

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Nos. 108520 and 108530
	:	
v.	:	
	:	
LONNIE B. THOMPSON,	:	
	:	
Defendant-Appellant.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: February 27, 2020**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-11-553640-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Daniel T. Van, Assistant Prosecuting Attorney, *for appellee*.

Lonnie B. Thompson, *pro se*.

EILEEN T. GALLAGHER, A.J.:

{¶ 1} Defendant-appellant, Lonnie Thompson, appeals pro se from his sentence following a jury trial. He raises the following assignments of error for review:

1. The trial court violated Thompson's due process protections, as provided by the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 10 of the Ohio Constitution, and the *Saxon* prohibition against the use of the sentencing packaging doctrine, when it failed to separately impose the proper term of postrelease control on each count of his conviction.

2. Thompson's sentencing entry is not a final, appealable order, which violates his due process protections as provided by the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 10 of the Ohio Constitution, and this court had no jurisdiction to hear his earlier appeals.

3. Thompson's sentence is void and contrary to law due to the trial court sentencing him to maximum prison terms on all counts for non-violent property offenses without proper consideration of R.C. 2929.11 and 2929.12, in violation of due process protections, as provided by the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 10 of the Ohio Constitution.

{¶ 2} After careful review of the record and relevant case law, we affirm Thompson's sentence.

## **I. Procedural and Factual History**

{¶ 3} Between March 7, 2008, and October 17, 2008, Thompson operated a criminal enterprise involving the production of counterfeit checks that were cashed at various stores throughout northeast Ohio. A jury found Thompson guilty of one count of engaging in a pattern of corrupt activity, 29 counts of forgery, one count of telecommunications fraud, 12 counts of identity fraud and one count of theft in connection with the counterfeit check cashing scheme. At his sentencing hearing on March 4, 2013, the trial court orally pronounced the sentences to be imposed on each of these counts as follows:

- Count 1 (engaging in a pattern of corrupt activity): \$250 fine and 8 years consecutive to the sentences imposed on all other counts;

- Counts 2-4 (forgery): \$250 fine and 12 months for each count, concurrent to each other and consecutive to the sentences imposed on all other counts;
- Counts 5-6 (forgery): \$250 fine and 12 months for each count, concurrent to each other and consecutive to the sentences imposed on all other counts;
- Counts 7-28 (forgery): \$250 fine and 12 months for each count, concurrent to each other and consecutive to the sentences imposed on all other counts;
- Count 30 (telecommunications fraud): \$250 fine and 12 months, concurrent with the sentence imposed on Count 31 and consecutive to the sentences imposed on all other counts;
- Counts 31-43 (identity fraud): \$250 fine and 12 months for each count, consecutive to each other and consecutive to the sentences imposed on all other counts;
- Counts 44-47 (identity fraud): \$250 fine and 18 months for each count, consecutive to each other and consecutive to the sentences imposed on all other counts;
- Counts 48-49 (forgery): \$250 fine and 12 months for each count, concurrent to each other and Count 50 and consecutive to the sentences imposed on all other counts; and
- Count 50 (theft): \$250 fine and 18 months, concurrent to Counts 48 and 49 and consecutive to the sentences imposed on all other counts.

{¶ 4} Thompson's individual sentences, when added together, resulted in an aggregate prison sentence of 31 1/2 years. The trial court also indicated that Thompson would be subject to a period of postrelease control not to exceed three years.

{¶ 5} After the trial court pronounced his sentences, Thompson requested that payment of the fine and costs be deferred while he was in prison. The trial court

found him to be indigent and indicated that the fine and costs would be “suspended.” Although the state requested restitution in the amount of \$18,985.22, the trial court did not order restitution during the sentencing hearing.

{¶ 6} On March 13, 2013, the trial court issued its sentencing journal entry. The prison sentences stated in the sentencing journal entry matched the sentences the trial court had orally pronounced for each count at the sentencing hearing with one exception: although the trial court stated at the sentencing hearing that the 12-month sentence on Count 30 would run concurrent with the sentence on Count 31 and consecutive to the sentences on all other counts, the sentencing entry indicated that the 12-month sentence on Count 30 was “consecutive to any other count.” Accordingly, the sentencing journal entry inaccurately stated that an aggregate prison sentence of 32 1/2 years had been imposed. The sentencing journal entry also indicated that Thompson would be subject to postrelease control for a mandatory term of three years, imposed a fine of \$5,750 and court costs and ordered restitution in the amount of \$18,985.22.

