**[Cite as *State v. Jones*, 2015-Ohio-2906.]**

**IN THE COURT OF APPEALS**

**ELEVENTH APPELLATE DISTRICT**

**LAKE COUNTY, OHIO**

| | | |
|---|---|---|
| STATE OF OHIO, | : | **MEMORANDUM OPINION** |
| Plaintiff-Appellee, | : | **CASE NO. 2015-L-030** |
| - vs - | : | |
| JOSEPH JONES, JR., | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Lake County Court of Common Pleas.
Case No. 14 CR 000274.

Judgment: Appeal dismissed.

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

*Joseph Jones, Jr.*, pro se, PID: A661-943, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

**{¶1}** Appellant, Joseph Jones, Jr., appeals the judgment of the Lake County Court of Common Pleas denying his motion to vacate court costs. For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

**{¶2}** Appellant plead guilty to two counts of domestic violence, felonies of the third degree, in violations of R.C. 2915.25 (A), subject to division (C) of R.C. 2929.13, and was sentenced to thirty months for each count, to run consecutively, on October 15,

2014. In the entry of sentence, appellant was ordered to pay court costs. The clerk of courts prepared an itemized bill at a later date in the amount of $440.00. Appellant did not file a direct appeal from the sentencing entry; however, on March 5, 2015, appellant filed a motion to vacate court costs. The trial court denied this motion March 12, 2015.

**{¶3}** Appellant filed a timely notice of appeal and asserts one assignment of error:

**{¶4}** "Trial counsel was ineffective for failing to move the court for a waiver of, and for not objecting to, the imposition of court costs against the indigent appellant."

**{¶5}** Pursuant to Article IV, Section 3(B)(2) of the Ohio Constitution, courts of appeals have jurisdiction only to "affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district[.]" "It is well-established that an order must be final before it can be reviewed by an appellate court. If an order is not final, then an appellate court has no jurisdiction." *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989).

**{¶6}** The statutory "final order" is defined within R.C. 2505.02(B) and includes seven categories. Only the first two categories are relevant to the instant matter: "(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment; (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment." R.C. 2505.02(B). Pursuant to R.C. 2505.02(A)(1), a "substantial right" is "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect."

**{¶7}** "An order denying a motion to suspend court costs, fines, and/or restitution does not affect a substantial right because there is no legally enforceable right to have these monetary assessments suspended." *State v. Evans*, 4th Dist. Scioto No. 99CA2650, 1999 Ohio App. LEXIS 4331 at *2, citing R.C. 2949.09, et seq. Accordingly, this court, along with others, has held the denial of a postconviction motion to vacate court costs does not affect a substantial right and is not a final, appealable order. *See Evans, supra*; *State v. Pasqualone*, 140 Ohio App.3d 650 (11th Dist. 2000); *State v. Arnett*, 3rd Dist. Shelby No. 17-95-25, 1996 Ohio App. LEXIS 996; *see also State v. Goodman*, 11th Dist. Trumbull No. 2014-T-0047, 2014-Ohio-4884 (holding the denial of a postconviction motion to impose a payment plan for court costs is not a final, appealable order).

**{¶8}** Based on the foregoing, we conclude the trial court's judgment denying appellant's motion to vacate court costs is not a final, appealable order. *See State v. Strickland*, 11th Dist. Trumbull No. 2014-T-0049, 2014-Ohio-5622, ¶16.

**{¶9}** It is well settled that a final, appealable order is required before there can be a basis for an appeal. *Goodman*, *supra*, at ¶16. "'If there is no final judgment or other type of final order, then there is no reviewable decision over which an appellate court can exercise jurisdiction, and the matter must be dismissed.'" *Pasqualone*, *supra*, at 655, quoting *BCGS, L.L.C. v. Raab*, 11th Dist. Lake No. 98-L-041, 1998 Ohio App. LEXIS 6584 at *3-4 (July 17, 1998).

**{¶10}** Assuming, arguendo, the trial court's judgment was a final, appealable order, appellant's claim is still barred by res judicata. Under the doctrine of res judicata, a final judgment of conviction bars a defendant from raising any defense or any claimed

lack of due process that was or could have been raised at the trial that resulted in the judgment of conviction or on appeal from that judgment. *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus.

**{¶11}** The error appellant assigns arises from the trial court's sentencing entry, which imposed the court costs obligation. The Ohio Supreme Court held that "failing to specify the amount of costs assessed in a sentencing entry does not defeat the finality of the sentencing entry as to costs." *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, ¶21. Numerous Ohio courts have recognized that this error could have been raised in a direct appeal to an appellate court. *See Pasqualone, supra*, at 657-658 (collecting cases). "A defendant must make a motion to waive payment of court costs at the time of sentencing or the issue is waived." *State v. Spencer*, 4th Dist. Scioto No. 15CA3681, 2015-Ohio-1445, ¶8.

**{¶12}** Appellant's assigned error is that counsel was ineffective in that he should have asked to have the costs waived at the sentencing hearing. This issue is one that clearly could have been raised on direct appeal, as appellant knew courts costs had been assessed, and also knew there was no request for waiver of the costs. Although appellant could have raised this issue in his direct appeal, he failed to do so. Accordingly, even if the order was final and appealable, appellant's argument would be barred by the doctrine of res judicata.

**{¶13}** The appeal is dismissed for lack of jurisdiction.

THOMAS R. WRIGHT, J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.