

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

RONDIAL E. WINTERS

Defendant-Appellant

: JUDGES:

:

: Hon. Patricia A. Delaney, P.J.

: Hon. W. Scott Gwin, J.

: Hon. William B. Hoffman, J.

:

: Case No. CT2017-0038

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: O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County  
Court of Common Pleas, Case No.  
CR2012-0138

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

December 18, 2017

APPEARANCES:

For Plaintiff-Appellee:

D. MICHAEL HADDOX  
MUSKINGUM COUNTY PROSECUTOR

GERALD V. ANDERSON II  
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For Defendant-Appellant:

RONDIAL E. WINTERS, PRO SE  
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P.O. Box 5500  
Chillicothe, OH 45601

*Delaney, J.*

{¶1} Defendant-Appellant Rondial E. Winters appeals the May 24, 2017 judgment entry of the Muskingum County Court of Common Pleas.

### **FACTS AND PROCEDURAL HISTORY**

{¶2} This case arose when Winters elected to plead guilty to the following eight counts contained in a bill of information filed June 6, 2012: gross sexual imposition pursuant to R.C. 2907.05(A)(4), a felony of the third degree [Count I]; gross sexual imposition pursuant to R.C. 2907.05(A)(4), a felony of the third degree [Count II]; gross sexual imposition pursuant to R.C. 2907.05(A)(4), a felony of the third degree [Count III]; gross sexual imposition pursuant to R.C. 2907.05(A)(4), a felony of the third degree [Count IV]; pandering obscenity involving a minor pursuant to R.C. 2907.321(A)(1), a felony of the second degree [Count V]; pandering obscenity involving a minor pursuant to R.C. 2907.321(A)(1), a felony of the second degree [Count VI]; pandering obscenity involving a minor pursuant to R.C. 2907.321(A)(1), a felony of the second degree [Count VII]; and pandering obscenity involving a minor pursuant to R.C. 2907.321(A)(1), a felony of the second degree [Count VIII].

{¶3} The State of Ohio's statements of fact at both the bill of information hearing and the later sentencing hearing established Winters had sexual contact with a minor under the age of thirteen on four separate occasions between June 1, 2001 and May 2, 2007. In the course of the investigation, the victim told police Winters had shown her pornography and seizure of Winters' computer yielded, e.g., four separate images of child pornography.

{¶4} Winters affirmatively waived prosecution by indictment on June 6, 2012 and entered guilty pleas as charged in exchange for the State's recommended aggregate sentence of 14 years. (Winters then entered guilty pleas again on August 6, 2012 because the maximum sentence for Counts I through IV had been misstated at the first hearing.) Winters also elected to proceed with sentencing under the "current law" instead of the law in existence at the time the crimes occurred with respect to sex offender classification.

{¶5} On August 29, 2012, the trial court entered an Entry Nunc Pro Tunc imposing prison terms of four years each upon counts Counts I through IV and prison terms of five years each upon Counts V through VIII. Counts I, II, III, and IV were to be served concurrently with each other [4 years total]. The terms for Counts V and VI were to be served concurrently to each other but consecutively to the terms imposed in Counts I through IV [5 years total]. The periods imposed upon Counts VII and VIII were to be served concurrently to each other but consecutively to the terms imposed for Counts 1 through IV and Counts V and VII [5 years total]. Winters' aggregate prison term was thus 14 years.

{¶6} Winters did not file a direct appeal from his convictions and sentences.

{¶7} On April 6, 2015, Winters filed a Motion to Correct Sentence arguing the trial court failed to make required findings of fact to impose consecutive sentences pursuant to R.C. 2929.14(C) and failed to determine whether the convictions represented allied offenses of similar import pursuant to R.C. 2941.25. The State responded with a motion in opposition. The trial court denied Winters' motion by entry dated May 14, 2015.

{¶8} Winters appealed the trial court's May 14, 2015 judgment entry in *State v. Winters*, 5th Dist. Muskingum No. CT2015-0029, 2016-Ohio-622. We affirmed the judgment of the trial court.

