

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff - Appellee

-VS-

RALPH BLAINE SMITH

Defendant - Appellant

JUDGES:

Hon. William B. Hoffman, P.J.
Hon. Patricia A. Delaney, J.
Hon. Craig R. Baldwin, J.

Case No. 14-CA-18

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County
Court of Common Pleas, Case No.
2000-CR71

JUDGMENT:

Affirmed in part, Reversed in part,
and Remanded

DATE OF JUDGMENT:

October 16, 2014

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant – Pro Se

GREGG MARX
Prosecuting Attorney

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Baldwin, J.

{¶1} Appellant Ralph Blaine Smith appeals a judgment of the Fairfield County Common Pleas Court converting his motion to vacate a void sentence into a petition for post-conviction relief, and dismissing the petition on the grounds of untimely filing and res judicata. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} On February 2, 2000, two intruders, armed with guns and a butcher knife, entered the home of Rudy and Trisha Stefanitsis. The Stefanitsis' three young children were present in the home. Both of the intruders wore face masks, but the mask of one of the perpetrators fell down several times, allowing Mr. and Mrs. Stefanitsis to see his entire face.

{¶3} The intruders forced Mr. Stefanitsis to open his safe, from which they stole cash and comic books. They also ordered Mrs. Stefanitsis to give them her wedding ring, her watch, two necklaces and two bracelets which she was wearing at the time. The intruders stole a bracelet which Mr. Stefanitsis was wearing, \$300 to \$400 in cash from his wallet which was laying on a dresser, a necklace which was located upstairs, and a cordless telephone.

{¶4} Prior to fleeing, the intruders cut the telephone lines (T. at 419) and tied up Mr. and Mrs. Stefanitsis with electrical tape.

{¶5} Upon trying to determine who might know that they possessed a safe in their house, the name of Ralph Blaine Smith was suggested to Mr. Stefanitsis. A photo array was assembled by Detective Silvernail which included a photo of Ralph Blaine

Smith. Both Mr. and Mrs. Stefanitsis separately and independently picked appellant out of the photo array.

{¶6} On March 17, 2000, appellant was indicted on one count of Aggravated Burglary in violation of R.C. 2911.11(A)(1), one count of Aggravated Burglary in violation of R.C. 2911.11(A)(2), one count of Aggravated Robbery in violation of R.C. 2911.01(A)(3), two counts of Aggravated Robbery in violation of R.C. 2911.01(A)(1), one count of Kidnapping in violation of R.C. 2905.01(A); one count of Kidnapping in violation of R.C. 2905.01(A)(2), and one count of Theft in violation of R.C. 2913.02. All counts except the theft charge included firearm specifications.

{¶7} The matter proceeded to jury trial in the Fairfield County Common Pleas Court. Appellant was convicted of all charges. By Judgment Entry dated September 19, 2000, the trial court imposed maximum consecutive sentences, resulting in a total of sixty-one (61) years, to be served consecutively to six (6) years for the firearm specifications. Appellant filed an appeal to this court, raising six assignments of error, including challenges to his sentence. We affirmed appellant's convictions and sentence. *State v. Smith*, 5th Dist. Fairfield No. 00-CA-63, 2001-Ohio-1952.

{¶8} Appellant filed a Petition to Vacate or Set Aside Judgment on June 19, 2008. The trial court dismissed the petition, finding the motion was one for post-conviction relief.

{¶9} On November 12, 2013, appellant filed a motion to vacate a void sentence. He argued that robbery and kidnapping were allied offenses of similar import, the judgment entry of sentencing did not comply with R.C. 2929.14(B), the court improperly sentenced him on firearm specifications on both counts one and two, and the

court failed to notify him and impose the correct term of postrelease control. The court found the petition to be an untimely motion for post-conviction relief, and found all issues raised therein to be barred by res judicata. The court dismissed appellant's petition.

{¶10} Appellant assigns three errors to this Court on appeal:

{¶11} "I. THE TRIAL COURT ERRED WHEN IT IMPROPERLY RECAST THIS APPELLANT'S MOTION TO VACATE A VOID SENTENCE AS A POST-CONVICTION PETITION TO ALLOW THE COURT TO DENY THE MOTION ON PROCEDURAL GROUNDS RELEVANT ONLY TO POST-CONVICTION PETITIONS UNDER 2953.23 RATHER THAN ADDRESS THE MERITS OF THE MOTION TO VACATE A VOID SENTENCE AS WOULD HAVE BEEN PROPER AS A MOTION TO VACATE A VOID SENTENCE IN VIOLATION OF THIS APPELLANT'S CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND THE DUE PROCESS OF LAW GUARANTEED HIM BY THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.

