

[Cite as *State v. Thompson*, 2018-Ohio-179.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105866

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LONNIE B. THOMPSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-11-553640-A

BEFORE: E.A. Gallagher, A.J., E.T. Gallagher, J., and Boyle, J.

RELEASED AND JOURNALIZED: January 18, 2018

FOR APPELLANT

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EILEEN A. GALLAGHER, A.J.:

{¶1} Defendant-appellant, Lonnie Thompson is again before this court and has raised four assignments of error for our review:

- I. The trial court failed to conduct a de novo resentencing denying Appellant his Due Process protections under the Fourteenth Amendment to the U.S. Constitution and Article 1, Section 10 of the Ohio Constitution.
- II. The trial court failed to conduct a full allied offense determination and to merge all allied offenses, violating Appellant's protection against Double Jeopardy as provided by the Fifth Amendment to the U.S. Constitution, and his right to Due Process under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 10 of the Ohio Constitution.
- III. The trial court failed to make required findings under R.C. 2929.14(C)(4) before imposing consecutive sentences at Thompson's resentencing, in violation of his Due Process protections under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 10 of the Ohio Constitution.
- IV. The trial court violated Appellant's Due Process protections under the Fifth and Fourteenth Amendments to the U.S. Constitution, and Article 1, Section 10 of the Ohio Constitution, when it engaged in vindictive sentencing against him.

Having reviewed the record and pertinent law, we affirm Thompson's sentence.

{¶2} This is Thompson's fifth appeal. In his first appeal, Thompson argued that the trial court "abused its discretion by imposing a total sentence of 32½ years." *State v. Thompson*, 8th Dist. Cuyahoga No. 99628, 2014-Ohio-202, ¶ 21 ("*Thompson I*"). We concluded that the trial court erred by failing to merge two counts and remanded the matter for resentencing as to those two counts. Thompson did not raise any issue in his first appeal regarding the trial court's imposition of a fine, costs, or restitution or the trial court's failure to give him jail-time credit.

{¶3} In his second appeal, Thompson argued that the trial court’s nunc pro tunc entry correcting his sentence was invalid because the sentence was greater than the 28½ years imposed at the sentencing hearing. *State v. Thompson*, 8th Dist. Cuyahoga No. 102326, 2015-Ohio-3882, ¶ 5 (“*Thompson II*”). This court held that in his prior appeal, Thompson only argued that the trial court erred by imposing 32½ years and that res judicata prevented him from raising an argument he could have raised on direct appeal. We also concluded that issuing the nunc pro tunc was an appropriate manner to correct the mathematical error with respect to the sentencing error, because it was undisputed that the aggregate prison sentence imposed totaled 31½ years. We held that “[a]lthough Thompson’s sentences on each of the individual counts were clearly stated at the sentencing hearing, the record reflects that the trial court, the state, and defense counsel each made a math error in calculating Thompson’s aggregate sentence.” *Thompson II* at ¶ 17.

{¶4} We agreed with Thompson, however, that the trial court erred by not correcting the improper imposition of a fine, costs and restitution, “which were either ordered suspended or not imposed at the sentencing hearing.” *Id.* at ¶ 18. We concluded that “the November 14, 2014 nunc pro tunc entry is incomplete and a new nunc pro tunc entry must be issued correcting all of the mathematical and clerical errors in the March 13, 2013 sentencing journal entry.” *Id.* Although Thompson also argued in *Thompson II* that the trial court erred by not giving him jail-time credit, we held that Thompson’s remedy was to file a motion with the trial court pursuant to R.C. 2929.19(B)(2)(g)(iii).

{¶5} In his third appeal Thompson argued that he was denied due process of law when the court entered a nunc pro tunc sentencing entry without this appearance or waiver of appearance, that the journal entry did not reflect what had previously occurred in the case and that the trial court erred in failing to follow this court’s mandate as to jail-time credit. *State v. Thompson*, 8th Dist. Cuyahoga No. 104226, 2016-Ohio-7404 (*“Thompson III”*).

{¶6} In *Thompson III*, the court overruled appellant’s assignments of error and affirmed the judgment of the trial court.

{¶7} Thompson’s fourth appeal, Appeal No. 104406, was dismissed for lack of a final appealable order.

{¶8} In the present case, Thompson’s notice of appeal indicates that he will appeal “on questions of law the judgment rendered by this court on May 17, 2017.”

{¶9} The appellant’s assignments of error are all overruled.

{¶10} As to Assignments of Error I and II, the trial court was not obligated to conduct a de novo resentencing. The trial court was merely instructed to address the potential merger of counts 30 and 31, which in fact, it did do. The trial court also addressed the fine, costs and restitution that had previously been ordered by journal entry but not imposed in open court. The trial court has suspended all of the aforementioned financial sanctions.

{¶11} Thompson’s third assignment of error had been addressed in *Thompson I* and is, thus, barred by res judicata.

{¶12} Finally, appellant's fourth assignment of error is also barred by the doctrine of res judicata. In four prior appeals, Thompson has never raised this issue.

{¶13} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were no reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

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

EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

EILEEN T. GALLAGHER, J., and
MARY J. BOYLE, J., CONCUR