[Cite as *State v. Applegate*, 2015-Ohio-2372.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
DAVID APPLEGATE	:	Case No. 2015 AP 01 0001
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 2004 CR 01 0007
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	June 15, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
ROBERT C. URBAN, JR. 125 East High Avenue New Philadelphia, OH 44663	DAVID APPLEGATE, Pro Se #469-862 Marion Correctional Institution P.O. Box 57 Marion, OH 43301

Farmer, P.J.

{¶1} On June 1, 2004, appellant, David Applegate, pled no contest to one count of involuntary manslaughter in violation of R.C. 2903.04 and two counts of felonious assault in violation of R.C. 2903.11. By judgment entry filed June 4, 2004, the trial court found appellant guilty, and pursuant to a negotiated plea agreement, sentenced appellant to an aggregate term of twenty years in prison. The trial court also ordered appellant to pay all court costs. Appellant did not file an appeal.

{¶2} On November 29, 2004, appellant filed a motion to waive court costs. By judgment entry filed December 14, 2004, the trial court denied the motion.

{¶3} On June 25, 2008, appellant filed a motion to dismiss court costs. By judgment entry filed July 7, 2008, the trial court denied the motion.

{¶4} On December 31, 2013, appellant filed a motion for judicial release. By judgment entry filed April 18, 2014, the trial court denied the motion.

{¶5} On August 1, 2014, appellant filed another motion for judicial release. By judgment entry filed August 15, 2014, the trial court denied the motion.

{¶6} On November 24, 2014, appellant filed a motion to vacate sentence, arguing the trial court improperly imposed court costs, improperly using the "sentencing package doctrine," and failed to notify him of post-release control. By judgment entry filed December 8, 2014, the trial court denied the motion.

{¶7} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶8} "TRIAL COURT ERRED IN IMPOSING COURT COST IN ITS SENTENCING ENTRY WHEN IT DID NOT IMPOSE THOSE COST AT THE TIME OF SENTENCING IN OPEN COURT DENYING APPELLANT OF HIS RIGHT TO *DUE PROCESS* AND *EQUAL PROTECTION OF THE LAW*."

II

{¶9} "TRIAL COURT IMPROPERLY EMPLOYED THE SENTENCING-PACKAGE DOCTRINE TO APPELLANT'S SENTENCE DENYING HIM OF HIS CONSTITUTION *PROTECTION OF THE LAW* AND HIS RIGHT TO *DUE PROCESS*."

III

{¶10} "TRIAL COURT ERRED WHEN IMPOSING SENTENCE DUE TO NOT NOTIFYING APPELLANT OF HIS POST-RELEASE CONTROL OBLIGATION OUTSIDE OF THE PRESENCE OF THE PROSECUTOR DENYING APPELLANT HIS RIGHT *TO EQUAL PROTECTION OF THE LAW* AND HIS RIGHT TO *DUE PROCESS.*"

I

{¶11} Appellant claims the trial court erred in imposing court costs. We disagree.

{¶12} In his November 24, 2014 motion to vacate sentence, appellant argued the trial court did not mention costs during the sentencing hearing therefore, he was denied the opportunity to seek a waiver of costs.

{¶13} Appellant was sentenced on June 4, 2004 and assessed court costs. Appellant did not file an appeal.

{¶14} On November 29, 2004, appellant filed a motion to waive court costs. Said motion was denied on December 14, 2004. Appellant did not file an appeal.

{¶15} On June 25, 2008, appellant filed a motion to dismiss court costs. Said motion was denied on July 7, 2008. Appellant did not file an appeal.

{¶16} Appellant could have raised the issue of court costs in a direct appeal, but he failed to do so.

{¶17} We find the issue of court costs as argued in appellant's motion to vacate sentence to be governed by the doctrine of res judicata. Res judicata is defined as "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp*., 73 Ohio St.3d 379, 1995-Ohio-331, syllabus.

{¶18} Assignment of Error I is denied.

