

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HOCKING COUNTY

STATE OF OHIO, : Case No. 16CA17
Plaintiff-Appellee, :
v. : DECISION AND
 : JUDGMENT ENTRY
JAMES E. HAMILTON, JR. #A488-127, :
 : **RELEASED: 3/31/2017**
Defendant-Appellant. :

APPEARANCES:

James E. Hamilton, Jr., Chillicothe, Ohio, pro se appellant.

Colleen S. Williams, Assistant Hocking County Prosecutor, Logan, Ohio, for appellee.
Harsha, J.

{¶1} James E. Hamilton, Jr. appeals from a judgment denying his postconviction motion to correct his sentence. Hamilton filed the motion after he had previously appealed his conviction upon his guilty plea. He asserts that the trial court erred and abused its discretion by denying his motion without an evidentiary hearing, and by incorrectly ruling that the sentence was not contrary to law and that his claims are barred by res judicata.

{¶2} We reject Hamilton's assertion because res judicata barred his nonconstitutional claims, i.e. that the trial court erred by failing to make the required findings to impose the mandatory prison term, and by failing to advise him of his right to appeal his sentence. And insofar as Hamilton's motion raised constitutional issues, it should have been considered to be a time-barred petition for postconviction relief that the trial court lacked jurisdiction to address. Consequently, we overrule his assignment

of error and affirm the judgment of the trial court, as modified, to reflect the dismissal of his constitutional claims.

I. FACTS

{¶3} In February 2005, after Hamilton pleaded guilty to one count of aggravated murder in violation of R.C. 2903.01(A), the trial court sentenced him to life imprisonment with parole eligibility after serving twenty years.

{¶4} In his direct appeal Hamilton claimed that he was deprived of his constitutional right to due process when the trial court accepted his unknowing, unintelligent, and involuntary guilty plea and that his trial counsel rendered ineffective assistance by failing to object to the trial court's misstatements. We rejected Hamilton's arguments because the record showed that the trial court repeatedly and accurately advised Hamilton that his aggravated murder conviction carried a life sentence with parole eligibility after twenty years. We found that his trial counsel's failure to object to the trial court's misstatement about post-release control was not prejudicial. Hamilton had failed to show that he would not have pled guilty if counsel had objected to the court's misstatements, thus allowing the court to then correctly inform him that he would be subject to parole instead of post-release control. We affirmed the trial court's judgment. *State v. Hamilton*, 4th Dist. Hocking No. 05CA4, 2005-Ohio-5450, ¶ 13, 22-23.

{¶5} In 2010, Hamilton filed an unsuccessful pro se motion to withdraw his guilty plea and a motion for a new trial.

{¶6} His current appeal is based upon a 2016, pro se "verified motion to correct sentence." That motion claimed that his sentence was contrary to law and the errors and defects at the sentencing hearing and in the sentencing entry deprived him of due

process and a fair proceeding. He argued that his contentions were not barred by waiver or res judicata. He contended that his sentence “includes purported mandatory and more than the minimum sentence” but “none of the required language to impose mandatory or more than the minimum were cited” in the entry or at the hearing. He argued that R.C. 2929.13(F) required the court to issue findings and justifications for its sentence. Next, he argued that his case was a capital case that required a three-judge panel to determine his guilt and the appropriate sentence. Hamilton also argued that the sentencing entry did not inform him of his right to appeal his sentence if it were contrary to law as provided in R.C. 2953.08(B)(2). Hamilton requested the trial court issue a corrected amended sentencing entry that complies with felony sentencing statutes and that would entitle him to judicial release, earned credit, and eligibility for the “DRC Sponsored 80% Early Release Program.”

{¶17} The trial court denied the motion.

II. ASSIGNMENT OF ERROR

{¶18} Hamilton assigns the following error for our review:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION; WHEN IT OVERRULED AND DENIED DEFENDANT’S PROPERLY FILED VERIFIED MOTION TO CORRECT SENTENCE ALLEGING SENTENCING ERRORS, WITHOUT ANY REAL REVIEW OR HOLDING A HEARING, AFTER SCHEDULING ONE; BY INCORRECTLY RULING THAT THE SENTENCE IMPOSED WAS NOT CONTRARY TO LAW AND FURTHER INCORPORATING THE STATE’S FLAWED ARGUMENT THAT THESE ERRORS CAN ONLY BE RAISED ON DIRECT APPEAL AND ARE BARRED FROM REVIEW UNDER PRINCIPLES OF RES JUDICATA.