{¶12} "II. WHEN THE TRIAL COURT INITIALLY ERRED AT SENTENCING BY IMPOSING MULTIPLE SENTENCES ON ALLIED OFFENSES OF SIMILAR IMPORT RENDERING THAT SENTENCES [SIC] VOID AS A MATTER OF LAW FOR THE FAILURE TO COMPLY WITH R.C. 2941.25. THE TRIAL COURT COMPOUNDED THIS ERROR BY IT'S [SIC] REFUSAL TO ADDRESS AND CORRECT THIS ERROR WHICH DUE TO THE FACT THE SENTENCE IMPOSED IS VOID IT CAN BE ATTACKED AT ANY TIME, WHEN THIS APPELLANT BROUGHT IT TO THE COURT'S ATTENTION IN HIS MOTION TO VACATE IN VIOLATION OF THE

DOUBLE JEOPARDY CLAUSE IN THE 5TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.

{¶13} “III. THE TRIAL COURT ERRED IN NOT ADDRESSING THIS APPELLANT’S CLAIMS THAT PRC WAS NOT PROPERLY IMPOSED AS REQUIRED BY LAW; THE TRIAL COURT FAILED TO MAKE THE REQUIRED FINDINGS ENHANCING THIS APPELLANT’S SENTENCE BEYOND THE STATUTORY MINIMUM IN VIOLATION OF APPENDII;, [SIC] AND THE LACK OF A PROPER FINAL APPEALABLE ORDER UNDER THE LAW AT THE TIME OF THIS APPELLANT’S SENTENCING. ALL OF WHICH VIOLATES THIS APPELLANT’S CONSTITUTIONAL RIGHTS UNDER THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.”

I.

{¶14} In his first assignment of error, appellant argues that the court erred in converting his motion to vacate a void sentence into a petition for postconviction relief.

{¶15} A motion to correct or vacate a sentence, despite its caption, meets the definition of a motion for postconviction relief set forth in R.C. 2953.21(A)(1), if it was (1) filed subsequent to direct appeal, (2) claims a denial of constitutional rights, (3) seeks to render the judgment void, and (4) asks for vacation of the judgment and sentence. *State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131 (1997).

{¶16} As to appellant’s claims that he was not properly sentenced to consecutive sentences and that the offenses were allied offenses, appellant’s motion complies with this definition, and the court therefore did not err in converting it to a petition for postconviction relief.

{¶17} Appellant's claim that he was not properly informed of postrelease control is based solely on state statutory requirements and is not a constitutional claim. Further, the Ohio Supreme Court has held that where a trial court did not properly impose postrelease control, the sentence is void, and principles of res judicata do not preclude appellate review. *State v. Fischer*, 128 Ohio St. 3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶30. The trial court therefore erred in converting this portion of appellant's motion to vacate a void sentence into a petition for postconviction relief.

{¶18} The first assignment of error is sustained as to appellant's claim that he was not properly informed of postrelease control, and is overruled as to his remaining sentencing claims.

II.

{¶19} In his second assignment of error, appellant argues that the offenses were allied offenses of similar import and should have been merged. This argument could have been raised on direct appeal, and appellant raised this issue on direct appeal as to the multiple counts of aggravated robbery. Because this argument could have been raised on direct appeal, this claim is barred by res judicata. *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967).

{¶20} The second assignment of error is overruled.

III.

{¶21} In his final assignment of error, appellant argues that the court erred in dismissing his claim that he was not notified of postrelease control on the basis of res

judicata. Appellant also argues that the court erred in not considering his claims regarding the imposition of more than the minimum sentence.

{¶22} Where a trial court did not properly impose postrelease control, the sentence is void. *State v. Fischer*, 128 Ohio St. 3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶30. Principles of res judicata, including the doctrine of the law of the case, do not preclude appellate review. *Id.* The sentence may be reviewed at any time, on direct appeal or by collateral attack. *Id.*

{¶23} Although the sentencing entry recites that appellant was informed of postrelease control, the transcript of the sentencing hearing reflects that the trial court failed to inform appellant of postrelease control. A trial court may correct its omission to inform a defendant about post-release control sanctions by complying with R.C. 2929.191 and issuing a corrected sentence. *State v. Alexander*, 5th Dist. Stark No. 13-CA-151, 2014-Ohio-2351, ¶21. However, in cases where no corrected entry is necessary, only a hearing is required. *Id.*

{¶24} Appellant's remaining sentencing issues concerning merger and imposition of more than the minimum sentence could have been raised on direct appeal, and are therefore barred by res judicata. Appellant raised on direct appeal that the court erred in sentencing him to maximum, consecutive sentences, and this Court affirmed the sentence. *Smith, supra.*

{¶25} Because the trial court did not verbally inform appellant of mandatory post-release control sanctions at sentencing, his third assignment of error is sustained in part and overruled in part. Appellant is entitled to a new limited sentencing hearing during

which the court will explain the mandatory period of postrelease control included in his sentence.

{¶26} This matter is remanded to the trial court for the limited purpose of holding a sentencing hearing to address appellant in regards to his postrelease control sanction. As to all other issues, the judgment is affirmed.

By: Baldwin, J.

Hoffman, P.J. and

Delaney, J. concur.