

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

STATE OF OHIO,	:	APPEAL NOS. C-200317
		C-200324
Plaintiff-Appellee,	:	TRIAL NO. B-9805336B
vs.	:	
		<i>JUDGMENT ENTRY.</i>
TRENTON E. POPE,	:	
Defendant-Appellant.	:	

The court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist Loc.R. 11.1.1(A), and this judgment entry is not an opinion of this court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Pope appeals the judgment of the trial court denying his motions for assignment of counsel, to withdraw his guilty pleas, to merge allied offenses, and for judicial release.

Pope filed the appeal numbered C-200317 on August 31, 2020, and the appeal numbered C-200324 on September 8, 2020. Both appeals arise out of the trial court's May 20, 2020 judgment entries. Therefore, the appeal numbered C-200324 is dismissed as duplicative.

Regarding the appeal numbered C-200317, Pope contends in his first assignment of error that the trial court abused its discretion in denying his Crim.R. 32 motion to withdraw his guilty pleas. Pope argues that during the plea colloquy,

the trial court failed inform him of the maximum possible sentence in violation of Crim.R. 11(C)(2)(a).

However, Pope did not raise this argument before the trial court. In his Crim.R. 32 motion, he argued that he should be permitted to withdraw his guilty pleas because the trial court should have merged his convictions.

“It is a well-established rule that ‘an appellate court will not consider any error which counsel for a party complaining of the trial court’s judgment could have called but did not call to the trial court’s attention at a time when such error could have been avoided or corrected by the trial court.’ ” *State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 21, quoting *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 15, quoting *State v. Awan*, 22 Ohio St.3d 120, 122, 489 N.E.2d 277 (1986), quoting *State v. Childs*, 14 Ohio St.2d 56, 236 N.E.2d 545 (1968), paragraph three of the syllabus. Such a failure results in forfeiture of appellate review of the alleged error. *Rogers* at ¶ 21.

“Crim.R. 52(B) affords appellate courts discretion to correct ‘plain errors or defects affecting substantial rights’ notwithstanding the accused’s failure to meet his obligation to bring those errors to the attention of the trial court. However, the accused bears the burden of proof to demonstrate plain error on the record.” *Rogers* at ¶ 22, quoting *Quarterman* at ¶ 16. An appellant “must show ‘an error, i.e., a deviation from a legal rule’ that constitutes ‘an obvious defect in the trial proceedings.’ ” *Rogers* at ¶ 22, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002); see *State v. Chapman*, 9th Dist. Summit No. 28626, 2018-Ohio-1142, ¶ 23 (an appellate court may decline to entertain plain error if the appellant fails to argue it in its briefing).

Pope has failed to demonstrate plain error on the record. The first assignment of error is overruled.

In his second assignment of error, Pope contends that the trial court erred in failing to conduct an allied-offenses hearing. This court considered and rejected Pope's allied-offenses argument in two prior appeals. *State v. Pope*, 1st Dist. Hamilton No. C-980954, 1999 WL 1127786, *2 (Oct. 13, 1999); *State v. Pope*, 1st Dist. Hamilton No. C-090801 (June 30, 2010). Further consideration of Pope's second assignment of error is barred by the doctrine of res judicata. *See State v. Ketterer*, 140 Ohio St.3d 400, 2014-Ohio-3973, 18 N.E.3d 1199, ¶ 11 (holding that the defendant's merger argument was barred by res judicata where the court had determined in a prior appeal that that his offenses were not subject to merger). The second assignment of error is overruled.

In his third assignment of error, Pope contends that the trial court erred in denying his motion for judicial release. A motion for judicial release does not implicate a substantial right. *State v. Cruz*, 8th Dist. Cuyahoga No. 109770, 2021-Ohio-947, ¶ 7. Therefore, the denial of a motion for judicial release is not a final, appealable order. *Id.* at ¶ 6, citing *State v. Perry*, 1st Dist. Hamilton No. C-000121, 2000 WL 1235949, *2 (Sept. 1, 2000). The third assignment of error is overruled.

The appeal numbered C-200324 is dismissed. In the appeal numbered C-200317, the judgment of the trial court is affirmed.

Further, 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.

MYERS, P.J., CROUSE and BOCK, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on September 15, 2021,
per order of the court _____.
Administrative Judge