III. STANDARD OF REVIEW

{¶19} After he pleaded guilty, Hamilton was convicted of a single felony offense of aggravated murder without any death penalty specifications. When reviewing a felony

sentence, we apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E3d 1231, ¶ 22. Under R.C. 2953.08(G)(2), an appellate court may increase, reduce, or modify a sentence or may vacate the sentence and remand the matter to the sentencing court if it clearly and convincingly finds either “[t]hat the record does not support the sentencing court’s findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant” or “[t]hat the sentence is otherwise contrary to law.” See *State v. Mullins*, 4th Dist. Scioto No. 15CA3716, 2016-Ohio-5486, ¶ 25.

IV. LAW AND ANALYSIS

A. Nonconstitutional Claims

{¶10} In his sole assignment of error Hamilton asserts that the trial court erred and abused its discretion by denying his motion to correct his sentence.

{¶11} “ ‘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 claimed lack of due process that was raised or could have been raised by the defendant at the trial, * * * or on appeal from that judgment.’ ” *State v. Szefcyk*, 77 Ohio St.3d 93, 95, 671 N.E.2d 233 (1996), quoting *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus; see also *State v. Davis*, 139 Ohio St.3d 122, 2014-Ohio-1615, 9 N.E.3d 1031, ¶ 28. “ ‘Res judicata does not, however, apply only to direct appeals, but to all postconviction proceedings in which an issue was or could have been raised.’ ” *State v. Heid*, 4th Dist. Scioto No. 15CA3710, 2016-Ohio-2756, ¶ 18, quoting *State v. Montgomery*, 2013-Ohio-4193, 997 N.E.2d 579, ¶ 42 (8th Dist.).

{¶12} Hamilton claims that res judicata does not bar the claims in his motion to correct his sentence because his sentence was contrary to law. In effect Hamilton contends that his sentence is void. “ ‘In general, a void judgment is one that had been imposed by a court that lacks subject-matter jurisdiction over the case or the authority to act. Unlike a void judgment, a voidable judgment is one rendered by a court that has both jurisdiction and authority to act, but the court’s judgment is invalid, irregular, or erroneous.’ ” *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 6, quoting *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 12. In general, “sentencing errors are not jurisdictional and do not render a judgment void.” *Id.* at ¶ 7. But the Supreme Court of Ohio has at times held that “a sentence that is not in accordance with statutorily mandated terms is void,” which “is not precluded from appellate review by principles of res judicata, and may be reviewed at any time, on direct appeal or by collateral attack.” *Id.* at ¶ 8 and paragraph one of the syllabus.

{¶13} In *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, at ¶ 8, the Supreme Court of Ohio emphasized that the language in *Fischer* noting the inapplicability of res judicata, “does not apply to most sentencing challenges” and instead applied “only in a limited class of cases—all three cases to which we have applied the *Fischer* rule have in common the crucial feature of a void *sanction*.” (Emphasis added.).

{¶14} Hamilton claims that his sentence is contrary to law because “as a predicate to imposing mandatory and more than the minimum sentence; a court is required to make judicial fact findings and incorporate them into the Judgment Entry. Here, this did not happen. Certainly, no balancing test or any real discussion of any lesser included offenses or reduced time * * * .” To support his argument, Hamilton cites

to R.C. 2929.11; R.C. 2929.12; 2929.13(F); *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659 (involving consecutive sentences for multiple convictions); and two death penalty cases. He also contends he was entitled to a three-judge panel provided in death penalty cases and that the sentencing entry does not advise him of his right to appeal.

{¶15} The trial court convicted Hamilton of one count of aggravated murder in violation of R.C. 2903.01(A). The sentencing entry states, “[t]he Court has considered the record, oral statements and any victim impact statements, as well as the principles and purposes of sentencing under R.C. 2121.11, and the seriousness and recidivism factors under R.C. 2929.12.” The trial court sentenced Hamilton to life imprisonment with parole eligibility after serving twenty years of imprisonment, a mandatory sentence under R.C. 2929.03(A)(1), which the trial court had no discretion to reduce under R.C. 2929.13(F)(1).

