

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

GERALD D. FIELDS

Defendant-Appellant

: JUDGES:

: Hon. Sheila G. Farmer, P.J.
: Hon. John W. Wise, J.
: Hon. Patricia A. Delaney, J.

: Case No. CT2015-0031

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County
Court of Common Pleas, case no.
CR2009-0166

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

March 15, 2016

APPEARANCES:

For Plaintiff-Appellee:

D. MICHAEL HADDOX
MUSKINGUM CO. PROSECUTOR
GERALD V. ANDERSON, II
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For Defendant-Appellant:

GERALD D. FIELDS, PRO SE
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Delaney, J.

{¶1} Appellant Gerald D. Fields appeals from the May 4, 2015 Journal Entry of the Muskingum County Court of Common Pleas. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} A statement of the facts underlying appellant's criminal convictions is not necessary to our resolution of this appeal. The following lengthy procedural history is adduced, in part, from our decision in *Fields VI*, *infra*.

{¶3} On October 13, 2009, appellant pled guilty to one count of trafficking in drugs in violation of R.C. 2925.03 and one count of permitting drug abuse in violation of R.C. 2925.13. By journal entry filed November 9, 2009, the trial court sentenced appellant to an aggregate term of nine years in prison. Appellant's case was affirmed on appeal. *State v. Fields*, 5th Dist. Muskingum No. CT2009–0057, 2010–Ohio–6233 (*Fields I*). Appellant's appeal to the Supreme Court of Ohio was not accepted for review. *State v. Fields*, 128 Ohio St.3d 1459, 2011–Ohio–1829.

{¶4} On April 19, 2011, appellant filed a motion for post-conviction relief which was denied on April 21, 2011. On June 21, 2011, appellant filed a motion to vacate or set aside conviction or sentence and a motion to amend same on June 23, 2011 which were denied on June 29, 2011. These decisions were affirmed on appeal. *State v. Fields*, 5th Dist. Muskingum No. CT2011–0030, 2011–Ohio–5513 (*Fields II*). Appellant did not file an appeal with the Supreme Court of Ohio.

{¶5} On July 19, 2011, appellant filed a motion for sentence modification pursuant to H.B. No. 86 which was denied on July 22, 2011. This decision was affirmed on appeal. *State v. Fields*, 5th Dist. Muskingum No. CT2011–0037, 2011–Ohio–6044

(*Fields III*). Appellant's appeal to the Supreme Court of Ohio was not accepted for review. *State v. Fields*, 131 Ohio St.3d 1472, 2012–Ohio–896.

{¶6} On March 5, 2012, appellant filed a motion to withdraw plea which was denied on April 24, 2012. On May 7, 2012, the trial court resentenced appellant solely for the purpose of advising him that he was subject to a three year mandatory term of post-release control. These decisions were affirmed on appeal. *State v. Fields*, 5th Dist. Muskingum Nos. CT 12–0028 and CT 12–0030, 2012–Ohio–6086 (*Fields IV*). Appellant's appeal to the Supreme Court of Ohio was not accepted for review. *State v. Fields*, 134 Ohio St.3d 1509, 2013–Ohio–1123.

{¶7} On February 6, 2013, appellant filed a motion for sentencing pursuant to Crim.R. 32(B); Crim.R. 32(C); R.C. 2505.02; and a revised judgment of conviction and sentence which was denied on May 17, 2013. This decision was affirmed on appeal. *State v. Fields*, 5th Dist. Muskingum No. CT2013–0027, 2013–Ohio–5288 (*Fields V*). Appellant's appeal to the Supreme Court of Ohio was not accepted for review. *State v. Fields*, 138 Ohio St.3d 1468, 2014–Ohio–1674.

{¶8} On August 26, 2013, appellant filed a motion for allied offense determination which was denied on April 7, 2014. We affirmed the judgment of the trial court in *State v. Fields*, 5th Dist. Muskingum No. CT2014-0025, 2014-Ohio-5233 (*Fields VI*).

{¶9} On April 24, 2015, appellant filed a “Motion for Sentencing” arguing the trial court incorrectly sentenced him to consecutive terms. The trial court overruled this motion with a Journal Entry dated May 4, 2015.

{¶10} It is from this Journal Entry appellant now appeals.

