

[Cite as *State v. Black*, 2017-Ohio-977.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104830

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHARDON J. BLACK

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-575488-A

BEFORE: Boyle, P.J., S. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: March 9, 2017

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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MARY J. BOYLE, P.J.:

{¶1} Defendant-appellant, Chardon Black, appeals the trial court's denial of his motion to vacate judgment based on fraud. He raises one assignment of error for our review:

The appellant's judgment being void on its face for fraud, may be attacked at anytime, and *res judicata* [is] not applicable, his imprisonment on such judgment violates his United States Const., Amends., 5th, 6th, 14th, and Ohio Const., Art., I, [Sections] 1, 2, 10, 16 because appellant's imprisonment is without judgment or sentence.

{¶2} Finding no merit to his appeal, we affirm.

I. Procedural History and Factual Background

{¶3} In June 2013, Black was indicted on four counts, including attempted murder, felonious assault, domestic violence, and kidnapping. The charges arose after Black broke into his ex-girlfriend's home during the night. The victim woke up to Black beating her, repeatedly punching her in the face and choking her. Black continued to beat the victim until she climbed out of a second story window onto a roof. Black followed her outside and threw her off of the roof. The victim broke her back in several places, as well as her pelvis, left wrist, and one of her eye sockets.

{¶4} In May 2014, Black pleaded guilty to second-degree felonious assault and fourth-degree domestic violence. *State v. Black*, 8th Dist. Cuyahoga No. 102586, 2016-Ohio-383, ¶ 3. In exchange for his plea, Black received an agreed aggregate prison sentence of four years and ten months on the two counts, and the remaining counts were dismissed. At the plea hearing, defense counsel confirmed that this was the

agreement. Prior to entering his guilty pleas, Black indicated that he understood the offenses to which he would be pleading guilty and the sentences he would receive under the agreement. Black further acknowledged that he understood that the trial court had agreed to “honor” the “agreed-upon sentence.” Following a thorough plea colloquy, the trial court accepted Black’s guilty pleas to the felonious assault and domestic violence counts, and the remaining counts were nolle. *See id.*

{¶5} Prior to sentencing, the trial court confirmed that the parties had agreed, as part of the plea agreement, that the felonious assault and domestic violence convictions would not merge for sentencing. Defense counsel agreed with the trial court’s assessment. In June 2014, the trial court then imposed the agreed sentence of four years and ten months, indicating that “[t]his is an agreed to sentence.” *Id.* at ¶ 5.

{¶6} On February 12, 2015, Black was granted leave to file a delayed appeal. This court thereafter determined, sua sponte, that the trial court’s June 9, 2014 judgment was not a final, appealable order because it set forth a “blanket agreed sentence of 4 years, 10 months” rather than separate sentences on each of the counts of which Black had been convicted (although at the sentencing hearing, the trial court properly imposed four years for felonious assault and ten months for domestic violence). This court, therefore, remanded the case for the trial court to “clarify or correct the record pursuant to App.R. 9(E) and issue an order conforming with *State v. Dumas*, 8th Dist. Cuyahoga No. 95760, 2011-Ohio-2926, and *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus.” On October 26, 2015, the trial court issued

a corrected journal entry, sentencing Black to four years on Count 2 and ten months on Count 3.

{¶7} In November 2015, Black filed an amended notice of appeal, appealing the trial court's June 9, 2014 judgment as corrected by the trial court's October 26, 2015 journal entry. Black raised two assignments of error, challenging the fact that the trial court failed to merge the felonious assault and domestic violence offenses and arguing that the trial court's imposition of consecutive sentences was error due to the fact that the offenses were allied. We overruled his assigned errors and affirmed. *Id.* at ¶ 32.

{¶8} In July 2016, Black filed a motion to vacate a void judgment based on fraud. In it, he contended that the sentence he received in the corrected sentencing entry was void because the trial court never made the mandatory consecutive-sentence findings at the sentencing hearing, but fraudulently placed them in the sentencing entry. The trial court denied his motion. It is from this judgment that Black appeals.

II. Analysis

{¶9} Black argues that his sentence is void because the trial court never made the required consecutive-sentence findings that were placed in his corrected sentencing entry.

He claims that the judge — or someone else — committed fraud by placing the language in the sentencing entry. Black, however, could have raised this issue in his direct appeal, but he failed to do so. Thus, this issue is barred by *res judicata*.

{¶10} In *State v. Davis*, 119 Ohio St.3d 422, 2008-Ohio-4608, 894 N.E.2d 1221, the Ohio Supreme Court explained:

Res judicata is the “[r]ule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.” *Holzemer v. Urbanski* (1999), 86 Ohio St.3d 129, 132, 712 N.E.2d 713, quoting Black’s Law Dictionary (6th Ed.1990) 1305. In the criminal law context, this court has held that issues that could have been raised on direct appeal and were not are res judicata and not subject to review in subsequent proceedings. *State v. Hutton*, 100 Ohio St.3d 176, 2003-Ohio-5607, 797 N.E.2d 948, ¶ 37; *State v. D’Ambrosio* (1995), 73 Ohio St.3d 141, 143, 652 N.E.2d 710.

{¶11} We further note that even if this issue was not barred by res judicata, the trial court was not required to make the findings under R.C. 2929.14(C)(4) before imposing consecutive sentences because the trial court imposed the exact sentence that was agreed upon by the state and Black. *State v. Sergent*, Slip Opinion No. 2016-Ohio-2696, ¶ 43 (“in the context of a jointly recommended sentence that includes nonmandatory consecutive sentences, a trial court is not required to make the consecutive-sentence findings set out in R.C. 2929.14(C)(4).”). We further note that even though the trial court did not have to make the findings under R.C. 2929.14(C)(4) because it was an agreed-upon sentence, we find that in this case, the trial court did.

{¶12} Accordingly, Black’s sole assignment of error is overruled.

{¶13} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having

been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

MARY J. BOYLE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR