

WELBAUM, J.

{¶ 1} Defendant-appellant, Jeffrey E. Stevens, appeals pro se from a decision of the Montgomery County Court of Common Pleas overruling his motion for a re-entry of judgment. For the reasons outlined below, the judgment of the trial court will be affirmed.

{¶ 2} On October 11, 1996, Stevens was convicted of three counts of aggravated robbery, one count of attempted aggravated murder, one count of aggravated murder, one count of having weapons under disability, and multiple firearm and prior-offense-of-violence specifications. On November 5, 1996, the trial court imposed 15 to 25 years in prison for the three counts of aggravated robbery, 15 to 25 years in prison for the count of attempted aggravated murder, life in prison for the count of aggravated murder, and three to five years in prison for having weapons under disability. The trial court also imposed a three-year prison term for all the firearm specifications, which were merged at sentencing. All of the sentences were ordered to be served consecutively, thereby providing a total aggregate sentence of life in prison plus an additional indefinite prison term of 36 to 58 years.

{¶ 3} Stevens filed a direct appeal from his conviction on April 16, 1997. None of the assignments of error raised in his direct appeal challenged the validity of his sentence. On April 3, 1998, this court affirmed Stevens's conviction in *State v. Stevens*, 2d Dist. Montgomery No. 16509, 1998 WL 151107 (Apr. 3, 1998).

{¶ 4} Almost 16 years later, on January 8, 2014, Stevens filed a motion for sentencing and a motion for allied offense determination. As part of these motions, Stevens claimed: (1) his 1996 sentence for aggravated murder was void because the judgment entry did not state that he would be eligible for parole after 20 years; and (2) his

conviction was void because the trial court failed to consider whether any of the crimes for which he was sentenced were allied offenses of similar import. On February 4, 2014, the trial court issued a decision overruling both motions.

{¶ 5} Approximately one month later, on March 3, 2014, Stevens filed a second motion for sentencing. In that motion, Stevens again argued that the life sentence he was serving was void because the judgment entry did not specify that he would be eligible for parole after 20 years. On March 6, 2014, the trial court also overruled this motion.

{¶ 6} On June 25, 2014, after his multiple post-judgment motions were overruled, Stevens filed a motion requesting a re-entry of judgment. In that motion, Stevens moved the trial court to re-issue its February 4, 2014 decision on grounds that he was not served a copy of that decision. The trial court overruled the motion later that same day. Stevens now appeals from the trial court's decision overruling his motion for a re-entry of judgment, raising two assignments of error for review.

{¶ 7} Under his First Assignment of Error, Stevens contends the life sentence he received for aggravated murder is void because the corresponding judgment entry allegedly fails to comply with R.C. 2929.03(A)(1) in that the entry imposes a life sentence without stating that he will become eligible for parole after 20 years. Under his Second Assignment of Error, Stevens contends the trial court erred in failing to consider whether his convictions should merge as allied offenses of similar import. While Stevens has appealed from the trial court's June 25, 2014 decision overruling his motion for a re-entry of the February 4, 2014 judgment, the foregoing assignments of error indicate that Stevens is actually challenging the merits of the trial court's February 4, 2014 decision overruling his January 8, 2014 motion for sentencing and motion for allied offense

determination.

{¶ 8} “To invoke the jurisdiction of an appellate court, a party must file a notice of appeal in compliance with App.R. 3(D), which requires the designation of the specific ‘judgment, order or part thereof appealed from.’ ” *McCain v. Brewer*, 2d Dist. Darke No. 2014-CA-8, 2015-Ohio-198, ¶ 21. “[A]n appellate court lacks jurisdiction to review a judgment or order that is not designated in the appellant’s notice of appeal.” (Citation omitted.) *State v. Howard*, 2d Dist. Montgomery No. 21678, 2007-Ohio-3582, ¶10. Specifically, “[w]e have held that our jurisdiction is not invoked to consider a trial court’s post-judgment order overruling a post-judgment motion, unless that order is designated in the notice of appeal.” (Citation omitted.) *McCain* at ¶ 21.

{¶ 9} In this case, because the February 4, 2014 decision was not designated in Stevens’s notice of appeal, we do not have jurisdiction to consider that decision here. Accordingly, the assignments of error raised by Stevens in this appeal are not properly before this court.