{¶11} Appellant raises one assignment of error:

ASSIGNMENT OF ERROR

{¶12} “WHETHER THE TRIAL COURT ABUSED ITS DISCRETION THEREBY VIOLATING DUE PROCESS WHEN IT DENIED [‘WITHOUT HEARING’] APPELLANT’S (‘PRO SE’) MOTION FOR SENTENCING, AND [‘SEQUENCE DETERMINATION’] PURSUANT TO THE PROVISIONS OF: STATE V. KISH, 2014 OHIO 668. AT: HN 1; AND HN1; AND, STATE V. HOLDCROFT, 137 OHIO ST.3D 526, AT: ¶ 2-3, 10.”
[Brackets and parentheses in original; sic throughout.]

ANALYSIS

{¶13} Appellant argues the trial court erred upon resentencing because the trial court never set forth the sequence in which the consecutive terms were to be served. We find appellant’s argument to be barred by res judicata and the law of the case doctrine and therefore disagree.

{¶14} We note appellant appealed from the trial court’s resentencing of May 7, 2012 for proper imposition of post-release control and we affirmed in *Fields IV*, supra. In overruling appellant’s arguments in that case, we pointed out that beyond the imposition of post-release control at resentencing, any other arguments should have been raised on direct appeal and thus were barred by the doctrine of res judicata. *Fields IV*, supra, at ¶ 22.

{¶15} In his latest round of arguments, appellant argues the trial court failed to specify the sequence in which his consecutive terms were to be served, thus imposition of post-release control is invalid. Appellant’s cited case, *State v. Kish*,¹ is based upon the

¹ *State v. Kish*, 8th Dist. Cuyahoga No. 99895, 2014-Ohio-699, appeal not allowed, 139 Ohio St.3d 1471, 2014-Ohio-3012, 11 N.E.3d 1193.

decision of the Eighth District in *State v. Cvijetinovic*, 8th Dist. Cuyahoga No. 99316, 2013-Ohio-5121, in which a defendant was sentenced to consecutive terms for offenses under separate case numbers but the trial court failed to properly impose post-release control. The added issue became whether the defendant had already served the prison sentence in the case at issue; if so, he was not subject to post-release control for offenses in that case. *Cvijetinovic*, 2013-Ohio-5121 at ¶ 18. The survival of the term of post-release control depended upon the sequence in which the defendant served his sentence, but the trial court's sentencing entries were ambiguous; the appellate court thus resolved the matter in the defendant's favor, found that he had already served the relevant portion of his sentence, thus the trial court could not impose post-release control when the time had already been served. *Id.* at ¶ 25.

{¶16} In *Cvijetinovic*, the state argued the appeal was barred by res judicata and the appellate court disagreed because a void sentence can be collaterally attacked at any time. *Id.* at ¶ 13, citing *State v. Fischer*, 128 Ohio St.3d 92, 2010–Ohio–6238, 942 N.E.2d 332, paragraph one of the syllabus (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 collateral attack”); *State v. Billiter*, 134 Ohio St.3d 103, 2012–Ohio–5144, 980 N.E.2d 960, ¶ 10 (“if a trial court imposes a sentence that is unauthorized by law, the sentence is void”).

{¶17} In the instant case, however, appellant has already appealed once from the resentencing and imposition of post-release control. We found the Sentencing Entry was not void but was valid. *Fields V*, 2013-Ohio-5288 at ¶ 22. Appellant's latest round of

arguments is thus barred not only by res judicata but also under the law of the case doctrine:

Briefly, the doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.

The doctrine is considered to be a rule of practice rather than a binding rule of substantive law and will not be applied so as to achieve unjust results. However, the rule is necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution.

Fields VI, 5th Dist. Muskingum No. CT2014-0025, 2014-Ohio-5233, ¶ 15, citing *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984).

{¶18} This case represents the endless litigation censured in *Nolan*, supra. Appellant could have raised the issues in the instant appeal in his appeal from the resentencing (*Fields IV*), but he did not, and we subsequently found his sentence to be valid, not void. Appellant's latest round of arguments is thus barred by res judicata and the law of the case doctrine.

{¶19} Appellant's sole assignment of error is overruled.

CONCLUSION

{¶20} Appellant's sole assignment of error is overruled and the judgment of the Muskingum County Court of Common Pleas is affirmed.

By: Delaney, J. and

Farmer, P.J.

Wise, J., concur.