[Cite as *State v. Cunningham*, 2012-Ohio-2782.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 11AP-989
v.	:	(C.P.C. No. 99CR-06-3468)
Anthony J. Cunningham,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 21, 2012

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

Anthony Cunningham, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, Anthony J. Cunningham, appeals from two judgments of the Franklin County Court of Common Pleas. For the following reasons, we affirm.

Factual and Procedural Background

{¶ 2} In 1999, a Franklin County Grand Jury indicted appellant with four counts of forcible rape of a girl under the age of 13 as well as counts of kidnapping and gross sexual imposition. A jury found him guilty of all charges. At sentencing, the trial court sentenced him to concurrent sentences of life for each rape conviction, ten years for his kidnapping conviction, and five years for his gross sexual imposition convictions. The trial court also classified appellant as a sexual predator. The trial court's sentencing entry, however, erroneously indicated that appellant received ten-year sentences for his rape and kidnapping convictions. This court affirmed his convictions and his sexual predator classification. *State v. Cunningham*, 10th Dist. No. 00AP-67 (Sept. 21, 2000).

{¶ 3} In 2001, the State asked the trial court to amend its sentencing entry to change the ten-year sentences appellant received in that entry for his rape convictions to life sentences. The State argued that the trial court did impose life sentences and was required to impose life sentences for appellant's rape convictions because the victim of appellant's offenses was under the age of 13 at the time of the offenses. R.C. 2907.02(B). The trial court agreed and changed appellant's rape sentences in a "Corrected Judgment Entry" filed May 23, 2001. Also in that entry, however, the trial court erroneously changed appellant's kidnapping sentence to a life sentence. In a "Second Corrected Judgment Entry" filed shortly thereafter, the trial court corrected its "Corrected Judgment Entry" to reflect that appellant received a ten-year sentence for his kidnapping conviction and not a life sentence.

{¶ 4} In 2011, after a variety of unsuccessful challenges to his convictions, appellant filed two motions in the trial court: (1) a "Motion to Remove Stay, Remove Tier Classification, and Proceed with a Proper Classification Hearing" pursuant to R.C. 2950.09 as the law in effect in 1999; and a (2) "Motion to Discharge for Improper Use of Nunc Pro Tunc Entries, or a Lawful Remedy." The trial court denied both of those motions in separate judgment entries. Appellant appeals from both of those entries.

Appellant's Assignments of Error—Res Judicata

{¶ 5} Appellant assigns six assignments of error for our review. However, all of those assignments of error address either his 1999 sexual predator classification or the amended sentencing entries the trial court filed in 2001. These claims are all barred by res judicata. Under the doctrine of res judicata, a final judgment 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 the defendant raised or could have raised at trial or on appeal. *State v. Brown*, 167 Ohio App.3d 239, 2006-Ohio-3266, ¶ 7 (10th Dist.), citing *State v. Szefcyk*, 77 Ohio St.3d 93, 96 (1996).

{¶ 6} This court affirmed appellant's sexual predator classification in 2000. *Cunningham*. The issues he raises in this appeal about that classification could have been raised in that direct appeal. Having failed to do so, res judicata bars appellant from litigating those issues now. *State v. Horch*, 3d Dist. No. 14-07-47, 2008-Ohio-1484, ¶ 10; *State v. Dodson*, 10th Dist. No. 03AP-306, 2004-Ohio-581, ¶ 13.

{¶ 7} Appellant's arguments about the trial court's use of amended sentencing entries are similarly barred. The trial court filed two amended sentencing entries in 2001. These entries are more accurately described as nunc pro tunc entries because the trial court corrected the entries to reflect the sentences the court actually imposed at appellant's sentencing hearing. *State v. Spears*, 8th Dist. No. 94089, 2010-Ohio-2229, ¶ 10, citing *Dean v. Maxwell*, 174 Ohio St. 193, 198 (1963) (nunc pro tunc entry may be used to correct a sentencing entry to reflect the sentence the trial court imposed upon a defendant at a sentencing hearing).

{¶ 8} Appellant did not file an appeal from either of those nunc pro tunc entries nor did he file a motion for delayed appeal in this court. *See State ex rel Petty v. Portgage County Court of Common Pleas*, 11th Dist. No. 97-P-0041 (Oct. 17, 1997) (defendant could challenge nunc pro tunc entries in original appeal or through a direct or delayed appeal depending on substance of nunc pro tunc entries). Nor did he raise these issues in any of his previous appeals to this court. In fact, in 2010, appellant filed in the trial court a motion to impose a valid sentence. He argued, in part, that his sentences were void because the trial court did not properly impose post-release control. He did not challenge the trial court's use of nunc pro tunc entries. The trial court denied the motion. On appeal, this court rejected his challenge to the sentencing entries and affirmed. *State v. Cunningham*, 10th Dist. No. 10AP-452, 2011-Ohio-2045. Significantly, in an appeal that directly attacked his sentencing entries, appellant did not raise any challenges to the trial court's use of nunc pro tunc entries. *See State v. Nelson*, 8th Dist. No. 95420, 2010-Ohio-6032, ¶ 13 (res judicata barred defendant's sentencing arguments where defendant did not raise arguments in previous appeals). For all these reasons, res judicata also bars these claims he now seeks to present.

{¶ 9} Res judicata bars our consideration of appellant's six assignments of error. Accordingly, we overrule those assignments of error and affirm the judgments of the Franklin County Court of Common Pleas.

Judgments affirmed.

BRYANT and TYACK, JJ., concur.