

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 15AP-519 (C.P.C. No. 06CR10-8156)
Rodney D. Radford,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 8, 2015

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

Rodney D. Radford, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, Rodney D. Radford, appeals from a judgment of the Franklin County Court of Common Pleas denying his "Motion for Re-Sentencing Based on Void Judgment." For the following reasons, we affirm that judgment.

I. Factual and Procedural Background

{¶ 2} In 2007, appellant pled guilty to one count of aggravated robbery with a firearm specification. The trial court accepted his guilty plea, found him guilty, and sentenced him to nine years in prison and a mandatory five-year period of post-release control. Appellant did not appeal his conviction or sentence.

{¶ 3} In 2015, however, appellant filed a "Motion for Re-Sentencing Based on Void Judgment." Appellant argued that his sentence was void because the trial court failed to explain to him the consequences if he violated his post-release control and that if

he failed to pay court costs, he could be ordered to perform community service. The trial court denied his motion on the merits and also on res judicata grounds. On the merits, the trial court noted that it advised appellant of the consequences for violating post-release control and that appellant signed multiple documents advising him of those consequences. The trial court conceded that it did not advise appellant of the possibility of community service if he failed to pay court costs but, noted that because the trial court sentenced appellant to a prison term, the advisement was not needed. The trial court also held that res judicata barred his claims because they could have been raised in a direct appeal from his conviction but were not.¹

II. The Appeal

{¶ 4} Appellant appeals and assigns the following errors:

[1.] The Trial Court erred as a matter of law, and abused its discretion, when it failed to Re-sentence Defendant-Appellant, where the Trial Court failed to comply with separation-of-powers concerns and to fulfill the requirements of Post-Release Control Sentencing Statutes, especially R.C. 2929.19(B) and R.C. 2967.28 where a Trial Court must provide statutorily compliant notification to a Defendant-Appellant regarding Post-Release Control at the time of "Sentencing," including notifying the Defendant-Appellant of the details of the Post-Release Control and the consequences of violating Post-Release Control, and incorporate into its Judgment of Conviction.

[2.] The Trial Court erred as a matter of law, and abused its discretion, when it failed to Re-Sentence the Defendant-Appellant as Statutorily required, when it failed to notify the Defendant-Appellant at the "Sentencing Hearing," "that failure to pay Court costs [c]ould result in the Trial Court Ordering the Defendant-Appellant to perform Community Service "until the Judgment is paid or until the Court is satisfied that the Defendant-Appellant is in compliance with the approved schedule."

¹ Although the state argues that the trial court should have construed appellant's motion as an untimely petition for post-conviction relief, it declined to do so. We will treat the motion as the trial court did and address the merits of the motion. *State v. Pippen*, 4th Dist. No. 14CA3595, 2014-Ohio-4454, ¶ 10-12; *State v. Cockroft*, 10th Dist. No. 13AP-532, 2014-Ohio-1644, ¶ 7; *State v. Cunningham*, 10th Dist. No. 10AP-452, 2011-Ohio-2045.

A. Res Judicata

{¶ 5} Preliminarily, we note that the doctrine of res judicata bars the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, ¶ 59, citing *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus. An exception to the application of res judicata applies to void judgments. *State v. Mitchell*, 187 Ohio App.3d 315, 2010-Ohio-1766, ¶ 22, fn. 1 (6th Dist.), citing *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, ¶ 30; *State v. Ragland*, 10th Dist. No. 13AP-451, 2014-Ohio-798, ¶ 14 ("res judicata does not preclude review of a "void" sentence").

B. Imposition of Post-Release Control

{¶ 6} To avoid the application of res judicata, appellant argues in his first assignment of error that his sentence is void because the trial court did not properly notify him of the consequences for violations of post-release control. When a defendant is subject to mandatory post-release control, the trial court must notify the offender of the mandatory nature of the term of post-release control and the length of that mandatory term and incorporate that notification into its entry. *State v. Holloman*, 10th Dist. No. 14AP-419, 2014-Ohio-5763, ¶ 11, citing *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, ¶ 69. A sentence that does not include the statutorily mandated term of post-release control is void. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, paragraph one of the syllabus. Thus, res judicata does not bar consideration of appellant's claim. *State v. Cunningham*, 10th Dist. No. 10AP-452, 2011-Ohio-2045, ¶ 19. He must still demonstrate, however, that his sentence actually was void. *Id.* If not, then res judicata bars the claim. *Ragland* at ¶ 18.

{¶ 7} On the merits, appellant does not claim that the trial court failed to notify him of the consequences for violations of post-release control.² Instead, he argues that his sentence is void only because the trial court failed to properly incorporate those consequences into his judgment of conviction. This court has recently considered and

² We presume that the trial court properly advised appellant at sentencing of post-release control because appellant has not filed a transcript of that hearing. *State v. Myers*, 10th Dist. No. 11AP-909, 2012-Ohio-2733, ¶ 12 fn. 1. That advisement, coupled with the "Notice (Prison Imposed)" and "Entry of Guilty Plea" forms that appellant signed, as well as the "applicable periods" language in his sentencing entry, are the same notifications that we generally find sufficient for a trial court to properly impose post-release control. *Id.*; *Cunningham* at ¶ 15-18 (citing cases).

rejected the same argument, noting there is no authority to support the proposition that the failure of a trial court to place a verbatim recitation of the consequences of a violation of post-release control in a sentencing entry renders the sentence void. *Ragland* at ¶ 18, citing *State v. Dedonno*, 8th Dist. No. 94732, 2010-Ohio-6361, ¶ 12. Therefore, because appellant cannot demonstrate that his sentence was void, res judicata bars this claim. *Id.* Accordingly, we overrule appellant's first assignment of error.

C. The Consequences of a Failure to Pay Court Costs

{¶ 8} Appellant also alleges that his sentence is void because the trial court did not inform him of the possible consequences should he fail to pay court costs. This claim is also barred by res judicata, as it would not make his sentence void and could have been raised in a direct appeal. *State v. Huddleston*, 10th Dist. No. 12AP-512, 2013-Ohio-2561, ¶ 12 (res judicata barred same claim); *State v. Graham*, 12th Dist. No. CA2014-04-062, 2015-Ohio-576, ¶ 16 (same). Accordingly, we overrule appellant's second assignment of error.

III. Conclusion

{¶ 9} Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and BRUNNER, JJ., concur.
