

[Cite as *In re A.M.*, 2015-Ohio-5610.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

IN THE MATTER OF:

A.M.,

: Case No. 14CA49

Adjudicated Delinquent
Child.

: DECISION AND JUDGMENT ENTRY

APPEARANCES:

Timothy Young, Ohio Public Defender, and Brooke M. Burns, Assistant State Public Defender,
Columbus, Ohio, for Appellant.

Keller J. Blackburn, Athens County Prosecuting Attorney, and Merry M. Saunders, Athens
County Assistant Prosecuting Attorney, Athens, Ohio, for Appellee.

CIVIL APPEAL FROM COMMON PLEAS COURT, JUVENILE DIVISION
DATE JOURNALIZED:11-30-15

ABELE, J.

{¶ 1} This is an appeal from an Athens County Common Pleas Court, Juvenile Division,
judgment that denied a motion to vacate a prior judgment that classified A.M., appellant herein, a
tier III sex offender. Appellant raises the following assignment of error:

“THE ATHENS COUNTY JUVENILE COURT ERRED WHEN
IT DENIED A.M.’S MOTION TO VACATE ITS JANUARY 6,
2012 ORDER CLASSIFYING HIM AS A TIER III JUVENILE
SEX OFFENDER REGISTRANT, IN VIOLATION OF HIS
RIGHT TO DUE PROCESS.”

{¶ 2} In March 2009, the trial court adjudicated appellant a delinquent child for
committing rape, in violation of R.C. 2907.02(A)(1)(b), and entered a dispositional order. The

court committed appellant to the legal custody of the Ohio Department of Youth Services for an indefinite term consisting of a minimum period of twenty-four months and a maximum period not to exceed his twenty-first birthday. The court additionally found appellant to be a Juvenile Offender Registrant (JOR) under R.C. 2152.82(A). The court noted that appellant was fourteen at the time of the offense and that he had a prior sexually oriented offense. The court stated that appellant must comply with R.C. 2950.04, 2950.05, and 2950.06. The court also classified appellant a tier III sex offender subject to community notification. The court's entry recited that the court gave appellant and his parents notice of appellant's R.C. Chapter 2950 registration and verification duties.

{¶ 3} Before the trial court entered its dispositional order, appellant and his parents signed a form entitled, "Explanation of Duties to Register as Juvenile Offender Registrant or Child Victim Offender." This form notified appellant that he had been classified a tier III sex offender and further notified appellant of his registration and verification duties. The form also contains appellant's acknowledgment that the requirements had been explained to him and that he must abide by all provisions contained in R.C. Chapter 2950.

{¶ 4} Appellant subsequently appealed the trial court's judgment. Appellant argued, in part, that the trial court erroneously classified him a tier III sexual offender. In particular, appellant contended that the court incorrectly believed that the tier III classification was mandatory and asserted that the court should have exercised discretion to determine whether to classify appellant as a tier III offender. We agreed with appellant's argument that the trial court erred in its belief that appellant's tier III sex offender classification is mandatory. We thus

reversed the court's "judgment concerning the sex offender classification" and remanded the matter to the trial court.

{¶ 5} On January 4, 2012, the trial court held a hearing to address our remand. The court initially explained that the purpose of the hearing was to consider whether to classify appellant a tier III offender. The court then heard from the parties. At the end of the hearing, the court determined to classify appellant a tier III sex offender. With respect to appellant's registration duties, the court stated:

"I should note [in 2009] when this issue was discussed and decided, uh, both [appellant]'s father and mother were present in Court and the terms and conditions of registration and notification were fully explained line by line in detail from the explanation of duties long form that is provided in accordance with [R.C.] 2950.04 and .041. I am not going to go through that process again. The, uh, Court has reviewed fully the court file and the record of these proceedings and considered [R.C.] 2152.83 which does give this Court discretion to determine the appropriate tier level as well as whether community and notification requirements should be ordered. I have considered the statements including [appellant]'s statement to the Court. * * * *."

