

[Cite as *State v. Williams*, 2018-Ohio-852.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106254

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RICHARD WILLIAMS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-10-534090-A

BEFORE: Laster Mays, J., E.A. Gallagher, A.J., and Stewart, J.

RELEASED AND JOURNALIZED: March 8, 2018

FOR APPELLANT

Richard Williams, pro se
Inmate No. 592-040
London Correctional Institution
1580 State Rt. 56, SW
P.O. Box 69
London, Ohio 43140

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor

By: Frank Romeo Zeleznikar
Assistant County Prosecutor
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Richard Williams (“Williams”) appeals his sentence, and asks this court to reverse his sentence, and impose a sentence of life imprisonment with the possibility of parole after serving ten years.

{¶2} We affirm the trial court’s decision on the basis of res judicata. However, we warn Williams that his conduct through the continued filing of appeals and original actions, may result in his being declared a vexatious litigator pursuant to Loc.App.R. 23(A). Pursuant to the rule, we are providing a warning to Williams of this court’s inherent power to prevent abuse of the appellate process.

I. Facts and Procedural History

{¶3} In 2010, Williams pleaded guilty to one count of gross sexual imposition, a

third-degree felony, in violation of R.C. 2907.05(A)(4); and one count of rape, a first-degree felony, in violation of R.C. 2907.02(A)(1)(b). The trial court sentenced Williams to five years imprisonment on the gross sexual imposition count and life imprisonment with the eligibility for parole after 25 years on the rape count. The prison terms were run consecutively for a total prison term of life with eligibility for parole after 30 years.

{¶4} Williams appealed his guilty plea and sentence in 2011. This court affirmed his convictions and sentence in *State v. Williams*, 8th Dist. Cuyahoga No. 95853, 2011-Ohio-2551, ¶ 27 (“*Williams I*”). Subsequently, Williams has filed numerous motions and postconviction petitions regarding the same issues. On August 29, 2017, Williams filed a motion to vacate his sentence, where he argued that his 25-years-to-life sentence was contrary to law. The trial court subsequently denied that motion. Williams filed an appeal assigning one error for our review:

The trial court erred in denying appellant’s motion to vacate void sentence contrary to law when the trial court improperly sentence the appellant to life imprisonment with the possibility of parole after serving 25 years. That sentence required a conviction of a sexually violent predator specification. Therefore, his sentence is consequently contrary to law.

II. Void Sentence and Res Judicata

A. Standard of Review

{¶5} The Ohio Supreme Court has determined that “void sentences are not precluded from appellate review by principles of res judicata and may be reviewed at any time, on direct appeal or by collateral attack.” *State v. Lenard*, 8th Dist. Cuyahoga No. 99149, 2013-Ohio-1995, ¶ 8.

{¶6} It is also understood that

“[r]es judicata, also known as claim preclusion is the doctrine under which a final judgment on the merits bars a party from bringing another lawsuit based upon the same claim.” *State v. Thompson*, 8th Dist. Cuyahoga No. 70532, 1996 Ohio

App. LEXIS 5202 (Nov. 21, 1996). “Res judicata extends to bar not only claims which actually were litigated, but every question which might properly have been litigated.” *Id.* “Under the doctrine of res judicata, * * * issues cannot be considered in postconviction proceedings under Ohio Rev. Code Ann. § 2953.21 where they have already been or could have been fully litigated by the prisoner while represented by counsel, either before his judgment of conviction or on direct appeal from that judgment. Issues properly before a court on a petition for postconviction relief are issues which could not have been raised on direct appeal due to the fact that the evidence supporting such issues is *dehors* the record. If a court finds that an issue raised in a petition for postconviction relief has, or should have been raised on direct appeal or in a previous postconviction relief motion, the trial court may dismiss the petition on the grounds of preclusion.” *Id.*

State v. Shearer, 8th Dist. Cuyahoga No. 103848, 2016-Ohio-7302, ¶ 4.

B. Law and Analysis

{¶7} In Williams’s sole assignment of error, he argues that the trial court erred by first imposing a sentence of 25 years to life on the rape charge, and then by dismissing his motion to vacate his sentence. He additionally argues that his sentence is void.

“A judgment will be deemed void when it is issued by a court which did not have subject matter jurisdiction or otherwise lacked the authority to act.” *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 6. On the other hand, “a voidable judgment is one rendered by a court that has both jurisdiction and authority to act, but the court’s judgment is invalid, irregular, or erroneous.” *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 12.

State v. Holmes, 8th Dist. Cuyahoga No. 100388, 2014-Ohio-3816, ¶ 12.

{¶8} However,

sentencing errors do not render a judgment void because such errors have no effect upon the trial court’s jurisdiction. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 7. One exception to this general rule is that a sentencing judgment will be considered void when the imposed sentence does not lie within the statutorily mandated terms. *Id.* at ¶ 8.

