

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2014-L-116
JORGE VALADEZ GONZALEZ,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas.
Case No. 12 CR 000619.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Karen A. Sheppert*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Jorge Valadez Gonzalez, pro se, PID: A642-457, Marion Correctional Institution, P.O. Box 57, 940 Marion-Williamsport Rd., Marion, OH, 43302 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Jorge Valadez Gonzalez, appeals from the judgment entry of the Lake County Court of Common Pleas, denying his motion to vacate costs and restitution. For the following reasons, we affirm the judgment of the trial court.

{¶2} On April 29, 2013, appellant entered a written plea of guilty to two counts of aggravated vehicular assault, felonies of the third degree, in violation of R.C. 2903.08(A)(1)(a); and one count of OVI, a misdemeanor of the first degree, in violation

of R.C. 4511.19(A)(1)(a). On June 5, 2013, the trial court sentenced appellant to a mandatory four-year prison term on Count 1, a mandatory four-year prison term on Count 2, and 180 days in jail on Count 3, to run concurrent with each other for a total of four years in prison. Appellant's driver's license was suspended for 10 years. Appellant was also ordered to pay court costs and fees; a mandatory fine of \$375.00 on Count 3; and \$18,333.50 in restitution to the victim.

{¶3} Appellant was represented by counsel at this hearing and did not file a direct appeal of his June 5, 2013 sentence.

{¶4} On October 1, 2014, appellant filed a pro se motion to vacate costs and restitution, arguing the trial court did not consider his "present and future ability to pay the amount of the sanction or fine," in violation of R.C. 2929.19(B)(5).¹ The trial court denied the motion without a hearing on November 5, 2014.

{¶5} Appellant timely noticed this appeal and assigns two errors, which we consolidate for review:

[1.] Trial court erred in ordering to pay restitution/fine without following the mandates of the Ohio Revised Code denying appellant his right to *Due Process* and *Equal Protection of the Law*.

[2.] Trial court erred in not determining present and future ability to pay before imposing financial sanction denying Appellant his right to *Due Process* and *Equal Protection of the Law*.

Appellant asserts that the trial court did not determine the amount of restitution at the sentencing hearing, in violation of R.C. 2929.18(A)(1), and did not consider his present and future ability to pay before imposing financial sanctions, in violation of R.C. 2929.19(B)(5).

1. Although appellant refers to R.C. 2929.19(B)(6) throughout his pleadings and brief on appeal, the relevant provision is now R.C. 2929.19(B)(5), following the enactment of H.B. 86 on September 30, 2011.

{¶6} We initially note that appellee, the state of Ohio, asserts this appeal must be “considered without any transcripts” because appellant did not file the transcript separately as App.R. 9 requires. Appellant filed a motion with the trial court for the transcript to be provided at state’s expense on appeal; this motion was never ruled on. Nevertheless, the transcript of the sentencing hearing is properly before us in the record, as appellant attached a copy to his motion to vacate costs and restitution in the trial court.

{¶7} Appellant’s claims, however, are barred by res judicata.

Under the doctrine of *res judicata*, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was *raised or could have been raised by the defendant at the trial*, which resulted in that judgment of conviction, *or on an appeal* from that judgment.

State v. Perry, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus (emphasis sic.).

{¶8} The errors appellant assigns arise from the sentencing hearing and the trial court’s sentencing entry, which imposed the financial sanctions. This court, citing numerous Ohio courts, has recognized that these errors could have been raised in a direct appeal to an appellate court. See *State v. Pasqualone*, 140 Ohio App.3d 650, 657-658 (11th Dist.2000) (collecting cases). Although appellant could have raised the issue of the trial court’s imposition of financial sanctions at the sentencing hearing and on direct appeal, he did neither. Simply stated, these alleged errors existed at the time of sentencing and should have been alleged at that time, or at the very least on direct

appeal, not after the denial of a post-sentence motion filed over a year after the entry of sentence.

{¶9} In his reply brief on appeal, appellant argues, for the first time, that he was not advised of his right to appeal. He asserts, therefore, that this appeal should be considered as his direct appeal. This argument is not properly raised and is without merit. Appellant acknowledged by way of signature in his written plea of guilty that his attorney advised him of his “limited appellate rights, and that any appeal must be filed within 30 days of the Court’s entry of the judgment of [his] sentence.”

{¶10} For the foregoing reasons, appellant’s arguments are barred by the doctrine of res judicata.

{¶11} The judgment of the Lake County Court of Common Pleas is affirmed.

DIANE V. GRENDALL, J.,

COLLEEN MARY O’TOOLE, J.,

concur.