{¶ 6} On January 6, 2012, the trial court issued a "Journal Entry on Remand Issue of Tier Classification." The court (1) observed that its January 4, 2012 remand hearing addressed "only the matter of the Tier classification," (2) classified appellant a tier III sex offender pursuant to R.C. 2152.831(A) and R.C. 2950.01(G)(3), and (3) ordered that appellant be subject to the community notification provisions. The court "confirm[ed]" its March 2009 adjudication and disposition entry, including the JOR finding and the accompanying explanation of duties to register. The court explained:

"On remand, the Court hereby supplements the same with its discretionary finding and conclusion that [appellant] shall be classified as a Tier III sex offender subject to community notification provisions. Tier III classification mandates compliance with all of the requirements set forth in the March 4, 2009,

Explanation of Duties to Register for [appellant]’s lifetime, with in-person verification every ninety (90) days.”

Appellant did not appeal the court’s January 6, 2012 judgment. On November 24, 2014, appellant filed a “Motion to Declare Duty to Register Void,” and requested the court to void the January 6, 2012 judgment that required appellant to comply with R.C. Chapter 2950’s requirements. Appellant argued that the court’s attempt to incorporate the 2009 notification did not sufficiently comply with the court’s statutory duties under R.C. 2950.03(A)(3). Appellant asserted that the court’s failure to repeat the R.C. Chapter 2950 notifications at the remand hearing voided appellant’s registration requirements.

{¶ 7} On December 17, 2014, the trial court overruled appellant’s motion. The court determined that its remand hearing did not require “a complete re-hashing of [appellant’s] duties to register.” The court further noted that its January 6, 2012, entry stated: “‘Tier III classification mandates compliance with all of the requirements set forth in the March 4, 2009, Explanation of Duties to Register for [appellant]’s lifetime, with in person verification every ninety (90) days.’” The court thus determined that it provided all notices required by law and found no merit to appellant’s argument that its prior decision was void. The court additionally determined that res judicata precluded appellant’s challenge. This appeal followed.

{¶ 8} In his sole assignment of error, appellant asserts that the trial court erred by denying his motion to vacate the January 6, 2012 judgment that classified him a tier III sex offender. Appellant asserts that the trial court failed to comply with Ohio law when it held the remand hearing, and thus, its judgment classifying him a tier III sex offender is void. Appellant contends that the trial court’s January 6, 2012 judgment is void for the following two reasons: (1)

the court applied R.C. 2152.83 when it should have applied R.C. 2152.82(A); and (2) the court did not provide appellant with notice of his registration requirements and, thus, did not comply with R.C. 2152.82(B)(2) and R.C. 2950.03(B)(1).

{¶ 9} Before we evaluate the underlying merits of appellant’s assignment of error, we first consider whether res judicata bars appellant’s challenges to the trial court’s tier III sex offender classification.

{¶ 10} “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. Szefcyk, 77 Ohio St.3d 93, 95, 671 N.E.2d 233 (1996), quoting State v. Perry, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus. Accord State v. Davis, 139 Ohio St.3d 122, 2014-Ohio-1615, 9 N.E.3d 1031, ¶28. The doctrine of res judicata is based on the principles ““that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties.”” State v. Griffin, 138 Ohio St.3d 108, 2013-Ohio-5481, 4 N.E.3d 989, ¶52, quoting Szefcyk, 77 Ohio St.3d at 95 (internal quotations omitted).

{¶ 11} The doctrine of res judicata does not, however, prevent a criminal defendant from collaterally attacking a void judgment. State v. Fischer, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶40. A “void judgment” generally means one ““imposed by a court that lacks

subject-matter jurisdiction over the case or the authority to act.” Id. at ¶6, quoting State v. Payne, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶27.

{¶ 12} Ordinarily, sentencing errors do not render a judgment void. Id. at ¶7. In Fischer, however, the Ohio Supreme Court crafted an exception to this rule to “address the constitutional infirmities of a sentence imposed without statutory authority.” Id. at ¶20. In Fischer, the court held that “[t]he failure to impose a statutorily mandated period of postrelease control * * * * is an act that lacks both statutory and constitutional authority.” Id. at ¶22. The Fischer court thus expanded the definition of void judgments to include “a discrete vein of [criminal] cases: those in which a court does not properly impose a statutorily mandated period of postrelease control.” Id. at ¶31.