{¶ 7} Thompson filed a direct appeal from his convictions and sentence. On January 23, 2014, this court affirmed Thompson’s convictions, but held that the convictions for telecommunications fraud and identity fraud in Counts 30 and 31 should have merged for sentencing. Accordingly, the matter was remanded for resentencing on the counts that should have merged. *State v. Thompson*, 8th Dist. Cuyahoga No. 99628, 2014-Ohio-202 (“*Thompson I*”).

**{¶ 8}** While his direct appeal was pending, Thompson filed a pro se motion to correct the trial court's March 13, 2013 sentencing journal entry, arguing that the sentencing journal entry erroneously imposed a fine and costs, which the trial court had stated at the sentencing hearing would be suspended due to Thompson's indigency. After this court ruled on his appeal, Thompson filed a second, nearly identical pro se motion to correct the sentencing journal entry. The state filed a response, expressing that it did not oppose correction of the sentencing entry to suspend the fine and costs.

**{¶ 9}** On February 26, 2014, the trial court issued a journal entry with the vague language "[s]entencing journal entry to reflect defendant's fine and cost[s] are suspended." The journal entry did not indicate that it was issued in response to any motion that was filed. The trial court never issued a subsequent sentencing journal entry reflecting its suspension of the fine and costs.

**{¶ 10}** On March 20, 2014, Thompson filed a third pro se motion to correct the trial court's March 13, 2013 sentencing journal entry, claiming that the sentencing journal entry incorrectly stated that he was sentenced to 32 1/2 years in prison. On November 12, 2014, the trial court granted the motion, in part, indicating in a journal entry that it would issue "a nunc pro tunc entry that correctly reflects the sentences imposed upon defendant at the sentencing hearing held on or about March 4, 2013."

**{¶ 11}** That same day, the trial court issued two other separate journal entries. One is described on the trial court's docket as "[j]ournal entry to merely

correct the error in calculating the total sentence imposed upon the defendant.” The other purports to be a nunc pro tunc entry “as if and for the sentencing journal entry issued on 3-13-2013.” Each of these journal entries states that it is “issued nunc pro tunc to correct the error in calculating the total sentence imposed upon the defendant” from 32 1/2 years to 31 1/2 years. The entries further state that “[t]he sentence imposed upon defendant on each count shall remain unchanged from the sentencing entry issued on March 13, 2013.” Each of these journal entries reflect the assessment of court costs against Thompson, the imposition of a significant fine and restitution that was never ordered in open court.

{¶ 12} Thompson appealed from the trial court’s judgment, arguing that the trial court’s nunc pro tunc entry correcting his sentence was invalid because the sentence was greater than the prison term imposed at the sentencing hearing. *State v. Thompson*, 8th Dist. Cuyahoga No. 102326, 2015-Ohio-3882, ¶ 5 (“*Thompson II*”). Applying the doctrine of res judicata, this court found Thompson was precluded from claiming “that the trial court committed error in sentencing him to an aggregate sentence of more than 28 ½ years.” *Id.* at ¶ 14. This court also concluded that issuing the nunc pro tunc was an appropriate manner to correct the mathematical error with respect to the sentencing error, because it was undisputed that the aggregate prison sentence imposed totaled 31 1/2 years. We explained that “[a]lthough Thompson’s sentences on each of the individual counts were clearly stated at the sentencing hearing, the record reflects that the trial court, the state, and

defense counsel each made a math error in calculating Thompson's aggregate sentence." *Id.* at ¶ 17.

{¶ 13} We agreed with Thompson, however, that the trial court erred by not correcting the improper imposition of a fine, costs, and restitution, "which were either ordered suspended or not imposed at the sentencing hearing." *Id.* at ¶ 18. This court concluded that "the November 14, 2014 nunc pro tunc entry is incomplete and a new nunc pro tunc entry must be issued correcting all of the mathematical and clerical errors in the March 13, 2013 sentencing journal entry." *Id.* Although Thompson also argued in *Thompson II* that the trial court erred by not giving him jail-time credit, we held that Thompson's remedy was to file a motion with the trial court pursuant to R.C. 2929.19(B)(2)(g)(iii).

