

[Cite as *State v. MacConnell*, 2009-Ohio-5745.]

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 08CA0069
vs.	:	T.C. CASE NO. 05CR0919
RION T. MAC CONNELL	:	
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 30th day of October, 2009.

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GRADY, J.:

{¶ 1} Defendant, Rion T. MacConnell, appeals from a judgment of the common pleas court that denied Defendant's motion to correct his sentence, on Defendant's contention that his sentence is void.

{¶ 2} On March 30, 2006, after having convicted Defendant

on his pleas of no contest of receiving stolen property, R.C. 2913.51(A), and possession of criminal tools, R.C. 2923.24(A), both fifth degree felonies, the court imposed available twelve-month prison terms for each of those offenses, to be served consecutively. We affirmed Defendant's conviction and sentence on direct appeal on April 27, 2007. *State v. MacConnell*, Greene App. No. 06CA56, 2007-Ohio-2107.

{¶ 3} On August 13, 2008, Defendant filed a motion asking the trial court to correct his sentence. Defendant argued that the sentence is void because the court, when imposing the sentence, failed to engage in the "consistency analysis" required by R.C. 2929.11(B). The trial court denied the motion, finding that it did consider the matters that R.C. 2929.11 required it to. Defendant appeals from that judgment.

{¶ 4} Defendant relies on the same contention regarding his sentence on appeal, arguing that because his sentence is void the trial court erred in denying his motion to "correct" his sentence.

{¶ 5} The State argues that Defendant's claim that his sentence is void, which is presented in both his motion and in this appeal, are barred by res judicata because that claim was not argued in the prior appeal. The doctrine of res judicata applies when a prior valid, final judgment exists. *Grava v.*

Parkman (1995), 73 Ohio St.3d 379. A void judgment is, per se, not valid. An appellate court's judgment affirming a void judgment of a trial court would likewise lack validity. Therefore, res judicata does not preclude Defendant's claim that his sentence is void.

{¶ 6} "Any attempt by a court to disregard statutory requirements when imposing a sentence renders the attempted sentence a nullity or void." *State v. Beasley* (1984), 14 Ohio St.3d 74, 75. Courts have inherent power to vacate their own void judgments. *Patton v. Diemer* (1988), 35 Ohio St.3d 68.

{¶ 7} In *Beasley*, the sentencing court failed to impose a prison sentence mandated by statute for the felonious assault offenses of which the defendant was convicted. R.C. 2919.11 contains no such mandate with respect to a sentence the court imposes for a felony offense.

{¶ 8} R.C. 2929.11(A) identifies the policy purposes and principles by which the court "shall be guided" in selecting a sentence from the available statutory range of sentences. R.C. 2929.11(B) states:

{¶ 9} "A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the

offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders." (Emphasis supplied.)

{¶ 10} R.C. 2911.11 sets up no particular exercise in which the sentencing court must engage to demonstrate compliance with the values in division (B) of that section, including consistency with other sentences. Applying the presumption of correctness that proceedings in the trial court are afforded, we have held that when the court states it has considered those matters, compliance with R.C. 2929.11 is presumed. *State v. Lewis*, Greene App. No. 06CA0119, 2007-Ohio-6607, at ¶7.

{¶ 11} When the court imposed Defendant's sentences on March 30, 2006, the court stated that it had "considered . . . the purposes and principles of sentencing." (T. 4). No more than that was necessary to demonstrate compliance, though a failure to state that recitation would not render a sentence void. Rather, any defect in consistency would render a sentence merely voidable, on a finding that the court abused the discretion imposed on it by R.C. 2929.11(B). The party claiming inconsistency has the burden to prove the inconsistency. *State v. Dunn*, Allen App. No. 1-02-98, 2003-Ohio-4353. Defendant has not offered such proof.

{¶ 12} The trial court did not err when it found Defendant's

sentence is not void for the reason he claims, and denied his motion on that basis. The assignment of error is overruled.

The judgment of the trial court will be affirmed.

FROELICH, J. And WOLFF, J. concur.

(Hon. William H. Wolff, Jr., retired from the Second District, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

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