

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION

FILED

STATE OF OHIO

2009 JUL -11 P 3:03 CASE NOS. CR 437512, 434529, 443109

Plaintiff

-vs-

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY ORDER

DARNELL SMITH)

Defendant)

JOAN SYNENBERG, JUDGE:

This matter is before the Court upon Defendant Darnell Smith's ("Smith") Motion to Vacate Void Judgment and Convictions filed December 18, 2008 and the State of Ohio's Brief in Opposition to Vacate Void Judgment and Convictions filed January 13, 2009. In his Motion, Smith seeks to have his guilty pleas voided on the ground that the Court failed to advise him of certain rights. Upon consideration of Smith's Motion, the State's Brief in Opposition, the Eighth District Court of Appeal's opinions, and the file and records pertaining to these proceedings, the Court finds Smith's Motion to be procedurally barred by res judicata and R.C. 2953.21 and 2953.23. Accordingly, the Court denies Smith's Motion, for the following reasons.

Procedural History

On December 16, 2003, Smith entered guilty pleas to various drug related offenses and was sentenced to a six-year prison term. Smith was permitted to turn himself in on January 9, 2004. On January 13, 2004, Smith filed a motion

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to vacate and/or withdraw guilty plea. After a hearing, the Court denied Smith's motion.

On February 10, 2005, the Eighth District Court of Appeals affirmed the Court's order denying Smith's motion to withdraw guilty plea. *State v. Smith*, Cuyahoga App. Nos. 84687, 84688, 84689, 2005-Ohio-513. The Eighth Appellate District held that Smith's motion was appropriately denied absent a showing of manifest injustice.

Smith filed an Application to Reopen. On May 27, 2005, the Eighth Appellate District denied Smith's application, holding that counsel did not render ineffective assistance of counsel. *State v. Smith*, Cuyahoga App. Nos. 84687, 84688, 84689, 2005-Ohio-2711.

On February 10, 2006, Smith filed a Petition for Post-Conviction Relief pursuant to R.C. 2953.21. On February 14, 2006, the State filed a Motion to Dismiss Smith's Petition. On April 2, 2008, the Court entered Findings of Fact and Conclusions of Law and denied Smith's Petition on the ground that the Petition was barred as untimely filed pursuant to R.C. 2953.21(A)(2). Additionally, the Court found that Smith's claims were without merit, as the Eighth Appellate District had considered and rejected his claims. On June 17, 2008, the Eighth Appellate District dismissed Smith's appeal for Smith's failure to file the record.

Smith's Instant Motion

In his Motion, Smith claims the Court failed to apprise him of certain rights and, therefore, his guilty pleas and convictions are void. Smith failed to

cite a statute or rule upon which he has based his Motion. Smith's Motion, however, is barred whether Smith relies on Crim. R. 32.1 or R.C. Chapter 2953.

A successive motion to withdraw a guilty plea may be barred by res judicata. See *State v. Craddock*, Cuyahoga App. No. 89484, 2008-Ohio-448, "Likewise, in this case we find that the trial court was without jurisdiction to grant Craddock's successive motion to withdraw his guilty plea. We also find that the successive motion was barred by the doctrine of res judicata." *State v. Craddock*, 2008-Ohio-448, at ¶ 8. As such, Smith was required to litigate any issues that could have been raised in a motion to withdraw a guilty plea in his first motion to withdraw his guilty pleas. The Court considered and denied Smith's first motion to withdraw his guilty pleas, which was affirmed on appeal. *State v. Smith*, Cuyahoga App. Nos. 84687, 84688, 84689, 2005-Ohio-513. The Court finds Smith's instant Motion, therefore, is barred by res judicata.

Additionally, the Court finds Smith's Motion is procedurally barred as untimely filed pursuant to R.C. 2953.21 (A)(2), and is also barred as a successive Petition pursuant to R.C. 2953.23.

For the reasons set forth above, the Court denies Defendant Darnell Smith's Motion to Vacate Void Judgment and Convictions filed December 18, 2008.

IT IS SO ORDERED.

7/1/09
DATE



JOAN SYNENBERG, JUDGE

COPIES TO:

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