

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080377
	:	TRIAL NO. B-0602216-A
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
ANTHONY HAYES,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant Anthony Hayes appeals from the Hamilton County Common Pleas Court's judgment overruling his Crim.R. 32.1 motions to withdraw his guilty pleas. We affirm the court's judgment.

Hayes was convicted in January of 2007 upon guilty pleas to multiple counts of aggravated robbery, robbery, kidnapping, and having a weapon under a disability. We affirmed his convictions in his direct appeal,<sup>2</sup> and the Ohio Supreme Court declined to accept for review his appeal there.<sup>3</sup>

In August 2008 and then again in September 2008, Hayes filed with the common pleas court separate Crim.R. 32.1 motions to withdraw his guilty pleas,

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> *State v. Hayes* (Aug. 6, 2008), 1st Dist. No. C-070063.

<sup>3</sup> *State v. Hayes*, \_\_\_ Ohio St.3d \_\_\_, 2009-Ohio-278, \_\_\_ N.E.2d \_\_\_.

challenging (1) the state's failure to disclose, in conformity with *Brady v. Maryland*,<sup>4</sup> allegedly exculpatory evidence, (2) the amendment of his indictment under Crim.R. 7(D), and (3) his trial counsel's effectiveness in preparing for trial and counseling his pleas. The court overruled the motions, and this appeal followed.

Hayes advances on appeal two assignments of error. In his first assignment of error, he cites the Ohio Supreme Court's decision in *State v. Colon*<sup>5</sup> to argue that the trial court had no jurisdiction to convict him upon his guilty pleas, because the counts of the indictment charging him with aggravated robbery and robbery did not include a mens rea element. In his second assignment of error, he contends that his plea agreement was "unenforceable" because the amendment of the prior-offense element of count ten of his indictment violated Crim.R. 7(D).

We note preliminarily that Hayes appeals here from the judgment overruling his motions to withdraw his guilty pleas. Thus, his assignments of error must be read to challenge the common pleas court's refusal to permit him to withdraw his pleas based on (1) his defective indictment under *Colon* or (2) his improperly amended indictment under Crim.R. 7(D).

In Hayes's direct appeal, we reviewed his convictions in light of *Colon* and held that the defects in the indictment did not rise to the level of plain error.<sup>6</sup> And his Crim.R. 7 challenge presents a matter that could fairly have been determined in his direct appeal, without resort to evidence outside the record. Thus, the doctrine of res judicata barred him from advancing these challenges in his postsentence motions to withdraw his guilty pleas.<sup>7</sup>

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<sup>4</sup> (1963), 373 U.S. 83, 83 S.Ct. 1194.

<sup>5</sup> 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917

<sup>6</sup> See *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749, 893 N.E.2d 169, ¶7.

<sup>7</sup> See *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus; *State v. Cole* (1982), 2 Ohio St.3d 112, 114, 443 N.E.2d 169.

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We, therefore, hold that the common pleas court properly overruled Hayes's motions to withdraw his guilty pleas. Accordingly, we overrule the assignments of error and affirm the judgment of the court below.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

**PAINTER, P.J., SUNDERMANN and DINKELACKER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on February 25, 2009  
per order of the Court. \_\_\_\_\_

Presiding Judge