{¶ 13} More recently, the Ohio Supreme Court reiterated that the Fischer exception “does not apply to most sentencing challenges.” State v. Holdcroft, 137 Ohio St.3d 526, 2013-Ohio-526, 2013-Ohio-5014, 1 N.E.3d 382, ¶8. In Holdcroft, the court explained that the Fischer exception ordinarily applies to “void sanctions.” Id. at ¶7. Thus, res judicata still bars “most sentencing challenges,” such as whether a trial court complied with R.C. 2929.11 and 2929.12, whether a trial court should have merged offenses, and whether a trial court properly imposed consecutive sentences. Id. at ¶8. Holdcroft thus makes clear that not every instance of statutory noncompliance voids a criminal sanction. Instead, a criminal sanction is void if the court failed to impose a statutorily mandated sanction or if the sanction is unauthorized by law. Holdcroft at ¶8; Fischer; State v. Billiter, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 960, ¶10 (stating that in adult criminal system “if a trial court imposes a sentence that is unauthorized by law, the sentence is void”).

{¶ 14} We have applied these general principles in juvenile cases and stated that a void sanction is one that is unauthorized by law. In re C.W., 2013-Ohio-2483, 991 N.E.2d 1167, ¶8 (4th Dist.) (citations omitted). Thus, in the case sub judice, absent a void sanction,¹ res judicata prevents appellant from challenging the trial court’s 2012 judgment.

{¶ 15} In the case sub judice, appellant has not shown that the trial court imposed a void sanction.² First, the instant case is not one of the “discrete vein of cases” in which the trial court failed to impose a statutorily mandated sanction, such as postrelease control, a mandatory fine, or a driver’s license suspension. See Holdcroft at ¶8 and cases cited. Thus, the rule set forth in Fischer does not apply to the facts in the case at bar.

{¶ 16} Second, appellant’s tier III classification is not a void sanction, i.e., it is not unauthorized by law. The Ohio Revised Code expressly permits a trial court to classify a delinquent child a tier III sex offender. See R.C. 2152.82(B). Thus, appellant’s tier III sex offender classification is authorized by law.

{¶ 17} Appellant’s arguments challenging whether the trial court properly applied the law when classifying him a tier III sex offender and properly notified him of his registration duties under R.C. Chapter 2950 are akin to the sentencing challenges Holdcroft outlined as barred by res judicata. None of appellant’s challenges assert that the trial court lacked authority to classify appellant a tier III sex offender, or failed to impose a statutorily-mandated sanction. Any error

¹ We observe that appellant has not argued that the trial court’s judgment is void because it lacked subject-matter jurisdiction.

² We, assume, arguendo, that a sex offender classification is a “sanction.” See generally Holdcroft at ¶6, quoting R.C. 2929.01(DD) (defining “sanction” as “any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense”).

the trial court may have committed when it imposed the tier III classification did not exceed the trial court's underlying authority to impose that classification. Thus, because appellant's arguments do not challenge the trial court's authority to impose the classification, we believe that res judicata precludes appellant's arguments that the court applied the wrong statute when classifying him a tier III sex offender and that the court failed to properly notify him of his registration duties. See generally State v. Graham, 3rd Dist. Hancock No. 5-13-31, 2014-Ohio-1785, ¶¶12-19 (determining that sentence was not void for failing to include notification regarding duty to register as a sex offender); State v. Westerfield, 10th Dist. Franklin No. 13AP-286, 2013-Ohio-4216, ¶¶6-7 (concluding that res judicata barred argument that the trial court failed to comply with R.C. 2950.09); State v. Glover, 4th Dist. Washington No. 12CA7, 2012-Ohio-6006, ¶¶6-7 (determining that res judicata barred challenge to alleged failure to comply with R.C. 2950.09); State v. Harris, 9th Dist. Lorain No. 07CA009130, 2007-Ohio-4915, ¶5 (rejecting argument "that the trial court's failure to comply with the notice provision of R.C. 2950.09(B)(1) somehow voids his adjudication"). Cf. State v. Litten, 9th Dist. Summit No. 27414, 2015-Ohio-1250, ¶15 (rejecting argument that trial court's failure, on remand, to provide more thorough notice under R.C. 2950.03 constituted reversible error when trial court previously gave notice at original sentencing hearing).

{¶ 18} Accordingly, based upon the foregoing reasons, we overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee shall recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, P.J. & Harsha, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.