

[Cite as *State v. Warren*, 2016-Ohio-5933.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104018

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**EDDIE WARREN**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-10-533587-A

**BEFORE:** E.T. Gallagher, P.J., Boyle, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** September 22, 2016

**FOR APPELLANT**

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**ATTORNEYS FOR APPELLEE**

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BY: Brett Hammond  
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EILEEN T. GALLAGHER, P.J.:

{¶1} Defendant-appellant, Eddie Warren (“Warren”), pro se, appeals from his sentence following a bench trial. He raises the following assignment of error for our review:

1. The sentencing court erred to the prejudice of the Defendant-Appellant and abused its discretion when it denied his Motion Requesting Resentencing to Minimal Concurrent Sentences under R.C. 2929.14(C)(4) and 2929.41(A) without a hearing.

{¶2} After careful review of the record and relevant case law, we affirm Warren’s sentence.

### **I. Procedural and Factual History**

{¶3} In 2010, Warren was charged with two counts of aggravated robbery with one-, three-, and five-year firearm specifications; one count of aggravated robbery with one- and three-year firearm specifications; two counts of kidnapping with one- and three-year firearm specifications; and one count of felonious assault with one-, three-, and five-year firearm specifications. Warren waived his right to a jury trial, and the matter proceeded to a trial before the bench.

{¶4} At the conclusion of trial, the trial court convicted Warren of the aggravated robbery and felonious assault charges along with all accompanying firearm specifications. He was acquitted of the kidnapping charges. The trial court subsequently imposed a total prison sentence of 16 years.

{¶5} In September 2011, this court affirmed Warren’s convictions in *State v. Warren*, 8th Dist. Cuyahoga No. 95671, 2011-Ohio-4633 (“*Warren I*”). In his appeal,

Warren argued his convictions were against the manifest weight and sufficiency of the evidence. He also argued ineffective assistance of counsel. He did not challenge the trial court's imposition of consecutive sentences. However, in December 2015, Warren filed a motion requesting resentencing to minimal concurrent sentences based on the trial court's failure to comply with the mandates of R.C. 2929.14(C)(4) and 2929.41(A) when imposing consecutive sentences. The trial court denied Warren's motion without a hearing, stating, in pertinent part:

Defendant's claims are barred under principles of res judicata as they could have been raised during his direct appeal. *State v. McGee*, 8th Dist. Cuyahoga No. 91638, 2009-Ohio-3374.

{¶6} Warren now appeals from the trial court's judgment.

## **II. Law and Analysis**

{¶7} In his sole assignment of error, Warren argues the trial court erred in denying his motion for resentencing.

{¶8} We begin by acknowledging that Warren did not raise the alleged sentencing errors in his direct appeal. Sentencing errors not raised on direct appeal are generally barred by the doctrine of res judicata. *State v. Willard*, 8th Dist. Cuyahoga No. 101055, 2014-Ohio-5278, ¶ 10. Void sentences, however, are an exception to the res judicata doctrine, and may be reviewed at any time, either on direct appeal or by collateral attack. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 30. In contrast, “[a]rguments challenging the imposition of a sentence that is voidable are barred by the doctrine of res judicata if not raised on direct appeal.” *State v. Britta*, 11th Dist. Lake

No. 2011-L-041, 2011-Ohio-6096, ¶ 17, citing *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 30 (res judicata “operate[s] to prevent consideration of a collateral attack based on a claim that could have been raised on direct appeal from the voidable sentence”).

{¶9} Errors in the imposition of consecutive sentences, such as the failure to make the required statutory findings, render the sentences voidable, rather than void. *State v. Wilson*, 11th Dist. Lake No. 2015-L-067, 2015-Ohio-5465, ¶ 19; *State v. Bowshier*, 2d Dist. Clark No. 2015-CA-53, 2016-Ohio-1416, ¶ 16 (“the Supreme Court of Ohio ‘has declined to find sentences void based on the court’s failure to comply with certain sentencing statutes, including the consecutive sentencing statute.’”).

{¶10} As the Ohio Supreme Court has explained:

[C]hallenges to a trial court’s compliance with R.C. 2929.11 and 2929.12, which may be brought by either the defendant or the state, must still be presented in a timely direct appeal under R.C. 2953.08. R.C. 2953.08(E). \* \* \*. This is also true with regard to challenges to a sentencing court’s determination whether offenses are allied and its judgment as to whether sentences must be served concurrently or consecutively.

(Citations omitted.) *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 8.

{¶11} In this case, Warren had the opportunity to challenge the trial court’s imposition of consecutive sentences in his direct appeal, but failed to do so. Accordingly, the arguments set forth in Warren’s motion for resentencing are barred by res judicata. *See State v. Atkinson*, 8th Dist. Cuyahoga No. 103661, 2016-Ohio-3068, ¶ 13; *State v. Wofford*, 5th Dist. Stark No. 2016CA00087, 2016-Ohio-4628.

{¶12} Nevertheless, even if his alleged sentencing errors were not barred, we find Warren’s motion for resentencing to be without merit. In his motion, Warren argues he is entitled to a concurrent term of incarceration because the trial court “failed to comply with the mandatory language of R.C. 2929.14(C)(4) and 2929.41(A) before imposing consecutive sentences.” Warren’s argument, however, relies on the current version of the statute as amended by H.B. 86, effective September 30, 2011. Warren’s sentence was journalized on August 11, 2010, prior to the effective date of H.B. 86. The trial court, therefore, was not required to make the findings contained in R.C. 2929.14(C) before imposing consecutive sentences. *See State v. Calliens*, 8th Dist. Cuyahoga No. 97034, 2012-Ohio-703, ¶ 28 (recognizing that the amendments are not applicable to individuals who were sentenced prior to the September 30, 2011 effective date). Indeed, at the time that Warren was sentenced, trial judges were not mandated to make statutory findings as a prerequisite to imposing consecutive sentences. *See State v. Nunez*, 8th Dist. Cuyahoga No. 102946, 2016-Ohio-812, ¶ 9, citing *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 99; *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, paragraph three of the syllabus; *see also State v. Thomas*, Slip Opinion No. 2016-Ohio-5567.

{¶13} Because the current versions of R.C. 2929.14(C)(4) and 2929.41(A) were not effective at the time of Warren’s sentence, the trial court did not err in denying Warren’s motion for resentencing. Warren’s sole assignment of error is overruled.

{¶14} 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. 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.

EILEEN T. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., and  
ANITA LASTER MAYS, J., CONCUR