

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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|----------------------|---|------------------------|
| State of Ohio, | : | |
| | : | No. 14AP-1003 |
| Plaintiff-Appellee, | : | (C.P.C. No. 12CR-2469) |
| v. | : | |
| | : | (REGULAR CALENDAR) |
| Jeremy L. Chapin, | : | |
| | : | |
| Defendant-Appellant. | : | |

D E C I S I O N

Rendered on July 28, 2015

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*,
for appellee.

Yeura R. Venters, Public Defender, and *Emily L. Huddleston*,
for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} This is an appeal by defendant-appellant, Jeremy L. Chapin, from a judgment of the Franklin County Court of Common Pleas denying his motion for resentencing.

{¶ 2} On May 16, 2012, appellant was indicted on four counts of aggravated vehicular assault, in violation of R.C. 2903.08, and two counts of operating a vehicle while under the influence of alcohol or drugs, in violation of R.C. 4511.19. On October 8, 2013, appellant entered a guilty plea to one count of aggravated vehicular assault, a felony of the third degree, one count of aggravated vehicular assault, a felony of the fourth degree, and

one count of operating a vehicle under the influence of alcohol or drugs, a misdemeanor of the first degree.

{¶ 3} The trial court conducted a sentencing hearing on November 15, 2013. By judgment entry filed November 19, 2013, the trial court sentenced appellant to two years incarceration on the third-degree aggravated vehicular assault conviction, and six months incarceration on the misdemeanor conviction for operating a vehicle under the influence of alcohol or drugs, with those sentences to be served consecutively to each other. The trial court imposed a five-year period of community control for the fourth-degree aggravated vehicular assault conviction. Appellant did not appeal his sentence.

{¶ 4} On October 15, 2014, appellant filed a motion for resentencing, asserting in part that his sentence was void because the trial court failed to make requisite findings under R.C. 2929.14(C). On October 30, 2014, the state filed a memorandum contra appellant's motion for resentencing. By entry filed November 6, 2014, the trial court denied appellant's motion, holding in part that appellant's claims "are untimely and barred by res judicata."

{¶ 5} On appeal, appellant sets forth the following assignment of error for this court's review:

The trial court erred by failing to reconsider consecutive sentences imposed without first making findings required by R.C. 2929.14(C)(4) and *State v. Bonnell*, 140 Ohio St.3d 209; 2014-Ohio-3177, 16 N.E.3d 659.

{¶ 6} Under his single assignment of error, appellant contends the trial court failed to comply with the requirements of R.C. 2929.14(C)(4) in order to impose consecutive terms of imprisonment. Appellant argues that the trial court's failure to make requisite statutory findings requires this court to remand the matter for re-sentencing pursuant to the Supreme Court of Ohio's decision in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177.

{¶ 7} As noted, in denying appellant's motion for resentencing, the trial court held in part that res judicata barred his claim. 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 claimed lack of due process that "was raised or could have been raised by the defendant

at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment." *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus. Further, "[i]t is well-settled that, 'pursuant to *res judicata*, a defendant cannot raise an issue in a [petition] for postconviction relief if he or she could have raised the issue on direct appeal.' " *State v. Elmore*, 5th Dist. No. 2005-CA-32, 2005-Ohio-5940, ¶ 21, quoting *State v. Reynolds*, 79 Ohio St.3d 158, 161 (1997).

{¶ 8} In the instant case, appellant's claim that the sentencing court erred in imposing consecutive sentences could have been raised in a direct appeal from his conviction.¹ See *State v. Adams*, 10th Dist. No. 14AP-623, 2015-Ohio-868, ¶ 8 (defendant's claim that the trial court erred by failing to make the findings required by R.C. 2929.14(C)(4) before imposing consecutive sentences could have been raised in his direct appeal, and thus "any further review of defendant's sentence is barred by *res judicata*"); *State v. Petitto*, 8th Dist. No. 99893, 2013-Ohio-5435, ¶ 13 (defendant's claim that trial court imposed consecutive sentences without making appropriate findings "could have and should have been raised in a timely filed appeal" from trial court's sentencing entry, and therefore "this claim is now barred by the doctrine of *res judicata*"); *State v. Ferrell*, 5th Dist. No. 2013CA00121, 2013-Ohio-5521, ¶ 15 ("Appellant either raised or could have raised arguments regarding the appropriateness of consecutive sentences * * * during his direct appeal. Accordingly, any such argument is barred under the doctrine of *res judicata*.").

{¶ 9} We note that, in his motion for resentencing, appellant argued before the trial court that the sentencing court's failure to make the requisite findings under R.C. 2929.14(C)(4) rendered his sentence void. However, "[t]he Ohio Supreme Court has declined to find sentences void based on the court's failure to comply with certain sentencing statutes, including the consecutive sentencing statute." *State v. Sanders*, 9th Dist. No. 27189, 2014-Ohio-5115, ¶ 5, citing *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, ¶ 8 (noting that challenges to a sentencing court's judgment as to whether sentences must be served concurrently or consecutively must be presented in a timely direct appeal). Thus, because the trial court's "alleged failure to comply with the

¹ In his appellate brief, appellant cites a number of cases in which this court has remanded causes for resentencing where the trial court failed to make required findings under R.C. 2929.14(C)(4). The cases cited by appellant, however, involved direct appeals from a trial court's judgment of conviction and sentence.

consecutive sentencing statute does not render [the] sentence void, res judicata applies." *Id.* at ¶ 6.

{¶ 10} Based on the foregoing, we conclude the trial court properly determined that appellant's claim was barred by res judicata. Accordingly, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BRUNNER and HORTON, JJ., concur.
