

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27680

Appellee

v.

PHILLIP A. SINGFIELD

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 08 09 3117

DECISION AND JOURNAL ENTRY

Dated: July 15, 2015

SCHAFER, Judge.

{¶1} Defendant-Appellant, Phillip Singfield, appeals from the order of the Summit County Court of Common Pleas denying his pro se motion to correct sentence pursuant to R.C. 2929.41. For the reasons set forth below, we affirm.

I.

{¶2} This is the third appeal Mr. Singfield has filed involving his criminal convictions and sentence. In a prior appeal, *State v. Singfield*, 9th Dist. Summit No. 24576, 2009-Ohio-5945, this Court set forth the underlying factual and procedural history as follows:

At approximately 1:30 a.m. on July 26, 2008, Staci Smith and her cousin, Natea Proctor, drove to a bar on Newton Street. Smith parked her vehicle in the bar's lot, and she and Proctor remained in the vehicle to eat some food that they had just purchased. While they were eating, a man approached the vehicle and asked the women for a light. Subsequently, the man produced a handgun and threatened to shoot the women while he demanded their purses. Smith and Proctor handed over their purses, and the man walked away, entered a nearby car, and drove off. Smith and Proctor went to the bar and called 911 to report the incident. Both Smith and Proctor provided the police with descriptions of their assailant.

Smith later saw the man whom she believed had robbed her while riding the bus and again while walking down a street near her home. On the second occasion, Smith telephoned Proctor. Proctor, who was at Smith's house, was able to look outside and see the man. Proctor also identified him as the person who had robbed her. Smith began to follow the man and called 911. Upon their arrival, the police arrested Singfield, the man whom both Smith and Proctor had identified as their assailant.

On October 3, 2008, a grand jury indicted Singfield on the following counts: (1) two counts of aggravated robbery, in violation of R.C. 2911.01(A)(1), both with firearm specifications, in violation of R.C. 2941.145; (2) two counts of robbery, in violation of R.C. 2911.01(A)(1)/(2), both with firearm specifications, in violation of R.C. 2941.145; (3) having a weapon while under disability, in violation of R.C. 2923.13(A)(2)/(3); (4) theft, in violation of R.C. 2913.02(A)(1)/(4); and (5) petty theft, in violation of R.C. 2913.02(A)(1)/(4). The matter proceeded to a jury trial and, on December 15, 2008, the jury found Singfield guilty on all counts and the specifications linked to those counts. On December 16, 2008, the trial court orally sentenced Singfield, including a prison term for each specification, to a total sentence of fourteen years.

On December 22, 2008, Singfield filed a motion to modify his sentence, arguing that his firearms specifications were allied offenses for which the trial court should not have imposed separate sentences upon him. The trial court held a hearing on the motion and issued another oral sentence. The trial court: (1) merged Singfield's sentences for his two counts of robbery with firearm specifications with his counts for theft and petty theft; (2) increased his two aggravated robbery sentences by one year each and ordered them to run consecutively for a total period of ten years; (3) issued three year sentences on each of the two firearm specifications attached to Singfield's two aggravated robbery convictions, ordering them to run concurrently with one another but consecutively with the sentence for aggravated robbery; and (4) ordered a one year consecutive sentence for having a weapon while under disability. Accordingly, Singfield still received a total sentence of fourteen years. The court journalized Singfield's sentence on December 29, 2008.

Singfield appealed, and this Court affirmed the judgment of the trial court in part and reversed it in part. *State v. Singfield*, 9th Dist. No. 24576, 2009–Ohio–4172. In reversing in part, this Court reversed Singfield's convictions for aggravated robbery and their attendant specifications because his indictment did not include the mens rea of recklessness with regard to aggravated robbery's deadly weapon element. *Id.* at ¶ 17–18. On August 27, 2009, the State filed an application for reconsideration. On October 7, 2009 we granted the State's application, vacated our decision, and reinstated Singfield's appeal.

Id. at ¶ 2–6. On reconsideration, this Court again affirmed Mr. Singfield's convictions. *See State v. Singfield*, 9th Dist. Summit No. 24576, 2009-Ohio-5945, ¶ 26.