{¶9} Winters argued in his first assignment of error that his negotiated pleas of guilty to the bill of information were not knowing, intelligent, and voluntary. *Id.* at ¶ 15. In his argument, he referred to evidence outside of the record. We found his argument was not appropriate for review and should have been raised in a petition for post-conviction relief. The trial court did not consider Winters' Motion to Correct Sentence to be a petition for post-conviction relief; however, the trial court would have been without jurisdiction to hear the petition for post-conviction relief because it was untimely pursuant to R.C. 2953.23(A). *Id.* at ¶ 17.

{¶10} Winters asserted in his second through fifth assignments of error that he received ineffective assistance of counsel; the consecutive sentences of the trial court did not comply with R.C. 2929.14(C); his convictions were allied offenses of similar import; and he should not have been classified as a tiered sex offender despite his specific request that the trial court do so. We held Winters' arguments were barred by res judicata. *Id.* at ¶ 20. We also found he was bootstrapping issues to an appeal from his "motion to correct sentence." Those arguments could and should have been raised upon direct appeal and were therefore barred by res judicata. *Id.* at ¶ 21.

{¶11} We further noted that Winters entered negotiated pleas of guilty to a jointly-recommended sentence. This court has recognized that Winters may not have been entitled to appellate review of his sentence based on R.C. 2953.08(D)(1), which provides: "A sentence imposed upon a defendant is not subject to review under this section if the

sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.” *Id.* at ¶ 22 quoting *State v. Guiley*, 5th Dist. Stark No.2013CA00211, 2014–Ohio–2035, ¶ 9.

{¶12} On May 15, 2017, Winters filed a Motion to Set Aside Judgment with the trial court. He argued the requisite language to impose consecutive sentences was not included in his sentencing. On May 24, 2017, the trial court denied the motion. The trial court found Winters’ motion to be an untimely petition for post-conviction relief, leaving the trial court without jurisdiction to hear his argument. The trial court further found Winters’ arguments were barred by res judicata.

{¶13} It is from this judgment Winters now appeals.

#### **ASSIGNMENT OF ERROR**

{¶14} Winters raises one Assignment of Error:

{¶15} “THE LOWER COURT COMMITTED PREJUDICIAL ERROR IN IGNORING LEGISLATIVE MANDATES.”

#### **ANALYSIS**

{¶16} In his sole Assignment of Error, Winters argues the trial court erred when it failed to apply *State v. Thomas*, 148 Ohio St.3d 248, 2016–Ohio–5567, 70 N.E.3d 496 and grant his Motion to Set Aside Judgment because his sentence was contrary to law. In *State v. Thomas*, the Ohio Supreme Court held the defendant, who committed a first-degree felony in 1993 and was sentenced in 2014, should have been sentenced under H.B. 86.

{¶17} We reviewed Winters’ Motion to Correct Sentence filed on April 6, 2015. In his motion, Winters argued the trial court failed to include the requisite language from

R.C. 2929.14(C)(4), as amended by H.B. 86, at his sentencing. When the trial court denied his Motion to Correct Sentence, Winters appealed and raised this issue as an assignment of error. We determined Winters' argument was barred by the doctrine of res judicata. See *State v. Winters, supra*, at ¶ 21. We further found because Winters' sentence was authorized by law and recommended jointly by the defendant and prosecution, R.C. 2953.08(D)(1) prevented Winters' sentence from being subject to review.

{¶18} Upon review of his Motion to Set Aside Judgment and appeal of the trial court's denial of that motion, we find Winters is raising the identical argument as in his previous motion and subsequent appeal. The "law of the case" doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels. *State v. Kalman*, 5th Dist. Ashland No. 16-COA-042, 2017-Ohio-6910, 2017 WL 3120303, ¶ 25 citing *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). The decision of this Court in *State v. Winters* remains the law of the case as to all subsequent proceedings both at the trial level and upon review. *State v. Boyd*, 5th Dist. Stark No. 1999CA00352, 2000 WL 1055798, at \*3 (July 24, 2000). We follow our previous holding and find Winters' argument as to consecutive sentencing is barred by res judicata and statute.

{¶19} Winters' sole Assignment of Error is overruled.

**CONCLUSION**

{¶20} The judgment of the Muskingum County Court of Common Pleas is affirmed.

By: Delaney, P.J.,

Gwin, J. and

Hoffman, J., concur.