

[Cite as *State v. Thompson*, 2015-Ohio-1984.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 26364
	:	
v.	:	T.C. NO. 09CR1237
	:	
RYAN K. THOMPSON	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

.....
OPINION

Rendered on the 22nd day of May, 2015.

.....

MICHELE D. PHIPPS, Atty, Reg. No. 0069829, Assistant Prosecuting Attorney, 301 W.
Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

RYAN K. THOMPSON, Inmate #705-233, Chillicothe Correctional Institution, P. O. Box
5500, Chillicothe, Ohio 45601
Defendant-Appellant

.....

DONOVAN, J.

{¶ 1} This matter is before the Court on the pro se Notice of Appeal of Ryan K. Thompson, filed August 25, 2014. Thompson appeals from the August 1, 2014 decision of the trial court that overruled his pro se “Motion for Resentencing Based on Void

Judgment,” filed July 29, 2014. We hereby affirm the judgment of the trial court.

{¶ 2} Thompson was convicted, following a jury trial, on one count of possession of crack cocaine, in violation of R.C. 2925.11(A), a felony of the second degree. He received a mandatory sentence of four years in prison, he was ordered to pay a fine of \$10,000.00, and the trial court suspended his driver’s license for four years. The court further advised Thompson that he was subject to three years of post-release control supervision after his release from imprisonment. Thompson appealed, and this Court affirmed his conviction on September 24, 2010. *State v. Thompson*, 2d Dist. Montgomery No. 23581, 2010-Ohio-4535.

{¶ 3} Thompson filed his re-sentencing motion on July 29, 2014. Therein he asserted that his sentence is void since the trial court failed to comply with R.C. 2947.23. The version of the statute in effect at the time of Thompson’s sentencing provides as follows:

(A)(1) In all criminal cases, * * * the judge or magistrate shall include in the sentence the costs of prosecution, including any costs under section 2947.231 of the Revised Code, and render a judgment against the defendant for such costs. At the time the judge or magistrate imposes sentence, the judge or magistrate shall notify the defendant of both of the following:

(a) If the defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service

in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule.

{¶ 4} In overruling his July 29, 2014 motion, the court indicated, “having been advised that the Defendant has completed his sentence in this matter, his Motion for Resentencing is OVERRULED.”

{¶ 5} Thompson asserts one assigned error herein as follows:

THE TRIAL COURT ERRED ABUSED ITS DISCRETION, WHEN THE TRIAL COURT ERRED AS A MATTER OF LAW AND ENTERED A VOID JUDGMENT, WHEN THE TRIAL COURT FAILED TO COMPLY WITH STATUTORY REQUIREMENTS OF R.C. 2947.23(A)(1)(a) TO NOTIFY THE DEFENDANT-APPELLANT THAT HE COULD BE ORDERED TO PERFORM COMMUNITY SERVICE IN LIEU OF COURT COSTS, IN CASE NO. 2009-CR-01237 AND CASE NO. 2014-CR-00473 WHEN BOTH CASES ARE BEING SERVED CONCURRENTLY.

{¶ 6} We note that attached to Thompson’s brief is a copy of a judgment entry of conviction, dated April 23, 2014, in Case No. 2014 CR 00473, which provides that Thompson pled guilty to having weapons while under disability (prior drug conviction), a felony of the third degree, and trafficking in cocaine, a felony of the fifth degree, and that the trial court imposed a sentence of 12 months on each count, to be served concurrently with each other and concurrently with the sentence imposed in 2009-CR-1237.

{¶ 7} Thompson asserts that at “the time of Sentencing on April 23rd, 2014 the Trial Court imposed Court Costs and failed to Notify the Defendant he could be Ordered

to perform Community Service in lieu of Costs, but, ran case No. 2014-CR-00473, and Case No. 2009-CR-01237 to be served concurrently with one another.” He argues that this Court “should Remand for Re-Sentencing with instructions For both case numbers above, for the Trial Court to fully comply with R.C. 2947.23(A)(1)(a).” He further asserts: “Because, Appellant has completed his sentence on Case No. 2009-CR-01237 and the Trial court ran the completed sentence concurrently with Case No. 2014-CR-00473 this Court should Remand to waive Costs in the latest Case No. 2014-CR-00473 and dismiss the costs in Case No. 2009-CR-01237, because this Case No. cannot be rectified.” Finally, Thompson asserts as follows:

A review of Appellant’s Tuesday, April 23rd, 2014 at 9:47 am sentencing transcripts, will reflect Trial Counsel’s ineffectiveness on page 3, line 9-11, attached hereto as Exhibit – D, when Mr. Weller misadvice (sic) to the Trial Court, “to be run concurrently with the time he’s doing in 09-CR-1237,” caused prejudice to Appellant by the Court’s imposing the costs without the proper notification in lieu of costs, and his failure to object to Statutory Requirements at “Sentencing” in both cases.

In the case at hand, the Appellant Respectfully states that the Trial Court’s findings on August 1st, 2014 is contrary to law and this Honorable Court should Reverse and Remand, so that the Trial Court can comply with the mandatory requirements of the Ohio Revised Code during Re-sentencing.

{¶ 8} To the extent that Thompson asserts that the trial court erred in failing to comply with R.C. 2947.23 when sentencing him in Case No. 2009 CR 01237, we agree

with the State that his argument is barred by the doctrine of res judicata. As this Court has previously noted:

* * * “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 any 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, 226 N.E.2d 104 (1967), paragraph nine of the syllabus.

State v. Howard, 2d Dist. Montgomery No. 26069, 2014-Ohio-4602, ¶ 9.

We further note that the Supreme Court of Ohio, in *State v. Smith*, 131 Ohio St.3d 297, 2012-Ohio-781, 964 N.E.2d 423, ¶ 10, held that “the time to appeal a trial court’s failure to provide the notice required by R.C. 2947.23(A)(1) begins to run from the date of the trial court’s sentencing entry. See *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, paragraph three of the syllabus (a sentencing entry is a final, appealable order as to costs.)”

{¶ 9} Since Thompson could have raised his argument regarding the court’s failure to comply with R.C. 2947.23 in his direct appeal from his 2009 conviction and failed to do so, res judicata bars him from subsequently raising the issue.

{¶ 10} Thompson’s additional arguments, namely that the trial court failed to comply with R.C. 2947.23 in sentencing him in Case No. 2014 CR 00473, and that he received ineffective assistance of counsel therein, are arguments not properly before us on this appeal. Since Thompson’s assigned error lacks merit, it is overruled. The

judgment of the trial court is affirmed.

.....

FAIN, J. and HALL, J., concur.

Copies mailed to:

Michele D. Phipps
Ryan K. Thompson
Hon. Mary Katherine Huffman