{¶ 10} Even if this court were to assume jurisdiction over this matter, both of Stevens’s assignments of error are barred by res judicata. In *State v. Johnston*, 2d Dist. Montgomery No. 25652, 2013-Ohio-4401, we addressed the same claim raised under Stevens’s First Assignment of Error and concluded that it was barred by res judicata. In *Johnston*, the appellant had been convicted of various charges, including aggravated murder, and received life in prison for the aggravated murder charge. Like Stevens, the appellant in *Johnston* filed a direct appeal from his conviction that did not challenge the validity of his sentence. After we affirmed the appellant’s conviction in that case, the appellant filed a motion for resentencing in which he argued, among other things, that the

trial court erred in imposing a life sentence as opposed to an indeterminate life sentence.

In holding that res judicata barred the claim, we stated the following:

“Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant 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, 180, 226 N.E.2d 104 (1967).

Johnston argues that the trial court’s judgment of conviction and his resulting sentences were void. A void sentence “is not precluded from appellate review by principles of res judicata, and may be reviewed at any time, on direct appeal or by collateral attack.” *State v. Parson*, 2d Dist. Montgomery No. 24641, 2012-Ohio-730, ¶ 8; *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 233, ¶ 8.

Under Ohio law, there are generally “but two reasons that a judgment is void: ‘[the judgment] has been imposed by a court that lacks subject-matter jurisdiction over the case or the authority to act.’” *Lamb v. Lamb*, 2d Dist. Montgomery No. 24076, 23538, 2011-Ohio-2970, ¶ 12, quoting *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 12 [Superseded on other grounds by statute as stated in *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958 and *Fischer*]. “Unlike a void judgment, a voidable judgment is one rendered by a court that has both jurisdiction and authority to act, but the

court's judgment is invalid, irregular, or erroneous." *Parson* at ¶ 8, citing *Simpkins* at ¶ 12. "[D]efendants with a voidable sentence are entitled to resentencing only upon a successful challenge on direct appeal." *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 30.

The trial court had jurisdiction over Johnston's case and the authority to impose a sentence upon him. Johnston filed a direct appeal, but he challenged only the court's jury instructions. Johnston could have raised on direct appeal the trial court's * * * imposition of a "life" sentence. Johnston failed to do so. Accordingly, these arguments are barred by res judicata.

Johnston, 2d Dist. Montgomery No. 25652, 2013-Ohio-4401 at ¶ 13-16.

{¶ 11} Like the appellant in *Johnston*, Stevens takes issue with the fact that he was sentenced to life in prison for aggravated murder as opposed to receiving an indeterminate life sentence. Specifically, Stevens argues that his life sentence is void because the trial court failed to state in its judgment entry that he will become eligible for parole after 20 years. However, as explained in *Johnston*, such an error would only render Stevens's judgment voidable since the trial court had subject-matter jurisdiction over Stevens's case and authority to impose a life sentence. *See Johnston* at ¶ 15. As a result, Stevens's argument may only be reviewed on direct appeal. *Id.* Because Stevens failed to raise this argument in his direct appeal, res judicata bars him from raising it now.

{¶ 12} Stevens's Second Assignment of Error—that the trial court failed to consider whether his convictions merged as allied offenses—is also barred by res

judicata. It is well-established that “ ‘[t]he issue of merger of allied offenses of similar import must be raised in an appellant’s direct appeal or it is barred by res judicata.’ ” *State v. Bowman*, 2d Dist. Montgomery No. 26162, 2015-Ohio-1162, ¶ 11, quoting *State v. Martin*, 7th Dist. Mahoning No. 13 MA 178, 2014-Ohio-5723, ¶ 20; see also *State v. Johnson*, 2d Dist. Montgomery No. 25711, 2013-Ohio-4946, ¶ 7. Therefore, because Stevens failed to raise the allied offense issue in his direct appeal, res judicata bars him from raising it here.

{¶ 13} For the foregoing reasons, Stevens’s First and Second Assignments of Error are overruled and the judgment of the trial court is affirmed.

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FAIN, J., and DONOVAN, J., concur.

Copies mailed to:

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