

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

SHIQUAN MONTEZ WOFFORD

Defendant-Appellant

: JUDGES:

- : Hon. W. Scott Gwin, P.J.
- : Hon. William B. Hoffman, J.
- : Hon. Patricia A. Delaney, J.

: Case No. 2016CA00087

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2010CR1258

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

June 20, 2016

APPEARANCES:

For Plaintiff-Appellee:

JOHN D. FERRERO
STARK COUNTY PROSECUTOR

KRISTINE W. BEARD
110 Central Plaza South, Suite 510
Canton, OH 44702-1413

For Defendant-Appellant:

SHIQUAN MONTEZ WOFFORD
Inmate No. A643-696
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, OH 44030

Delaney, J.

{¶1} Defendant-Appellant Shiquan Montez Wofford appeals the April 7, 2016 judgment entry of the Stark County Court of Common Pleas. Plaintiff-Appellee is the State of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} On January 28, 2011, in Stark County Court of Common Pleas Case No. 2010CR1258, Defendant-Appellant Shiquan Montez Wofford pled guilty to one count of having weapons under disability, three counts of aggravated trafficking in drugs, one count of possession of cocaine, and two counts of aggravated possession of drugs. The trial court sentenced Wofford to three years of community control.

{¶3} The sentencing entry stated if Wofford violated a condition of his sentence, it would lead to a more restrictive sanction, a longer sanction, or a prison term of six years.

{¶4} On April 9, 2013, Plaintiff-Appellee State of Ohio filed a motion to revoke community control. The motion stated that on March 31, 2013, Wofford entered a property in Massillon, Ohio without the consent of the owner or a person authorized to give consent. On March 31, 2013, Wofford also caused or attempted to cause physical harm to Shawnee Holloway.

{¶5} Wofford was indicted by the Stark County Grand Jury on one count of burglary, a third-degree felony in violation of R.C. 2911.12(A)(3), and one count of domestic violence, in violation of R.C. 2929.25(A). Following a jury trial in Stark County Court of Common Pleas Case No. 2013CR0526, Wofford was convicted of the charges, and sentenced to 36 months in prison.

{¶6} On August 22, 2013, the trial court revoked Wofford's community control sanctions and imposed sentence. The judgment entry states that Wofford was to serve a prison term of four years to be served consecutively with Case No. 2013CR0526, for a total prison term of seven years.

{¶7} Wofford appealed his conviction and sentence in Case No. 2013CR0526. In his appeal, he argued his conviction was against the manifest weight and sufficiency of the evidence. He also argued ineffective assistance of counsel. He did not raise the issue of a consecutive sentence. We affirmed Wofford's conviction and sentence in *State v. Wofford*, 5th Dist. Stark No. 2013CA00186, 2014-Ohio-3122.

{¶8} On April 4, 2016, Wofford filed a "Motion to Vacate Void/Void Ab Initio Sentence Imposed on December 22, 2015 for Failing to Follow Mandates of Revised Code 2929.14(C)(4) and Controlling Authority of *State v. Bonnell*." Wofford did not serve a copy of the motion to the State.

{¶9} The trial court denied the motion on April 7, 2016.

{¶10} The State filed a response to the motion on April 20, 2016.

{¶11} It is from the trial court's April 7, 2016 judgment entry that Wofford now appeals.

ASSIGNMENT OF ERROR

{¶12} Wofford raises one Assignment of Error:

{¶13} "THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO VACATE WITHOUT OPPOSITION FROM PROSECUTOR, FOR FAILURE TO COMPLY WITH STATUTORY MANDATES OF R.C. 2929.14(C)(4) AND STATE LAW CONTROLLING AUTHORITY OF *STATE V. BONNELL*."

ANALYSIS

{¶14} Wofford argues the trial court abused its discretion when it denied his motion to vacate his void sentence supported by the authority of *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659. Wofford contends the trial court failed to make the required findings under R.C. 2929.14(C)(4) before the trial court imposed consecutive sentences in Case No. 2010CR1258 and 2013CR0526.

{¶15} The State argues Wofford's April 4, 2016 motion was in essence a petition for post-conviction relief under R.C. 2953.21 and *State v. Reynolds*, 79 Ohio St.3d 158, 1997-Ohio-304, 679 N.E.2d 1132. In *Reynolds*, the Court stated, "where a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21. *Id.* at 160.

{¶16} Wofford argues the trial court should have granted the motion because the State failed to file a response. The State is not mandated to respond to a petition for postconviction relief. *State v. Jones*, 7th Dist. Mahoning No. 13 MA 53, 2014–Ohio–2592, ¶ 13. R.C. 2953.21(D) states, "[w]ithin ten days after the docketing of the petition, or within any further time that the court may fix for good cause shown, the prosecuting attorney shall respond by answer or motion. Within twenty days from the date the issues are raised, either party may move for summary judgment. The right to summary judgment shall appear on the face of the record." *State v. Church*, 5th Dist. Morgan No. 15AP0005, 2015-Ohio-4331, ¶ 19. In this case, Wofford did not serve a copy of the motion to the

State, but the State filed a response to the motion as soon as it became aware of the motion.