{¶ 14} On remand, the trial court issued a nunc pro tunc entry on February 10, 2016. The entry imposed the correct sentence and removed the imposition of restitution, fines, and costs from the order. Nevertheless, Thompson appealed from the trial court's judgment, arguing "that the trial court erred by correcting his sentence by issuing a nunc pro tunc entry instead of conducting a resentencing hearing as required by Crim.R. 43." In *State v. Thompson*, 8th Dist. Cuyahoga No. 104226, 2016-Ohio-7404 ("*Thompson III*"), this court affirmed Thompson's sentence, finding the trial court sufficiently followed the mandates of *Thompson II* by issuing a nunc pro tunc entry that reflected what occurred at the sentencing hearing. *Id.* at ¶ 8-9.

{¶ 15} While Thompson’s appeal in *Thompson III* was pending, the trial court held a resentencing hearing on March 29, 2016, to address the issue of merger as mandated by our remand in *Thompson I*. Ultimately, the state elected to proceed with sentencing on the identity fraud offense as charged in Count 31. The trial court imposed a \$250 fine and a 12-month sentence. Counts 31-43 were ordered to be served “consecutive to each other and consecutive to the sentence imposed on all other counts.” In an entry dated March 30, 2016, the trial court further awarded Thompson jail-time credit, and suspended fines, costs, and restitution.

{¶ 16} Thompson attempted to appeal from the trial court’s order in 8th Dist. Cuyahoga No. 104406. However, the appeal was dismissed by this court on December 23, 2016, for lack of a final appealable order.

{¶ 17} On May 16, 2017, the trial court issued a revised sentencing entry pursuant to our dismissal of 104406. In the entry, the trial court (1) incorporated the language of the February 9, 2016 nunc pro tunc sentencing entry, (2) stated that a hearing was held on March 29, 2016, to merge Count 30 and Count 31 as mandated by *Thompson I*, (3) clarified that Thompson was sentenced “to 12 months on Count 31 to be served consecutively to all other counts,” and (4) reiterated that all “fines, costs, and restitution are suspended.”

{¶ 18} Thompson appealed from the trial court’s judgment, arguing the trial court (1) failed to conduct a de novo resentencing hearing, (2) failed to conduct a full allied offense determination and to merge all allied offenses, (3) failed to make required findings under R.C. 2929.14(C)(4) before imposing consecutive sentences,



and (4) violated his due process protections when it engaged in vindictive sentencing against him.

{¶ 19} In *State v. Thompson*, 8th Dist. Cuyahoga No. 105866, 2018-Ohio-179 (“*Thompson IV*”), this court affirmed Thompson’s sentence, stating, in relevant part:

As to Assignments of Error I and II, the trial court was not obligated to conduct a de novo resentencing. The trial court was merely instructed to address the potential merger of [C]ounts 30 and 31, which in fact, it did do. The trial court also addressed the fine, costs and restitution that had previously been ordered by journal entry but not imposed in open court. The trial court has suspended all of the aforementioned financial sanctions.

Thompson’s third assignment of error [failure to make required findings under R.C. 2929.14(C)(4)] had been addressed in *Thompson I* and is, thus, barred by res judicata.

Finally, Thompson’s fourth assignment of error [vindictive sentencing] is also barred by the doctrine of res judicata. In four prior appeals, Thompson has never raised this issue.

*Id.* at ¶ 10-12.

{¶ 20} On November 21, 2018, Thompson filed a “motion to correct a void sentence.” In the motion, Thompson argued, pro se, that his maximum sentences are void pursuant to R.C. 2929.11. Thompson also filed a “motion for resentencing with proper postrelease control notification” on November 26, 2018. In this motion, Thompson argued that the trial court “failed to properly impose the correct term of postrelease control, pursuant to R.C. 2967.28, on each of the multiple counts within his conviction, but only imposed one collective term of postrelease control.”

**{¶ 21}** On April 4, 2019, the trial court denied Thompson’s motion to correct a void sentence, stating:

Defendant’s claim that the trial court failed to comply with R.C. 2929.11 is without merit. A trial court’s general statement that it considered the required statutory factors, without more, is sufficient to fulfill its obligations under the sentencing statutes. *State v. Walker*, 8th Dist. Cuyahoga No. 107368, 2019-Ohio-996, ¶ 9.

**{¶ 22}** On April 12, 2019, the trial court denied Thompson’s motion for resentencing with proper postrelease control notification, stating:

Defendant’s reliance on the trial transcript of the hearing held on March 29, 2016, is misplaced. The March 29, 2016, hearing was not a de novo sentencing hearing that would require the trial court to re-impose postrelease control. In addition, a trial court is not required to impose separate terms of postrelease control for each individual offense. *State v. Parker*, 8th Dist. Cuyahoga No. 106585, 2018-Ohio-3677, ¶ 20.