Id. at ¶ 15.

{¶9} Williams’s sentence is not void because it *does* lie within the statutorily mandated terms. R.C. 2907.02(B) states, “an offender under division (A)(1)(b) of this section shall be

sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 * * *.” R.C. 2971.03(B)(1)(c) applies to Williams and states “if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, a minimum term of twenty-five years and a maximum of life imprisonment.” Therefore, Williams’s sentence is not void.

{¶10} We find that Williams’s motion to vacate is barred by the doctrine of res judicata.

Under the doctrine of res judicata, “a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *State v. Patrick*, 8th Dist. Cuyahoga No. 99418, 2013-Ohio-5020, ¶ 7, citing *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 653 N.E.2d 226 (1995). In order to overcome the res judicata bar, the petitioner must show, through the use of extrinsic evidence, that he or she could not have appealed the original constitutional claim based on the information in the original trial record. *State v. Combs*, 100 Ohio App.3d 90, 652 N.E.2d 205 (1st Dist.1994). Said another way, issues properly raised in a petition for postconviction relief are only those that could not have been raised on direct appeal because the evidence supporting such issues is outside the record. *State v. Milanovich*, 42 Ohio St.2d 46, 50, 325 N.E.2d 540 (1975). Thus, a trial court may dismiss a petition on the basis of res judicata if an issue was or should have been raised on direct appeal. *State v. Dowell*, 8th Dist. Cuyahoga No. 86232, 2006-Ohio-110, ¶ 10, citing *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), 10 Ohio St.2d 175, 226 N.E.2d 104.

State v. Jackson, 8th Dist. Cuyahoga No. 104132, 2017-Ohio-2651, ¶ 53.

{¶11} Williams does not demonstrate that he could not have raised this issue on direct appeal. In *Williams I*, Williams did not appeal his sentence. Williams only appealed the validity of his plea and the fact that the sentences were to be served consecutively.

The Ohio Supreme Court has identified four elements necessary to bar a claim under the doctrine of res judicata: (1) there is a final, valid decision on the merits by a court of competent jurisdiction; (2) the second action involves the same parties or their privies as the first; (3) the second action raises claims that were or could have been litigated in the first action; and (4) the second action arises out of the transaction or occurrence that was the subject matter of the previous action.

(Citation omitted.) *Lenard v. Miller*, 8th Dist. Cuyahoga No. 99460, 2013-Ohio-4703, ¶ 27.

State v. Patterson, 8th Dist. Cuyahoga No. 105109, 2017-Ohio-2664, ¶ 4.

{¶12} In *Williams I*, this court rendered a final and valid decision on Williams’s appeal. This current appeal involves the same parties as the first appeal, and these claims could have been raised in *Williams I*. Finally, this action arises out of the occurrence that was the subject matter of the *Williams I* appeal. Therefore, Williams’s assignment of error is barred by res judicata and overruled.

{¶13} Based on the foregoing, this court directs Williams’s attention to Loc.App.R. 23. This rule authorizes this court, sua sponte, to find a party to be a vexatious litigator where that party habitually, persistently, and without reasonable cause engages in frivolous conduct. Pursuant to Loc.App.R. 23(A):

An appeal or original action shall be considered frivolous if it is not reasonably well-grounded in fact, or warranted by existing law, or by a good faith argument for the extension, modification or reversal of existing law.

Loc.App.R. 23(A).

{¶14} We recently exercised our inherent power under this rule to prevent abuse of the judicial process in *State v. Henderson*, 8th Dist. Cuyahoga No. 100374, 2014-Ohio-2274, after warning Henderson of the potential impact of his repeated meritless filings.¹ Despite the warning, Henderson was not deterred; he filed yet another appeal advancing the same arguments. We therefore declared Henderson to be a vexatious litigator based on his filing of “ten appeals and eighteen original actions since 1999, several of which were not reasonably grounded in fact

¹*Henderson v. Saffold*, 8th Dist. Cuyahoga No. 100406, 2014-Ohio-306.

or warranted by existing law.” *State v. Keith*, 8th Dist. Cuyahoga Nos. 102106, 102107, 102108, 2015-Ohio-2401, ¶ 23.

{¶15} Similarly, Williams has continuously taxed the limited resources of this court and the trial court through his filings of appeals and original actions. Viewed in a light most favorable to Williams, his court filings are neither grounded in fact nor warranted by existing law. Williams is hereby forewarned that his continued filing of appeals or original actions that are not reasonably grounded in fact or warranted by existing law shall result in his being declared a vexatious litigator pursuant to Loc.App.R. 23(B).

{¶16} The trial court’s judgment is affirmed.

It is ordered that the appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

EILEEN A. GALLAGHER, A.J., and
MELODY J. STEWART, J., CONCUR