{¶17} The State contends the trial court correctly denied Wofford's petition for postconviction relief because his petition was untimely and barred by the doctrine of res judicata. We agree Wofford's motion is barred by the doctrine of res judicata.

{¶18} Wofford argues he is entitled to relief under the authority of *State v. Bonnell*, *supra*. Wofford argues that at the sentencing hearing, the trial court failed to make required statutory findings pursuant to R.C. 2929.14(C)(4) when it imposed consecutive sentences in Case No. 2010CR1258 and Case No. 2013CR0526.

{¶19} The Court stated in *Bonnell*:

When imposing consecutive sentences, a trial court must state the required findings as part of the sentencing hearing, and by doing so it affords notice to the offender and to defense counsel. See Crim.R. 32(A)(4). And because a court speaks through its journal, *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 47, the court should also incorporate its statutory findings into the sentencing entry. However, a word-for-word recitation of the language of the statute is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.

State v. Bonnell, 140 Ohio St.3d 209, 218, 2014-Ohio-3177, 16 N.E.3d 659, 666, ¶ 29.

{¶20} We find the doctrine of res judicata bars Wofford's claim. "Under the doctrine of res judicata, a final judgment of conviction bars the defendant from raising and

litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that the defendant raised or could have raised at the trial which resulted in that judgment of conviction or on appeal from that judgment.” *State v. Snyder*, 5th Dist. Tuscarawas No. 2015AP070043, 2016-Ohio-832, ¶ 26 quoting *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967). Further, “[i]t is well-settled that, ‘pursuant to *res judicata*, a defendant cannot raise an issue in a [petition] for postconviction relief if he or she could have raised the issue on direct appeal.’ “ *State v. Elmore*, 5th Dist. Licking No. 2005-CA-32, 2005-Ohio-5940, ¶ 21 quoting *State v. Reynolds*, 79 Ohio St.3d 158, 161, 679 N.E.2d 1131 (1997).

{¶21} Wofford could have raised his claim that the sentencing court erred in imposing consecutive sentences in a direct appeal from the sentencing entry. See *State v. Chapin*, 10th Dist. Franklin No. 14AP-1003, 2015-Ohio-3013, ¶ 8 citing *State v. Adams*, 10th Dist. Franklin No. 14AP-623, 2015-Ohio-868, ¶ 8 (defendant's claim that the trial court erred by failing to make the findings required by R.C. 2929.14(C)(4) before imposing consecutive sentences could have been raised in his direct appeal, and thus “any further review of defendant's sentence is barred by *res judicata*”); *State v. Petitto*, 8th Dist. Cuyahoga No. 99893, 2013-Ohio-5435, ¶ 13 (defendant's claim that trial court imposed consecutive sentences without making appropriate findings “could have and should have been raised in a timely filed appeal” from trial court's sentencing entry, and therefore “this claim is now barred by the doctrine of *res judicata*”); *State v. Ferrell*, 5th Dist. Stark No. 2013CA00121, 2013-Ohio-5521, ¶ 15 (“Appellant either raised or could have raised arguments regarding the appropriateness of consecutive sentences * * * during his direct appeal. Accordingly, any such argument is barred under the doctrine of *res judicata*.”).

{¶22} The Tenth District Court of Appeals in *State v. Chapin, supra*, examined a similar motion for resentencing based on the authority of *Bonnell*. The court stated:

We note that, in his motion for resentencing, appellant argued before the trial court that the sentencing court's failure to make the requisite findings under R.C. 2929.14(C)(4) rendered his sentence void. However, “[t]he Ohio Supreme Court has declined to find sentences void based on the court's failure to comply with certain sentencing statutes, including the consecutive sentencing statute.” *State v. Sanders*, 9th Dist. No. 27189, 2014–Ohio–5115, ¶ 5, citing *State v. Holdcroft*, 137 Ohio St.3d 526, 2013–Ohio–5014, ¶ 8 (noting that challenges to a sentencing court's judgment as to whether sentences must be served concurrently or consecutively must be presented in a timely direct appeal). Thus, because the trial court's “alleged failure to comply with the consecutive sentencing statute does not render [the] sentence void, res judicata applies.” *Id.* at ¶ 6.

State v. Chapin, 10th Dist. Franklin No. 14AP-1003, 2015-Ohio-3013, ¶ 9.

{¶23} Wofford could have raised his argument in a direct appeal of the August 22, 2013 judgment entry revoking his community control and imposing a prison term to be served consecutively with the prison term in Case No. 2013CR0526. Accordingly, Wofford's motion for resentencing is barred by res judicata.

{¶24} Wofford's sole Assignment of Error is overruled.

CONCLUSION

{¶25} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J.,

Gwin, P.J. and

Hoffman, J., concur.