his guilty plea. All errors regarding whether the plea was entered into knowingly, voluntarily and intelligently may be reviewed on direct appeal whether or not a motion to withdraw a plea has been filed and ruled on. *State v. Rowbotham*, 173 Ohio App.3d 642, 2007-Ohio-6227, 879 N.E.2d 856. Appellant did raise matters regarding ineffective assistance of counsel in his direct appeal, and those arguments were overruled. Principles of res judicata bar the assertion of claims from a final judgment of conviction that have been raised or could have been raised on direct appeal. *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus.

{¶19} Appellant's argument is unpersuasive and his sole assignment of error is overruled. The judgment of the trial court overruling the two motions for withdrawal of Appellant's plea is affirmed.

Donofrio, J., concurs.

Vukovich, P.J., concurs.