**{¶ 23}** Thompson now appeals from the trial court’s April 4, 2019, and April 12, 2019 judgment entries.

## **II. Law and Analysis**

### **A. Postrelease Control**

**{¶ 24}** In his first assignment of error, Thompson argues the trial court erred by imposing a collective three-year term of mandatory postrelease control instead of imposing a period of postrelease control separately for each count.

**{¶ 25}** “[A] trial court must provide statutorily compliant notification to a defendant regarding postrelease control at the time of sentencing, including notifying the defendant of the details of the postrelease control and the

consequences of violating postrelease control.” *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 18 (citations omitted).

{¶ 26} Further, “a trial court must incorporate into the sentencing entry the postrelease-control notice to reflect the notification that was given at the sentencing hearing.” (Citations omitted.) *Id.* at ¶ 19.

[T]he sentencing entry must contain the following information: (1) whether postrelease control is discretionary or mandatory, (2) the duration of the postrelease-control period, and (3) a statement to the effect that the Adult Parole Authority (‘APA’) will administer the postrelease control pursuant to R.C. 2967.28 and that any violation by the offender of the conditions of postrelease control will subject the offender to the consequences set forth in that statute.

*State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, ¶ 1.

{¶ 27} If a trial court fails to impose the statutorily mandated term of postrelease control as part of a defendant’s sentence, that part of the sentence is void and must be set aside. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 26. “[V]oid 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.” *Id.* at ¶ 40. Res judicata, however, “still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence.” *Id.*; see also *State v. McGee*, 8th Dist. Cuyahoga No. 104566, 2017-Ohio-1363, ¶ 4, quoting *Fischer* at ¶ 31 (“A motion to correct a void sentence is limited to the narrow function of correcting only an illegal sentence. \* \* \* A motion to correct a void sentence ‘does not permit reexamination of all perceived errors at trial or in other proceedings prior to sentencing.’”).

{¶ 28} On appeal, Thompson contends that the trial court’s imposition of a collective term of postrelease control is not permitted under the Ohio Revised Code and violates the Ohio Supreme Court’s prohibition against the sentencing-package doctrine. Thus, Thompson asserts that “because the trial court only imposed one collective three-year mandatory period of postrelease control on all of the counts in [his] conviction, and that specific term could only have applied to Count 1, the sentences for the remaining counts must be found void and the matter remanded for resentencing.”

{¶ 29} Thompson’s argument is without merit. As explained in *State v. Parker*, 8th Dist. Cuyahoga No. 106585, 2018-Ohio-3677:

[t]his court has previously rejected the argument that a trial court is required to impose separate terms of postrelease control for each individual offense. *See State v. Davis*, 8th Dist. Cuyahoga No. 104574, 2018-Ohio-1147, ¶ 69-70; *State v. Makin*, 8th Dist. Cuyahoga No. 104010, 2017-Ohio-8569, ¶ 6-8; *State v. Byrd*, 8th Dist. Cuyahoga No. 98037, 2012-Ohio-5728, ¶ 3-33; *State v. Orr*, 8th Dist. Cuyahoga No. 96377, 2011-Ohio-6269, ¶ 46-50; *State v. Morris*, 8th Dist. Cuyahoga No. 97215, 2012-Ohio-2498, ¶ 16-18; *see also State v. Reed*, 2012-Ohio-5983, 983 N.E.2d 394, ¶ 12 (6th Dist.) (“[T]he sentencing court only has the duty in multiple offense cases to notify the defendant of and impose the longest term of postrelease control applicable under R.C. 2967.28(B). \* \* \* [T]he trial court need not announce at the sentencing hearing nor include in the sentencing judgment the applicable postrelease control sanction for each individual offense \* \* \*.”). As this court has explained, R.C. 2967.28(F)(4)(c) “precludes the court or parole board from imposing more than one period of postrelease control in cases that involve multiple convictions.” *See Davis* at ¶ 70; *see also* R.C. 2967.28(F)(4)(c), (“If an offender is subject to more than one period of postrelease control, the period of postrelease control for all of the sentences shall be the period of postrelease control that expires last, as determined by the parole board or court. Periods of postrelease control shall be served concurrently and shall not be imposed consecutively to each other.”).

*Id.* at ¶ 20. While Thompson suggests the foregoing precedent is “fatally flawed,” we find no basis to diverge from this court’s well-established assessment of R.C. 2967.28.

