

[Cite as *State v. Parks*, 2009-Ohio-5284.]

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 AND JUDGMENT ENTRY

CHARACTER OF PROCEEDINGS:

Motion to Certify a Conflict

JUDGMENT:

Motion Overruled.

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 30, 2009

PER CURIAM.

{¶1} Appellant James M. Parks has filed an App.R. 25(A) motion to certify a conflict. For the following reasons, the motion is denied.

{¶2} On March 4, 2004, the Carroll County Court of Common Pleas accepted Appellant's guilty plea to six counts of rape and sentenced him to six life sentences. Appellant filed a direct appeal and a Crim.R. 32.1 postsentence motion to withdraw his plea on April 2, 2004. We issued our Opinion on the direct appeal on December 23, 2005, affirming the conviction and sentence. The trial court had not yet ruled on the motion to withdraw when our Opinion was released. On November 5, 2007, Appellant filed a supplemental motion to withdraw his plea. Appellant then filed a petition for writ of procedendo in order to compel the trial court to rule on the two pending motions to withdraw his plea. The trial court subsequently denied both Crim.R. 32.1 motions. Appellant appealed the trial court judgment, and we affirmed the judgment on the basis of *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas* (1978), 55 Ohio St.2d 94, 378 N.E.2d 162, which held that a trial court loses jurisdiction to entertain a Crim.R. 32.1 motion after the plea and conviction are upheld on appeal.

{¶3} Appellant contends that four appellate districts have recognized the implicit overruling of *State ex rel. Special Prosecutors*, supra. Appellant cites *State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993, 773 N.E.2d 522, as the new controlling law. The issue in *Bush* was whether the time limit specifications and other requirements of filing a motion for postconviction relief governed a Crim.R. 32.1 postsentence motion to withdraw a plea. The Supreme Court held that Crim.R. 32.1

and postconviction relief operate independently of one another. Therefore, a defendant who files a postsentence Crim.R. 32.1 motion does not need to adhere to the time limitations prescribed for postconviction relief petitions. Nothing in the *Bush* opinion addresses the manner in which the filing or resolution of a direct appeal affects a Crim.R. 32.1 postsentence motion to withdraw a plea. Thus, the *Bush* Court did not overrule *State ex rel. Special Prosecutors*.

{¶4} Pursuant to Section 3(B)(4), Article IV of the Ohio Constitution, a court of appeals shall certify the case to the Supreme Court if it finds its judgment in conflict with a judgment of another court of appeals on the same question. At least three preconditions must be met before a conflict can be certified: “First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict *must* be ‘upon the same question.’ Second, the alleged conflict must be on a rule of law-not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals.” (Emphasis in original.) *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594, 596, 613 N.E.2d 1032.

{¶5} When both of the appellate decisions being compared have affirmed the lower court rulings, but for different reasons, the judgments themselves are not in conflict. When the conflicting reasons are not dispositive of both cases, there is no conflict to be certified. *Dombroski v. Wellpoint, Inc.* (Nov. 13, 2007), 7th Dist. No. 06BE60, citing *Lyons v. Lyons* (Oct. 4, 1983), 10th Dist. No. 82AP-949.

{¶16} Appellant cites six supposed appellate cases in conflict with our own. None of those cases cites or alludes to *State ex rel. Special Prosecutors*, and thus, they do not conflict with our judgment and reasoning based on *State ex rel. Special Prosecutors*.

{¶17} Five of the cases cited by Appellant affirm the trial court rulings denying the motions to withdraw guilty or no contest pleas. *State v. Spencer*, 2d Dist. No. 2006 CA 42, 2007-Ohio-2140; *State v. Burkhardt*, 2d Dist. No. 07-CA-26, 2008-Ohio-4387; *State v. Leugers*, 3d Dist. No. 1-05-90, 2006-Ohio-6928; *State v. Langenkamp*, 3d Dist. No. 17-08-03, 2008-Ohio-5308; *State v. Meadows*, 6th Dist. No. L-05-1321, 2006-Ohio-6183. Since those five cases affirmed the trial court rulings, albeit on a variety of different grounds, they present no conflict with our decision because we also affirmed the trial court judgment denying the Crim.R. 32.1 motions.

{¶18} In the sixth case cited by Appellant, *State v. Raleigh*, 5th Dist. No. 08-CA-67, 2008-Ohio-6843, the trial court denied a postsentence motion to withdraw a plea, but the Fifth District Court of Appeals reversed, finding a manifest injustice regarding the suppression hearing in a drunk driving case. *Raleigh* does not discuss *State ex rel. Special Prosecutors*, therefore, we cannot compare it to our judgment in the instant appeal and there is no conflict that we can certify. Furthermore, a later ruling by the Fifth District Court of Appeals specifically applied *State ex rel. Special Prosecutors* and held that a trial court loses jurisdiction to entertain a Crim.R. 32.1 motion once an appellate court has affirmed the conviction. *State v. Godfrey*, 5th Dist. No. 2008CA0056, 2009-Ohio-1480, ¶21. This is the same conclusion we

reached in the instant appeal and we are not in conflict with the Fifth District Court of Appeals.

{¶9} In *State ex rel. Special Prosecutors*, the Supreme Court 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. Appellant has not cited any appellate case in conflict with this holding or with our application of this holding. Therefore, Appellant’s motion to certify a conflict is denied.

Waite, J., concurs.

Donofrio, J., concurs.

Vukovich, P.J., concurs.