

[Cite as *State v. Stansell*, 2015-Ohio-1822.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101555

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL STANSELL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-07-356129-A

BEFORE: S. Gallagher, J., McCormack, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: May 14, 2015

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SEAN C. GALLAGHER, J.:

{¶1} Appellant Michael Stansell appeals the trial court's imposition of court costs against him. Upon review, we affirm.

{¶2} In 1998, appellant was convicted of certain sexual offenses in this case. The original sentencing entry from February 12, 1998, included the imposition of court costs. Appellant's convictions were affirmed in *State v. Stansell*, 8th Dist. Cuyahoga No. 75889, 2000 Ohio App. LEXIS 1726 (Apr. 20, 2000), and the Ohio Supreme Court denied his request to file a delayed appeal. *See State v. Stansell*, 91 Ohio St.3d 1527, 747 N.E.2d 252 (2001). At that time, appellant did not appeal the imposition of court costs.

{¶3} In 2013, appellant filed a motion to vacate the sexually violent predator specification, which the trial court denied. On appeal to this court, that decision was affirmed, but the case was remanded for the limited purpose of the advisement and imposition of postrelease control upon appellant, which had not been done at the time of appellant's original sentencing. *State v. Stansell*, 8th Dist. Cuyahoga No. 100604, 2014-Ohio-1633. Upon remand, the trial court held a hearing at which it advised appellant of postrelease control. On May 20, 2014, the trial court issued a sentencing entry that imposed the same sentence with the addition of postrelease control, and again included the imposition of court costs.

{¶4} Appellant filed this appeal claiming "the trial court erred in imposing court costs on appellant based on a remand to cure an error by the state, and without informing him of the costs and giving him an opportunity to object." We find no merit to his argument.

{¶5} In this case, court costs were included in the original sentencing entry. That entry imposed a sentence upon appellant, classified appellant as a sexual predator, found appellant indigent and waived fines, gave credit for time served, and ordered the payment of court costs. Although appellant sought to supplement the record on this appeal with the original sentencing transcript to show he was not ordered to pay court costs at the original sentencing hearing, the challenge should have been raised on direct appeal from the original sentencing entry. *See State v. Moorer*, 8th Dist. Cuyahoga No. 101214, 2014-Ohio-4581, ¶ 10-15. Appellant failed to appeal the issue, and therefore, his claim became barred by res judicata. *Id.* at ¶ 15.

{¶6} Insofar as appellant claims the trial court failed to mention court costs at the resentencing hearing that was limited to the imposition of postrelease control, this was consistent with the limited purpose of the remand. Contrary to appellant's assertion, the record does not show that costs were newly imposed against appellant as the original sentence included a prison term and costs. Because court costs were assessed in the original sentencing entry, the imposition of costs was consistent with the earlier mandate. *See State v. Patrick*, 8th Dist. Cuyahoga No. 89214, 2007-Ohio-6847, ¶ 17; *State v. Norris*, 8th Dist. Cuyahoga No. 95485, 2011-Ohio-1795, ¶ 24. Furthermore, the Ohio Supreme Court has held that res judicata applies to a challenge to the imposition of court costs arising from a resentencing limited to the proper imposition of postrelease control. *State v. Ketterer*, 140 Ohio St.3d 400, 2014-Ohio-3973, 18 N.E.3d 1199, ¶ 25-27.¹

¹ In *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, the Ohio

{¶7} Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

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

SEAN C. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and
MELODY J. STEWART, J., CONCUR

Supreme Court held that when an offender is entitled to a new hearing because postrelease control was not properly imposed, the new sentencing hearing to which an offender is entitled “is limited to proper imposition of postrelease control.” *Id.* at ¶ 29.