

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BROWN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-12-045
- vs -	:	<u>OPINION</u>
	:	7/26/2010
WILLIAM H. REDWINE, JR.,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. 2004-2136

Jessica Little, Brown County Prosecuting Attorney, Mary McMullen, 200 East Cherry Street, Georgetown, Ohio 45121, for plaintiff-appellee

William H. Redwine, Jr., 26 West Columbia Avenue, Cincinnati, Ohio 45215, defendant-appellant, pro se

RINGLAND, J.

{¶1} Defendant-appellant, William Redwine, appeals his conviction for felonious assault from the Brown County Court of Common Pleas.

{¶2} On June 16, 2006, appellant was found guilty of felonious assault in violation of R.C. 2903.11(A)(1). Appellant was sentenced on August 9, 2006 to five years in prison. Appellant's conviction was affirmed by this court in *State v. Redwine*, Brown App. No. CA2006-08-011, 2007-Ohio-6413. Appellant filed an App.R. 26(B) motion to reopen, which was denied by this court on September 4, 2008 and by the

Ohio Supreme Court on December 31, 2009.

{¶13} On December 3, 2009, appellant filed a motion for resentencing to correct a void judgment. The trial court determined that appellant was not informed that he was subject to a mandatory three-year period of postrelease control. The trial court resentenced appellant to four years in prison and granted judicial release on the court's own motion. Appellant timely appeals, raising three assignments of error.

{¶14} Assignment of Error No. 1:

{¶15} "APPELLANT WAS DENIED A FUNDAMENTALLY FAIR TRIAL WHERE THE STATE INTRODUCED CUMULATIVE EVIDENCE OF APPELLANT'S AGGRESSIVE CONDUCT TOWARD THIRD PARTIES AS PROOF OF APPELLANT'S PROPENSITY FOR VIOLENCE IN ORDER TO SHOW THAT HE ACTED IN CONFORMITY THEREWITH ON THIS OCCASION."

{¶16} Assignment of Error No. 2:

{¶17} "APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO CONFRONT AND CROSS-EXAMINE THE STATE'S WITNESS AGAINST HIM WHERE THE STATE INTRODUCED INTO EVIDENCE THE OUT-OF-COURT STATEMENT OF DR. REDDY AS PROOF THAT LINEAR BRUISE FOUND ON THE ALLEGED VICTIM WAS CAUSED BY SOME SORT OF DEADLY WEAPON."

{¶18} Assignment of Error No. 3:

{¶19} "APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHERE COUNSEL FAILED TO SUBJECTED [sic] THE FOREGOING PREJUDICIAL ERRORS TO ANY MEANINGFUL ADVERSARIAL TESTING."

{¶110} In the instant appeal, appellant raises three arguments contesting aspects of his original trial. Appellant urges that he may bring the foregoing assignments of error

because his original conviction was void based upon the court's failure to properly impose postrelease control. As a result, appellant argues that he is authorized to submit the foregoing assignments of error on direct appeal.

{¶11} We disagree with appellant's analysis of the proceedings and belief that his original sentence was void. Specifically, appellant was sentenced following the enactment of R.C. 2929.191. R.C. 2929.191 provides a procedure for the sentencing court to correct sentences that fail to properly impose the term of postrelease control. At the original sentencing hearing, the trial court failed to properly instruct appellant regarding postrelease control. During sentencing, the trial court instructed appellant that following his prison sentence he would be subject to postrelease control "up to three years." However, the term of postrelease control for felonious assault was a mandatory three years.

{¶12} Although appellant was incorrectly instructed regarding postrelease control, his original sentence was not void. See *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434. R.C. 2929.191(C) allows a sentencing court to conduct a hearing and issue a new entry to correct the judgment of conviction. *Id.* at ¶34-35. Appellant was correctly instructed of the mandatory three-year term of postrelease control at the resentencing hearing in this case.

{¶13} We recognize that the trial court conducted a full resentencing hearing in this case, which resulted in a reduction of appellant's prison term. Rather than fully resentence appellant, the trial court could have simply corrected any omission relating to the terms of postrelease control by conducting a hearing under R.C. 2929.191(C). Further, although the trial court modified appellant's sentence, the resentencing does not change the fact that appellant's original conviction was never void. We will not disturb the trial court's decision to modify appellant's sentence in the instant case since

the state failed to appeal that matter.

{¶14} Accordingly, since the original sentence and conviction were not void, appellant is estopped from raising the instant assignments of error as a second direct appeal. "The doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel." *State ex rel. Schacter v. Ohio Pub. Emps. Retirement Bd.* 121 Ohio St.3d 526, 2009-Ohio-1704, ¶27. "Claim preclusion prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action." *Id.* "The previous action is conclusive for all claims that were or could have been litigated in the first action." *Id.* The foregoing issues raised by appellant could have been pursued in his direct appeal, yet he failed to do so. Accordingly, the assignments of error raised in the instant matter are overruled on the basis of res judicata.

{¶15} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.