

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 14AP-623
 : (C.P.C. No. 11CR-0368)
 Jonathan E. Adams, II, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on March 12, 2015

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*,
for appellee.

Jonathan E. Adams, II, pro se.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Defendant-appellant, Jonathan E. Adams, II, appeals from a judgment of the Franklin County Court of Common Pleas denying his motion to correct sentence. For the following reasons, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On January 19, 2011, the state indicted defendant on multiple counts of rape and unlawful sexual conduct with a minor. The charges arose from allegations that defendant engaged in sexual conduct with his three younger cousins between 1998 and 2002, when defendant was between the ages of 15 and 19 years old. Following a jury trial, defendant was convicted of five counts of rape and three counts of unlawful sexual conduct with a minor. The trial court sentenced defendant to a total aggregate prison sentence of 15 years, and designated defendant as a sexually oriented offender.

{¶ 3} Defendant, through counsel, filed a timely, direct appeal. This court affirmed defendant's convictions and sentences in *State v. Adams*, 10th Dist. No. 12AP-83, 2012-Ohio-5088. Defendant attempted to appeal his case to the Supreme Court of Ohio; the court did not accept his appeal for review.

{¶ 4} On October 2, 2013, defendant filed a pro se motion to correct his sentence. The state filed a memorandum contra defendant's motion on October 9, 2013, asserting that res judicata barred all claims contained in defendant's motion.

{¶ 5} On July 10, 2014, the trial court issued a decision and entry denying defendant's motion to correct sentence. The court observed that defendant's motion asserted the following claims: (1) that the trial court failed to comply with the notice requirements in R.C. 2950.09(B)(1); (2) that the trial court imposed consecutive sentences without making the findings required by R.C. 2929.14(C)(4); and (3) that the trial court failed to merge allied offenses. The court concluded that res judicata barred all three claims.

II. ASSIGNMENTS OF ERROR

{¶ 6} Defendant appeals, assigning the following errors:

[I.] Whether the trial court committed prejudicial error in failing to follow the statutory provisions of H.B. 86[.]

[II.] Whether the trial court committed prejudicial error in failing in its mandatory duty to merge all counts[.]

[III.] Whether Appellant was denied effective assistance of counsel pursuant to the Sixth and Fourteenth Amendment[.]

III. DEFENDANT'S CLAIMS ARE BARRED

{¶ 7} Defendant's first and second assignments of error assert that the trial court erred by failing to make the findings required by R.C. 2929.14(C)(4) before imposing consecutive sentences, and that the trial court erred by failing to merge all counts for purposes of sentencing pursuant to R.C. 2941.25. As noted above, defendant appealed his convictions and sentences, and this court affirmed the trial court's judgment in *Adams*. As such, defendant's current claims are barred by res judicata.

{¶ 8} 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 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. "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." *State v. Lowe*, 9th Dist. No. 25475, 2011-Ohio-3355, ¶ 7. Defendant could have raised his concerns regarding R.C. 2929.14(C)(4) and R.C. 2941.25 in his direct appeal in *Adams*, but he did not. Accordingly, any further review of defendant's sentence is barred by res judicata.

{¶ 9} Defendant's third assignment of error asserts that he received ineffective assistance from both trial counsel and appellate counsel. *See State v. Lee*, 10th Dist. No. 06AP-226, 2007-Ohio-1594, ¶ 2, citing *State v. Timmons*, 10th Dist. No. 04AP-840, 2005-Ohio-3991 (noting that, in order to demonstrate ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), a defendant must demonstrate the following: (1) counsel was deficient in failing to raise the issues defendant now presents, and (2) defendant had a reasonable probability of success if the issue had been presented on appeal). However, defendant did not raise either claim of ineffective assistance in his motion to correct sentence. "It is well-settled law that issues not raised in the trial court may not be raised for the first time on appeal because such issues are deemed waived." *State v. Barrett*, 10th Dist. No. 11AP-375, 2011-Ohio-4986, ¶ 13. Accordingly, because defendant did not raise the issue of ineffective assistance of counsel in the trial court, he waived this issue for purposes of the instant appeal. *See State v. Glenn*, 5th Dist. No. 07-CA-39, 2009-Ohio-375, ¶ 18 (concluding that, where the "[a]ppellant did not raise the issues of ineffective assistance of counsel * * * in his motion" to vacate sentence and void conviction, "such issues [were] waived and [were] not appropriately considered on this appeal").

{¶ 10} Based on the foregoing, defendant's first, second, and third assignments of error are overruled. Having overruled defendant's three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and LUPER SCHUSTER, JJ., concur.