{¶16} Hamilton’s aggravated murder charge did not include aggravating circumstances specifications, so the provisions governing a death penalty case have no relevance. The trial court did not impose multiple sentences; therefore consecutive or concurrent sentencing analysis under R.C. 2929.14(C) has no relevance and would be barred by res judicata in any event. *State v. Berecz*, 4th Dist Washington No. 16CA15, 2017-Ohio-266, ¶ 18-19 citing *Holdcroft, supra*. And, because Hamilton was found guilty of only one offense, a merger analysis under R.C. 2941.25 has no relevance and likewise would be barred by res judicata. *Id.* at ¶ 22; See *State v. Hardie*, 4th Dist. Washington No. 14CA24, 2015-Ohio-1611, ¶ 12, citing *Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 8 (allied-offenses claim “does not render [appellant’s] sentence void, but is an error that must be raised on [direct] appeal”). The Supreme

Court recognized this result in *State v. Williams*, ___Ohio St.3d ___, 2016-Ohio-7658, ___N.E.3d ___, ¶ 26.

{¶17} Because Hamilton either raised or could have raised them in his prior direct appeal, we agree that res judicata barred Hamilton’s statutory sentencing claims, which even if meritorious would only render his sentence voidable rather than void.

{¶18} His remaining nonconstitutional claim concerns the trial court’s purported failure in its sentencing entry to notify him of his ability to appeal his sentence; he relies on Crim.R. 32 and R.C. 2953.08. Although R.C. 2953.08 confers the right to appeal from the sentence, it contains no requirement that the court notify the defendant of that right. And any purported failure by the trial court in its notification obligations under Crim.R. 32 could not render his sentence void. See, e.g., *Berecz* at ¶23; *State v. Gannon*, 4th Dist. Lawrence No. 15CA16, 2016-Ohio-1007, ¶ 17 (“because the error here resulted from the court’s failure to comply with the Crim.R. 11(C)(2)(a) requirements for accepting a plea, rather than as a result of ignoring a statutory mandate for imposing sentence, the plea was merely voidable and not void”); *State v. Barnes*, 12th Dist. Warren No. CA2014-03-049, 2015-Ohio-651, ¶ 27 (“While the trial court failed to advise [the defendant] of his right to appeal under Crim.R. 32(B)(2), such an error does not render [the defendant’s] conviction void”). Therefore, res judicata also bars this claim.

{¶19} Consequently, res judicata barred Hamilton’s sentencing claims because he either raised or could have raised them in his direct appeal. The trial court properly denied his motion to correct his sentence for these claims.

B. Constitutional Claims

{¶20} Hamilton also argues that his motion to correct sentence was based on “the constitution; especially the Fifth and Sixth Amendments.” “[I]f a criminal defendant, subsequent to his or her direct appeal, files a motion seeking the vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, then such a motion is a petition for postconviction relief.” *State v. Reynolds*, 79 Ohio St.3d 158, 679 N.E.2d 1131 (1997), syllabus. To the extent that Hamilton’s motion raised constitutional claims, it constituted an untimely petition for postconviction relief that the trial court could not address. R.C. 2953.23(A)(1) and (2); *State v. McDougald*, 4th Dist. Scioto No. 16CA3736, 2016-Ohio-5080, ¶ 22-23.

{¶21} Therefore, Hamilton has not established that the trial court erred by not granting his motion to correct his sentence. We overrule his assignment of error.

V. CONCLUSION

{¶22} Hamilton was not entitled to the relief requested in his motion to correct his sentence. The trial court correctly denied his motion insofar as he raised nonconstitutional claims because they were barred by res judicata. And for his constitutional claims, the motion constituted a time-barred petition for postconviction relief that the trial court lacked jurisdiction to address. Having overruled his sole assignment of error and upon authority of App.R. 12(A)(1)(a), we modify the trial court’s judgment to reflect the dismissal of the petition/motion insofar as it raised constitutional claims, and we affirm the judgment as modified.

JUDGMENT AFFIRMED

AS MODIFIED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED AS MODIFIED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

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

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Abele, J. & Hoover, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.