

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio, :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. : No. 08AP-1062  
 : (C.P.C. No. 04CR-01-296)  
 Louis P. Monroe, : (ACCELERATED CALENDAR)  
 :  
 Defendant-Appellant. :

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D E C I S I O N

Rendered on May 19, 2009

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*Ron O'Brien*, Prosecuting Attorney, and *Seth L. Gilbert*, for  
appellee.

*Louis P. Monroe*, pro se.

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APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Defendant-appellant, Louis P. Monroe, appeals from a judgment of the Franklin County Court of Common Pleas denying his "Common-law Motion for Relief from Judgment or Order" filed on October 28, 2008. Defendant assigns a single error:

THE TRIAL COURT ERRED BY DENYING APPELLANT'S COMMON LAW MOTION[.] APPELLANT'S 14TH AMENDMENT RIGHT OF THE U.S. CONSTITUTION WAS VIOLATED WHEN THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION.

Because the trial court properly concluded the indictment provided a valid basis for defendant's conviction, we affirm.

### **I. Procedural History**

{¶2} By indictment filed on January 16, 2004, defendant was charged with one count of aggravated murder in violation of R.C. 2903.01, with a repeat violent offender specification. The indictment also charged one count of tampering with evidence in violation of R.C. 2921.12, and one count of felony domestic violence in violation of R.C. 2919.25. All charges arose out of the death of Tina Monroe on January 1, 2004. Although defendant initially entered a not guilty plea to the charges, defendant appeared before the trial court with counsel on February 7, 2005 and entered a guilty plea to murder, the stipulated lesser-included offense of aggravated murder; at the state's request, the court entered a nolle prosequi to the remaining counts of the indictment. By judgment entry filed February 8, 2005, the trial court sentenced defendant to 15 years to life.

{¶3} On February 23, 2006, defendant filed a motion to withdraw his guilty plea. Defendant asserted his trial counsel (1) failed to conduct a reasonable and adequate investigation before advising him to plead guilty, (2) failed to investigate defendant's mental competence, and (3) failed to advise that defendant would plead guilty only to voluntary manslaughter. The trial court on April 28, 2006 filed a judgment denying defendant's motion to withdraw his guilty plea. The trial court concluded defendant knowingly, intelligently, and voluntarily entered his plea, received a lawful sentence, and stated no lawful or valid basis to withdraw his plea. Although defendant filed a notice of appeal from the trial court's judgment, this court dismissed the appeal as untimely filed.

{¶4} On October 28, 2008, defendant filed a "Common-law Motion for Relief from Judgment." In it he noted he initially was charged by a complaint filed in the municipal court pursuant to Crim.R. 3, but subsequently was indicted on January 16, 2004. Pointing out that the charge of aggravated murder contained in the indictment never was pursued against defendant through a complaint, affidavit or information, defendant argued the absence of a "lawful foundation" rendered his indictment void. By decision and entry filed on December 15, 2008, the trial court denied defendant's motion.

## **II. Assignment of Error**

{¶5} In his single assignment of error, defendant contends the trial court erred in overruling his motion. As in his motion before the trial court, defendant argues on appeal that because the aggravated murder charge set forth in the first count of the indictment never was pursued against defendant through complaint, affidavit or information, the indictment is void, leaving the trial court without subject matter jurisdiction. Apart from the procedural deficiencies inherent in defendant's motion, his substantive contention is without merit.

{¶6} Preliminarily, to the extent defendant contends the municipal court complaint itself was deficient because it failed to charge him with aggravated murder, his contention is irrelevant. Whatever the complaint charged, defendant was not convicted or sentenced on it; he was convicted and sentenced on the indictment. Thus, any flaw in the complaint's failing to mimic the indictment is harmless. *State v. Wac* (1981), 68 Ohio St.2d 84, 87.

{¶7} Nor was the indictment charging defendant with aggravated murder deficient for lack of a complaint filed in municipal court charging defendant with the same

offense. "[A] complaint is only one means for instituting a criminal action[.]" *Gotel v. Gansheimer*, 11th Dist. No. 2006-A-87, 2007-Ohio-2311, ¶8, affirmed, 116 Ohio St.3d 316, 2007-Ohio-6437. "[C]harges can also be brought by an indictment or information." *Id.* See also *State ex rel. Richardson v. Winston*, 8th Dist. No. 80425, 2001-Ohio-4145 (rejecting petitioner's contention that the common pleas court never obtained jurisdiction to try him pursuant to indictment because the original complaint had not properly been filed in the municipal court).

{¶8} Thus, "it simply was not necessary for the charges in the complaints and the charges in the indictment to correlate because the common pleas court's ability to proceed was predicated solely upon the indictment." *Gotel*, at ¶11. The fact that the complaint in municipal court did not allege aggravated murder "had no effect upon the jurisdiction of the common pleas court." *Id.* As the Supreme Court of Ohio explained in affirming the Eleventh District Court of Appeals' decision in *Gotel*, "[t]he manner by which an accused is charged with a crime is procedural rather than jurisdictional, and after a conviction for crimes charged in an indictment, the judgment binds the defendant for the crime for which he was convicted." *Gotel*, 116 Ohio St.3d 316, 2007-Ohio-6437, at ¶6, quoting *State ex rel. Nelson v. Griffin*, 103 Ohio St.3d 167, 2004-Ohio-4754. See also *Stebelton v. Haskins* (1964), 177 Ohio St. 52, 53 (noting that a defendant "in a felony case is tried upon the indictment returned by the grand jury" and on the evidence presented, not on the original affidavit filed against him). See also *State v. Moss* (Feb. 21, 2008), 10th Dist. No. 07AP-894 (Memorandum Decision) (rejecting defendant's argument that the trial court lacked subject-matter jurisdiction and his conviction was void, where defendant was subject to direct indictment).

{¶9} Because defendant was charged pursuant to grand jury indictment and entered a plea based on the charges set forth in the indictment, the lack of correlation between the complaint filed in the municipal court and the charges set forth in the indictment "does not affect the validity of [defendant's] conviction." *Stebelton*, supra, at 52. Defendant's single assignment of error is overruled, and the judgment of the trial court is affirmed.

*Judgment affirmed.*

BROWN and McGRATH, JJ., concur.

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