

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 19AP-251 (C.P.C. No. 94CR-1094)
Darrell A. Stepherson,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 30, 2019

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

On brief: *Darrell A. Stepherson*, pro se.

APPEAL from the Franklin County Court of Common Pleas

BEATTY BLUNT, J.

{¶ 1} Defendant-appellant, Darrell A. Stepherson, appeals from a judgment of the Franklin County Court of Common Pleas entered March 25, 2019, denying his motion to vacate that portion of his sentence imposing costs, for a re-sentencing hearing and for leave to file a motion for waiver of imposition of costs. For the reasons that follow, we affirm the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} We have previously set forth the facts and procedural history of this case in several prior decisions. See *State v. Stepherson*, 10th Dist. No. 94APA12-1805 (Sept. 26, 1995), *1-3; *State v. Stepherson*, 10th Dist. No. 13AP-282, 2013-Ohio-5396, ¶ 1-9; *State v. Stepherson*, 10th Dist. No. 14AP-462, 2014-Ohio-5298, ¶ 1-6; *State v. Stepherson*, 10th Dist. No. 18AP-388, 2018-Ohio-4292, ¶ 1, 4-5. Therefore, we shall be brief.

{¶ 3} On August 16, 1993, Stepherson and another person entered the residence of Nathan and Christa Curry. *Stepherson*, 2013-Ohio-5396, ¶ 2. Nathan Curry was fatally shot and robbed of marijuana he kept inside the residence. *Id.* Subsequently, Stepherson was indicted on two counts of aggravated murder, each with a death penalty specification, one count of aggravated robbery, and one count of kidnapping. *Id.* Following a jury trial commencing October 17, 1994, the jury returned verdicts finding Stepherson not guilty of the first count of aggravated murder (aggravated murder with prior calculation and design), but guilty of the lesser-included offense of involuntary manslaughter; guilty of the second count of aggravated murder (aggravated felony murder); and guilty of aggravated robbery. *Id.* at ¶ 3. The jury found him not guilty of the kidnapping count. *Id.*

{¶ 4} A mitigation hearing was held and the jury recommended a life sentence with parole eligibility after 30 years. *Id.* at ¶ 4. On December 5, 1994, the trial court sentenced Stepherson to an aggregate 43 years to life in prison. *Id.* The sentencing entry included the imposition of court costs. Since the time of his sentencing, Stepherson has doggedly sought review of his conviction and sentence based on a variety of technical and legal arguments; thus far we have found the arguments he has presented either meritless or untimely. *See generally Stepherson*, 2014-Ohio-5298, ¶ 7; *see also Stepherson*, 2018-Ohio-4292, ¶ 5 (dismissing Stepherson's appeal of the trial court's entry denying his motion for resentencing as being late).

{¶ 5} Most recently, Stepherson, through counsel, filed a motion requesting that the trial court vacate that portion of the sentence imposing court costs, grant leave to file a motion for waiver of costs, and hold a new sentencing hearing, all on the grounds that his sentence is "Void" because the sentencing court failed to inform him "the imposition of court costs was mandatory but subject to waiver if Mr. Stepherson filed a motion for waiver of court costs based upon indigency." (Feb. 26, 2019 Mot. to Vacate at 2-3.) The trial court denied Stepherson's motion, summarily stating that he waived any claimed error regarding fine plus costs. (Mar. 25, 2019 Entry.)

{¶ 6} Stepherson now appeals.

II. DISCUSSION

{¶ 7} Stepherson asserts one assignment of error:

The trial court erred in finding that the appellant waived any claimed error regarding fine plus costs.

{¶ 8} At the time Stepherson was sentenced, court costs were required to be assessed pursuant to R.C. 2947.23, which provides in pertinent part that "[i]n all criminal cases * * * the judge * * * shall include in the sentence the costs of prosecution and render a judgment against the defendant for such costs." In addition to the clearly mandatory language of the statute, the Supreme Court of Ohio has held, "R.C. 2947.23 does not prohibit a court from assessing costs against an indigent defendant; rather it *requires* a court to assess costs against all convicted defendants." (Emphasis sic.) *State v. White*, 103 Ohio St.3d 580, 582, 2004-Ohio-5989, ¶ 8.

{¶ 9} The Supreme Court later found that, notwithstanding the mandatory language of the statute, a court had discretion to waive costs in the case of an indigent defendant after costs have been imposed as required. *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, ¶ 11, *superseded in part by statute*. In other words, costs must always be imposed, but after such imposition they may be waived, suspended or modified. Indeed, the current version of R.C. 2947.23(C) specifically provides "[t]he court retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution, including any costs under section 2947.231 of the Revised Code, at the time of sentencing or at any time thereafter."

{¶ 10} R.C. 2947.23(C) took effect in 2013, almost 19 years after the trial court imposed sentence on Stepherson and determined he was to pay the costs of his prosecution. 2012 Am.Sub.H.B. No. 247 (effective Mar. 22, 2013). We have previously held that, for criminal sentences imposed after the effective date of H.B. No. 247, the statutory language in R.C. 2947.23(C) imbues trial courts with the jurisdiction to waive, suspend, or modify the payment of costs beyond the sentencing date. *State v. Banks*, 10th Dist. No. 17AP-210, 2017-Ohio-7135, ¶ 10. However, in cases such as Stepherson's, where the sentence was imposed and the judgment became final prior to the effective date of H.B. No. 247, the trial court does not have the authority to reach back and retroactively apply the current statute. *Id.*

{¶ 11} Moreover, "even when in the exercise of discretion it would seem costs should have been waived, success on a subsequent challenge *does not render void* the entire

decision." (Emphasis added.) *State v. Long*, 10th Dist. No. 17AP-845, 2018-Ohio-2372, ¶ 24 citing *Joseph* at ¶ 1, 19-21. Thus, Stepherson's argument that his sentence is void is entirely without merit. Furthermore, the law is clear that once the time for filing a direct appeal has run "Ohio courts are limited to correcting a void sanction." *State v. Holdcroft*, 137 Ohio St.3d 526, 533, 2013-Ohio-5014, ¶ 18, citing *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, ¶ 27. Thus, absent a timely appeal, claims relating to costs imposed at sentencing will be barred by res judicata. *State v. Banks*, 10th Dist. No. 15AP-653, 2015-Ohio-5372, ¶ 14, citing *State v. Jackson*, 141 Ohio St.3d 171, 2014-Ohio-3707, ¶ 92.

{¶ 12} Stepherson was convicted, sentenced, and costs were imposed in 1994. He filed and lost his direct appeal in 1995. *Stepherson*, 10th Dist. No. 94APA12-1805, (Sept. 26, 1995). Current R.C. 2947.23(C) is inapplicable to Stepherson's case because this provision did not take effect until long after the trial court imposed costs at the time of sentencing, reaching a final judgment. Stepherson has forfeited the error of which he now complains by failing to raise it on direct appeal by virtue of res judicata, and we therefore overrule Stepherson's sole assignment of error.

III. CONCLUSION

{¶ 13} Having overruled Stepherson's sole assignment of error, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT, P.J., and BROWN, J., concur.