II

{¶19} Appellant claims his sentencing violated the "sentencing packaging doctrine." We disagree.

{¶20} In his November 24, 2014 motion to vacate sentence, appellant argued he was informed that he would be sentenced to ten years on the involuntary manslaughter count and five years each on the felonious assault counts, when in actuality he was sentenced to ten years on the involuntary manslaughter count, eight years on one of the felonious assault counts, and two years on the other felonious assault count, to be served consecutively, for a total aggregate term of twenty years in prison.

{¶21} In the docket of the trial record, in between entries 73 and 74, are handwritten notes of the purposed plea agreement. The notes indicate the sentence

was to be ten years on the involuntary manslaughter count, eight years on one of the felonious assault counts, and two years on the other felonious assault count, to be served consecutively, for a total sentence of twenty years, exactly what appellant received.

{¶22} During the plea hearing, the trial court outlined these negotiated sentences, and appellant stated that he understood the sentences. June 1, 2004 T. at 6-8, 15, 16, 26-27.[1]

{¶23} The "sentencing package doctrine" as argued by appellant is a federal doctrine and has no applicability to Ohio sentencing laws and was not used in this case. *State v. Saxon,* 109 Ohio St.3d 176, 2006-Ohio-1245. R.C. 2929.14(A) dictates the range of possible sentences for each specific degree, and the trial court imposed a specific sentence to each of the three offenses which comported with said statute.

{¶24} Assignment of Error II is denied.

III

{¶25} Appellant claims the trial court erred in failing to inform him of post-release control. We disagree.

{¶26} In his November 24, 2014 motion to vacate sentence, appellant argued the trial court failed to notify him of post-release control during the plea and sentencing hearings. However, appellant acknowledged that the next day, the trial court informed him of post-release control via closed circuit television. Because the prosecutor was not

[1]We note original transcripts have not been filed in this case. By judgment entry filed October 21, 2004, the trial court ordered the court transcriptionist to prepare transcripts of the June 1 and 2, 2004 hearings and mail them to appellant in prison. Appellant made copies of the transcripts and attached them to his November 24, 2014 motion to vacate sentence.

present for this hearing (defense counsel was present), appellant argued the hearing was not an actual sentencing hearing.

{¶27} On June 1, 2004, appellant pled no contest and the trial court found him guilty and imposed sentence. The trial court neglected to inform appellant of post-release control. The next day, on June 2, 2014, the trial court held a supplemental hearing and notified appellant of post-release control. June 2, 2004 T. at 2-5. Appellant stated he understood the trial court's explanation of post-release control and confirmed his no contest pleas. *Id.* at 6.

{¶28} The June 4, 2004 judgment entry includes the following notification of post-release control:

> **ORDERED, ADJUDGED AND DECREED** that the Defendant was notified that as part of his sentence, the Defendant will be supervised under **Section 2967.28, Ohio Revised Code,** by the Ohio Parole Board, after the Defendant leaves prison and that said period of supervision will be a mandatory, non-reducible five year period. Further, the Defendant was informed that if he violates that supervision, the Ohio Parole Board may impose a prison term, as part of this sentence, of up to one-half of the stated prison term originally imposed upon the Defendant, i.e. ten years (one-half of an aggregate twenty year term).

{¶29} The trial court did not fail to inform appellant of post-release control.

{¶30} Appellant also appears to argue that the trial court failed to notify him of his right to appeal. During the plea hearing, appellant agreed to waive his right to appeal as part of the negotiated plea. June 1, 2004 T. at 6, 15, 16, 27. During the supplemental hearing, the trial court again reminded appellant of his agreement to waive his right to appeal, and appellant agreed that he understood. June 2, 2004 T. at 5-6.

{¶31} Assignment of Error III is denied.

{¶32} The judgment of the Court of Common Pleas of Tuscarawas County, Ohio is hereby affirmed.

By Farmer, P.J.

Delaney, J. and

Baldwin, J. concur.

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