{¶3} On April 15, 2010, Mr. Singfield filed a “Criminal Rule 47 Motion for Correction of Judgment” arguing that his judgment of conviction was not a final appealable order because it failed to properly address postrelease control and failed to state the manner of his conviction. On May 28, 2010, Mr. Singfield filed a motion to dismiss the indictment because it failed to contain the elements of mental culpability. After a hearing on the respective motions, the trial court denied the motion to dismiss the indictment and issued a judgment entry on October 19, 2010 purporting to reimpose Mr. Singfield’s original sentence, properly notify him of postrelease control, and state the manner of his conviction.

{¶4} On appeal, this Court determined that the trial court exceeded its authority by attempting to resentence Mr. Singfield on aspects of his sentence that were not void and vacated the parts of the resentencing entry that addressed anything other than postrelease control. *State v. Singfield*, 9th Dist. Summit No. 25670, 2012-Ohio-1331, ¶ 7. This Court also determined that the doctrine of res judicata precluded Mr. Singfield “from re-appealing the merits of his conviction following the trial court’s correction of the postrelease control error.” *Id.* at ¶ 8. We also remanded the matter to the trial court to issue a nunc pro tunc entry to correct the original sentencing entry’s omission of the manner of conviction. *Id.* at ¶ 9. The trial court filed a nunc pro tunc entry on April 9, 2012.

{¶5} On November 19, 2013, Mr. Singfield filed a pro se “Motion to Modify or Correction of Sentence Pursuant to [R.C.] § 2953.08,” wherein he asked the trial court to correct its December 29, 2008 sentencing entry to reflect that the sentences for his crimes are to run concurrently, not consecutively. The trial court denied Mr. Singfield’s motion.

{¶6} Mr. Singfield now appeals, raising one assignment of error for this Court’s review.

I.

ASSIGNMENT OF ERROR

THE COURT DENYING APPELLANTS MOTION TO CORRECT AN ERRONEOUS AND CONTRARY TO LAW, AND DENIED THE APPELLANT DUE PROCESS OF LAW. [SIC].

{¶7} In his sole assignment of error, Mr. Singfield avers that the trial court erred by denying his “Motion to Modify or Correction of Sentence Pursuant to [R.C.] § 2953.08.” Specifically, Mr. Singfield argues that the trial court’s 2008 sentencing entry was ambiguous as to whether the sentences were to run concurrently or consecutively to one another. As such, Mr. Singfield contends that this ambiguity must be construed in his favor and the trial court should amend its sentencing entry to run his sentences concurrent to one another. We disagree, as Mr. Singfield’s argument is barred by the doctrine of res judicata.

{¶8} The Ohio Supreme Court has held that most challenges to a trial court’s compliance with certain sentencing statutes “must * * * be presented in a timely direct appeal under R.C. 2953.08.” *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, ¶ 8, citing *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912. Absent a timely appeal, however, res judicata applies. *Id.* at ¶ 9. “The doctrine of res judicata prevents repeated attacks on a final judgment and applies to all issues that were or might have been previously litigated.” (Internal quotations and citation omitted.) *State v. Sanders*, 9th Dist. Summit No. 27189, 2014-Ohio-5115, ¶ 6, quoting *State v. Lowe*, 9th Dist. Summit No. 27199, 2014-Ohio-1817, ¶ 6.

{¶9} Here, Mr. Singfield could have raised the trial court’s alleged error involving the sentencing entry on direct appeal. The alleged error that Mr. Singfield asserts occurred within

the trial court's sentencing entry from 2008, and was thus patent on the face of the record. Mr. Singfield has previously appealed to this Court on two other occasions in this matter and could have raised his challenge to the clarity of the trial court's sentencing entry then. However, he failed to do so.

{¶10} Based on the foregoing, we conclude that the trial court did not err in denying Mr. Singfield's motion to modify or correct the trial court's sentence. Accordingly, Mr. Singfield's assignment of error is overruled.

III.

{¶11} Mr. Singfield's sole assignment of error is overruled. The order of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JULIE A. SCHAFER
FOR THE COURT

HENSAL, P. J.
CARR, J.
CONCUR.

APPEARANCES:

PHILLIP A. SINGFIELD, pro so, Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD KASAY, Assistant
Prosecuting Attorney, for Appellee.