**{¶ 30}** In this case, the record reflects that the trial court properly notified Thompson that he was subject to a mandatory three-year period of postrelease control, and that notification was included in the trial court’s sentencing entry. In addition, the trial court properly advised Thompson of the consequences of violating a condition of his postrelease control, and that information was also included in the sentencing entry. Significantly, however, the trial court was not required to pronounce at the sentencing hearing, nor in the sentencing journal entry, the applicable postrelease control sanction for each individual offense. Accordingly, Thompson’s sentence was not void, and the trial court did not err in denying his motion for resentencing with proper postrelease control notification.

**{¶ 31}** Thompson’s first assignment of error is overruled.

### **B. Final, Appealable Order**

**{¶ 32}** In his second assignment of error, Thompson argues that “due to the trial court’s failure to impose [postrelease control] on all 49 counts of his conviction, his judgment entry of sentencing is not a final, appealable order.” Thus, Thompson contends that this court lacks jurisdiction and must remand the matter for resentencing.

**{¶ 33}** Appellate courts generally only have jurisdiction to review “final orders” rendered by the lower courts. Ohio Constitution, Article IV, Section 3(B)(2); *see* R.C. 2505.02.

**{¶ 34}** In a criminal case, a valid judgment of conviction constitutes a final appealable order. R.C. 2505.02(B); *State v. Jackson*, 151 Ohio St.3d 239, 2017-Ohio-7469, 87 N.E.3d 1227, ¶ 11 (“A judgment of conviction qualifies as a final order under R.C. 2505.02(B).”). Under Crim.R. 32(C) and relevant Supreme Court authority, a judgment of conviction constitutes a “final order subject to appeal under R.C. 2505.02 when it sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge’s signature, and (4) the time stamp indicating the entry upon the journal by the clerk.” *State v. White*, Slip Opinion No. 2019-Ohio-1215, ¶ 13, quoting *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus. In addition, “a valid judgment of conviction requires a full resolution of any counts for which there were convictions.” *Jackson* at ¶ 11, citing *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, 127 Ohio St.3d 29, 2010-Ohio-4728, 936 N.E.2d 41, ¶ 2; *State ex rel. Rose v. McGinty*, 128 Ohio St.3d 371, 2011-Ohio-761, 944 N.E.2d 672, ¶ 3.

**{¶ 35}** Preliminarily, we note that even if the trial court had imposed an illegal term of postrelease control as Thompson suggests, this court would not be deprived of jurisdiction to consider and correct the error. *Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, at ¶ 39. “In fact, R.C. 2953.08(G)(2)(b) expressly authorizes a reviewing court to modify or vacate any sentence that is

‘contrary to law.’ Clearly, no such authority could exist if an unlawful sentence rendered a judgment nonfinal and unappealable.” *Id.*

**{¶ 36}** Nevertheless, we find no merit to Thompson’s contention that “there was never a final, appealable order.” Within this assignment of error, Thompson reiterates the postrelease control arguments set forth in the first assignment of error and contends that by failing to impose separate terms of postrelease control for each individual offense, the trial court “failed to fully dispose of all 49 counts of [his] conviction.” In rejecting a similar argument, this court has explained:

Finally, appellant’s argument that the sentencing entry is not a final, appealable order because a separate period of postrelease control was not imposed on Count 15 is incorrect. Only one term of postrelease control needs to and should be imposed where there are multiple, varying lengths that apply.

*State ex rel. Williams v. Corrigan*, 8th Dist. Cuyahoga No. 108789, 2019-Ohio-3779, ¶ 11, citing R.C. 2967.28(F)(4)(c); *Durain v. Sheldon*, 122 Ohio St.3d 582, 2009-Ohio-4082, 913 N.E.2d 442; *State v. Walker*, 8th Dist. Cuyahoga No. 106571, 2019-Ohio-2211, ¶ 16, citing *State v. Reed*, 2012-Ohio-5983, 983 N.E.2d 394, ¶ 12 (6th Dist.).

**{¶ 37}** In this case, the trial court’s sentencing entry complied with the requirements of Crim.R. 32(C), disposed of all pending matters in the underlying criminal case, and therefore, constituted a final, appealable order. *State v. Brown*, 2d Dist. Montgomery No. 25653, 2014-Ohio-2551, ¶ 22-23.

**{¶ 38}** Thompson’s second assignment of error is overruled.

### C. Maximum Prison Terms

{¶ 39} In his third assignment of error, Thompson argues his sentence is void and contrary to law because the trial court imposed maximum prison terms without proper consideration of R.C. 2929.11 and 2929.12. Given his age and the length of his total sentence, Thompson contends that the trial court essentially imposed “a life sentence for non-violent crimes.” Under such circumstances, Thompson asserts that “the sentence handed down by the trial court is beyond what is necessary to protect the public and to punish the offender.”

