[Cite as *State v. Bowman*, 2015-Ohio-1162.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 26162
Plaintiff-Appellee	:	
	:	Trial Court Case No. 1999-CR-1642
v.	:	
	:	(Criminal Appeal from
LARRY BOWMAN	:	Common Pleas Court)
	:	
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 27th day of March, 2015.

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FAIN, J.

{¶ 1} Defendant-appellant Larry Bowman appeals from a 2014 order of the trial court overruling, in part, his motion to correct a void judgment. Bowman contends that the trial court erred by failing to merge several of his convictions, as allied offenses of

similar import.

{¶ 2} We conclude that Bowman's merger argument was barred by res judicata, since he did not raise the merger issue in his appeal from his 1999 conviction. Therefore, the trial court did not err by failing to merge the convictions.

I. The Course of Proceedings

{¶ 3} In 1999, Bowman was convicted of one count of Kidnapping and three counts of Rape. He was sentenced to imprisonment for nine years on one count of Rape, to eight years on each of the other two counts of Rape, and to five years for Kidnapping. The Rape sentences were ordered to be served consecutively; the Kidnapping sentence was ordered to be served concurrently, for a total sentence of 25 years. Bowman appealed. We affirmed. *State v. Bowman*, 2d Dist. Montgomery No. 18176, 2001 WL 43099 (Jan. 19, 2001).

{¶ 4} In 2013, Bowman moved to correct a void judgment. In that motion, he asserted that the trial court had failed to attach a term of post-release control to each of his convictions, and had also failed to specify the term of post-release control. Also, Bowman contended that the portion of his sentence designating him as a sexual predator was void.

{¶ 5} By entry dated March 10, 2014, the trial court found that part of Bowman's motion addressed to post-release control to be well-taken but overruled the motion in all other respects. The order included the following: "When sentenced, the Court erred in imposition of post-release control sanctions. Contrary to Defendant's assertion, such error only renders that portion of the sentence void, not the entire sentence."

{¶ 6} The trial court held a sentencing hearing on March 19, 2014, in which it imposed a five-year term of post-release control on each of Bowman's felony convictions. The trial court evidently disagreed with Bowman's argument about his sexual offender classification as a sexual predator; no change was made to his sentence in that regard.

{¶ 7} Bowman appeals from the March 10, 2014 order overruling his motion to correct a void judgment.

II. Bowman not Having Raised the Merger Issue in his Appeal from his 1999 Conviction and Sentence, his Claim that his Convictions Should Merge Is Barred by Res Judicata

{¶ 8} Bowman's sole assignment of error is as follows:

> THE TRIAL COURT ERRED IN OVERRULING LARRY BOWMAN'S MOTION TO CORRECT A VOID JUDGMENT WITHOUT DETERMINING WHETHER THE RAPE CHARGES CONSTITUTED ALLIED OFFENSES OF SIMILAR IMPORT AS DEFINED BY R.C. 2941.25.

{¶ 9} Bowman cites *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923. In that case, the Supreme Court of Ohio held that the failure to merge allied offenses of similar import constitutes plain error, which can be the subject of an appeal even though not raised in the trial court, and even though the sentence is an agreed sentence. *Id*., ¶ 26, 31. The Court noted that " * * * , if a trial court fails to merge allied offenses of similar import, the defendant *merely* has the right to appeal the sentence."

Id., ¶ 29 (emphasis added).

{¶ 10} In the case before us, Bowman could have raised the alleged error of the trial court in failing to merge the convictions by appeal to this court. He did not do so. Therefore, Bowman's claim that the trial court erred by failing to merge the convictions is barred by res judicata. "Although the doctrine of res judicata does not preclude review of a void sentence, res judicata still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence." *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph three of the syllabus.

{¶ 11} "The issue of merger of allied offenses of similar import must be raised in an appellant's direct appeal or it is barred by res judicata." *State v. Martin*, 7th Dist. Mahoning No. 13 MA 178, 2014-Ohio-5723, ¶ 20; *see also State v. Johnson*, 2d Dist. Montgomery No. 25711, 2013-Ohio-4946, ¶ 7.

{¶ 12} Because Bowman failed to raise the merger issue in his initial appeal from his 1999 conviction and sentence, it is barred by res judicata, and the trial court did not err in failing to address that issue in its 2014 decision and re-sentencing to correct the void portion of the sentence dealing with post-release control. Bowman's sole assignment of error is overruled.

III. Conclusion

{¶ 13} Bowman's sole assignment of error having been overruled, the order of the trial court from which this appeal is taken is Affirmed.

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HALL, J., and WELBAUM, J., concur.

Copies mailed to:

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