

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOHN D. ALLEN

Defendant-Appellant

: JUDGES:

:

: Hon. William B. Hoffman, P.J.

: Hon. Patricia A. Delaney, J.

: Hon. Earle E. Wise, Jr., J.

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: Case No. CT2018-0010

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O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County
Court, Case No. TRC0500283

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

November 7, 2018

APPEARANCES:

For Plaintiff-Appellee:

D. MICHAEL HADDOX
MUSKINGUM COUNTY PROSECUTOR

GERALD V. ANDERSON II
27 North Fifth St., P.O. Box 189
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For Defendant-Appellant:

JOHN DALE ALLEN, PRO SE
3562 Rangoon Dr.
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Delaney, J.

{¶1} Defendant-Appellant John D. Allen appeals the January 9, 2018 judgment entry of the Muskingum County Court.

FACTS AND PROCEDURAL HISTORY

{¶2} On January 18, 2005, Defendant-Appellant John D. Allen was stopped by a State Highway Patrol Trooper. Allen was cited for a broken headlight, open container, driving without an operator's license, and falsification. He was also arrested for OMVI.

{¶3} Allen was arraigned and entered pleas of not guilty to the charges.

{¶4} The OMVI and Falsification charges were tried before a jury resulting in verdicts of “guilty.” Allen chose to represent himself at trial.

{¶5} On October 20, 2005, under Case No. TRC 0500283, the trial court sentenced Allen to 180 days in jail and a \$1,000.00 fine on the OMVI charge, 90 days in jail and a \$100.00 fine on the No Operator's License charge, and a \$25.00 fine on the broken headlight charge. Allen was also sentenced to a one year license suspension.

{¶6} In Case No. CRB 0500062, a fine of \$10.00 was imposed on the open container charge.

{¶7} In Case No. 0500302, on the Falsification charge, Allen was sentenced to pay court costs and ordered to have no criminal convictions or first degree misdemeanor offenses for 60 months or the sanction of a \$1,000.00 fine and 180 days in jail would be imposed.

{¶8} Allen appealed his convictions and sentences in *State v. Allen*, 5th Dist. Muskingum No. CT2005-0051, 2006-Ohio-1757, 2006 WL 890876. We affirmed the trial court's judgment.

{¶9} On November 22, 2017, the Muskingum County Court served Allen with a notice of hearing regarding Allen's outstanding fines in Case No. TRC0500283. A hearing was held on November 30, 2017. At the hearing, Allen made an oral motion requesting the trial court waive all fines and court costs based on his testimony that he was indigent and unable to pay his fines and costs.

{¶10} The trial court issued its judgment entry on January 9, 2018. The trial court took judicial notice that Allen had an outstanding balance owed to the court of \$2,200.02, which included unpaid fines of \$735.00. The trial court found Allen had not made a payment on any of his fines and court costs, nor had he attempted to work off any fines by doing community service. The trial court noted it allowed defendants to receive credit towards their fines in the amount of \$10.00 per hour for community service. The trial court denied Allen's request to waive all fines and court costs. The trial court further imposed a forfeiture of Allen's driver's license until all fines were paid or worked off by community service.

{¶11} It is from this judgment entry Allen now appeals.

ASSIGNMENT OF ERROR

{¶12} In Allen's pro se appellate brief, he provided a "Statement of Assignments of Error." It states as follows:

{¶13} "THE LOWER COURT'S ENTRY VIOLATES APPELLANT'S RIGHTS GUARANTEED BY THE FIFTH AND EIGHTH AMENDMENTS TO THE CONSTITUTION FOR THE UNITED STATES OF AMERICA AND THE NINTH ARTICLE IN THE BILL OF RIGHTS OF THE OHIO CONSTITUTION."

ANALYSIS

{¶14} We first note Allen did not provide a transcript of the November 30, 2017 hearing before the trial court. Since Allen has not provided a transcript, we must presume the regularity of the proceedings. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980).

{¶15} Allen contends the trial court erred in re-imposing fines and costs in the amount of \$2,002.02. He states he served his jail sentence in Case No. TRC0500283 and by re-imposing the fines and costs, the trial court has placed him in double jeopardy. Allen further contends the trial court owes Allen \$16,049.98 pursuant to R.C. 2947.14(D).

{¶16} We first find Allen is incorrect when he states the January 9, 2018 judgment entry re-imposed fines and court costs on Allen, thereby placing Allen in double jeopardy.

{¶17} In Case No. TRC0500283, the trial court sentenced Allen to 180 days in jail and a \$1,000.00 fine on the OMVI charge, 90 days in jail and a \$100.00 fine on the No Operator's License charge, and a \$25.00 fine on the broken headlight charge. Allen was also sentenced to a one year license suspension. In Case No. CRB 0500062, a fine of \$10.00 was imposed on the open container charge. In Case No. 0500302, on the Falsification charge, Allen was sentenced to pay court costs and ordered to have no criminal convictions or first degree misdemeanor offenses for 60 months or the sanction of a \$1,000.00 fine and 180 days in jail would be imposed. Allen appealed his convictions and sentences in *State v. Allen*, 5th Dist. Muskingum No. CT2005-0051, 2006-Ohio-1757, 2006 WL 890876, and we affirmed the trial court's judgment.

{¶18} The trial court held a hearing on November 30, 2017 regarding Allen's outstanding fines and costs in Case No. TRC0500283. At the hearing, Allen made an oral

motion to waive the fines and costs based on indigency. The trial court's January 9, 2018 judgment entry denied Allen's motion to waive the fines and costs based on indigency and ordered Allen to pay the outstanding fines and costs or complete community service. Because Allen did not provide a transcript of the November 30, 2017 hearing with this appeal, we must presume validity of the lower court's ruling on the matter of indigency and affirm. Further, a review of Allen's direct appeal of his convictions and sentences show Allen did not raise the issue of fines or court costs. Allen's arguments are thus barred by the doctrine of res judicata. *State v. Smith*, 5th Dist. Fairfield No. 14-CA-18, 2014-Ohio-4657, ¶ 19, citing *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967); see also, *State v. Houston*, 73 Ohio St.3d 346, 347, 652 N.E.2d 1018 (1995), citing *Perry*, supra. "A defendant who fails on direct appeal to challenge the sentence imposed on him for an offense is barred by res judicata from appealing that sentence * * *." *State v. Lindsay*, 5th Dist. Richland No. 16CA39, 2017-Ohio-595, ¶ 30.

{¶19} We next find the trial court does not owe Allen \$16,049.98 pursuant to R.C. 2947.14(D).

{¶20} R.C. 2947.14(D) states,

No person shall be ordered to be committed to a jail or workhouse or otherwise be held in custody in satisfaction of a fine imposed as the whole or a part of a sentence except as provided in this section. Any person imprisoned pursuant to this section shall receive credit upon the fine at the rate of fifty dollars per day or fraction of a day. If the unpaid fine is less than fifty dollars, the person shall be imprisoned one day.

{¶21} The record does not show the trial court ordered Allen held in custody in satisfaction of a fine imposed as the whole or part of a sentence. The record shows Allen was jailed due to his convictions and sentences in Case No. TRC0500283. Accordingly, R.C. 2947.14(D) is not applicable to the present case.

{¶22} Allen's Assignment of Error is overruled.

CONCLUSION

{¶23} The judgment of the Muskingum County Court is affirmed.

By: Delaney, J.,

Hoffman, P.J. and

Wise, Earle, J., concur.