{¶ 40} Under the doctrine of res judicata,

a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that “was raised or could have been raised” by the defendant at trial, which resulted in that judgment of conviction, or on an appeal from that judgment.

*State v. Jalloh*, 10th Dist. Franklin No. 13AP-411, 2014-Ohio-2730, ¶ 7, quoting *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967). “Although res judicata does not preclude review of a void sentence, the doctrine ‘still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence.’” *Jalloh* at ¶ 7, quoting *Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, at paragraph three of the syllabus.

{¶ 41} Although Thompson characterizes his sentence as void, the Ohio Supreme Court has expressed that a challenge to the trial court’s compliance with R.C. 2929.11 and 2929.12 must be presented in a timely direct appeal or it is waived. *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 8.



{¶ 42} In this case, Thompson challenged the length of the prison term imposed by the trial court in *Thompson I*. Ultimately, this court rejected Thompson’s arguments, finding (1) Thompson failed to demonstrate that “any of the sentences fell outside the statutory range for the applicable degree of felony,” (2) the trial court made the necessary findings for imposing consecutive sentences pursuant to R.C. 2929.14(C)(4), and (3) the trial court had no obligation to sentence Thompson similarly to his codefendants. *Thompson I*, 8th Dist. Cuyahoga No. 99628, 2014-Ohio-202, at ¶ 22-26.

{¶ 43} We recognize that this court did find that Thompson’s convictions for telecommunications fraud and identity fraud in Counts 30 and 31 were allied offenses of similar import and should have merged for sentencing. “When a cause is remanded to a trial court to correct an allied-offenses sentencing error, the trial court must hold a new sentencing hearing for the offenses that remain after the state selects which allied offense or offenses to pursue.” *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 7. It is well settled that although a remand for a new sentencing hearing anticipates a de novo sentencing, there are a number of limitations that inherently narrow the scope of that particular resentencing hearing. *Id.* at ¶ 15. “[O]nly the sentences for the offenses that were affected by the appealed error are reviewed de novo; the sentences for any offenses that were not affected by the appealed error are not vacated and are not subject to review” by the trial court. *Id.*, citing *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846

N.E.2d 824, paragraph three of the syllabus. *See also State v. Grayson*, 8th Dist. Cuyahoga No. 106578, 2019-Ohio-864.

**{¶ 44}** “The doctrine of res judicata does not bar a defendant from objecting to issues that arise at the resentencing hearing or from the resulting sentence.” *Id.* at ¶ 30. Specifically, the Ohio Supreme Court explained that a defendant may challenge the trial court’s consideration of R.C. 2929.11 when fashioning the new sentence. *Id.* at ¶ 31. However, the scope of an appeal from the new sentencing hearing is limited to issues that arose at the new sentencing hearing. *Id.* at ¶ 30, citing *Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, at ¶ 40 (“The scope of an appeal from a new sentencing hearing is limited to issues that arise at the new sentencing hearing.”).

**{¶ 45}** Based on the foregoing, it is evident that Thompson was permitted to challenge issues that arose during his March 29, 2016 resentencing hearing. Thus, while law of the case and principles of res judicata applied to those convictions and sentences that were affirmed and unaffected by the limited remand in *Thompson I*, Thompson could have disputed the trial court’s compliance with R.C. 2929.11 and 2929.12 when it imposed a sentence on the remaining identity fraud offense. In this case, however, the record reflects that Thompson did not challenge the trial court’s compliance with the requirements of R.C. 2929.11 and 2929.12 in his appeal from the resentencing hearing. *See Thompson IV*, 8th Dist. Cuyahoga No. 105866, 2018-Ohio-179. Because Thompson’s present claim could have and should have been raised in his previous appeal, it is now barred by the doctrine of res judicata. *See*

*State v. Ray*, 8th Dist. Cuyahoga No. 101142, 2014-Ohio-4689, ¶ 11 (challenges to the trial court's consideration of R.C. 2929.11 and 2929.12 are barred by res judicata).

{¶ 46} Thompson's third assignment of error is overruled.

{¶ 47} Judgment affirmed.

It is ordered that 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 is terminated. Case remanded to the trial court for execution of sentence.

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

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EILEEN T. GALLAGHER, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and  
SEAN C. GALLAGHER, J., CONCUR