

[Cite as *State v. Rolling*, 2018-Ohio-2742.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106607

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL ROLLING

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-02-421317-ZA

BEFORE: Laster Mays, J., E.A. Gallagher, A.J., and Boyle, J.

RELEASED AND JOURNALIZED: July 12, 2018

FOR APPELLANT

Michael Rolling, pro se
Inmate No. 443440
Marion Correctional Institution
P.O. Box 57
Marion, Ohio 43301

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor

By: Frank Romeo Zeleznikar
Assistant County Prosecutor
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Michael Rolling (“Rolling”) appeals his sentence and asks this court to vacate his current sentence and remand to the trial court for resentencing. We affirm. However, we warn Rolling that his conduct through his continued filing of appeals and original actions may result in his being declared a vexatious litigator pursuant to Loc.App.R. 23(A). Pursuant to the rule, we are providing a warning to Rolling of this court’s inherent power to prevent abuse of the appellate process.

{¶2} In January 27, 2003, Rolling pleaded guilty to one count of murder, a first-degree felony, in violation of R.C. 2903.02. He was sentenced to 15-years-to-life imprisonment. In June 2010, Rolling filed a motion for resentencing, challenging the court’s imposition of postrelease control. The trial court denied his motion for resentencing and issued a nunc pro tunc judgment entry, striking the imposition of postrelease control and replacing it with parole. Rolling appealed this decision and argued that the trial court erred when it failed to hold a resentencing hearing. He also argued that the trial court failed to substantially comply with Crim.R. 11(C)(2)(c). In *State v. Rolling*, 8th Dist. Cuyahoga No. 95473, 2011-Ohio-121 (“*Rolling I*”), this court affirmed the trial court’s decision.

{¶3} In *Rolling I*, this court stated,

[W]ith regard to whether the trial court employed a correct procedure in entering a nunc pro tunc deletion of the postrelease control provision, we note that a trial court may use a nunc pro tunc entry to correct mistakes in judgments, orders, and other parts of the record so the record speaks the truth. *State v. Greulich*, 61 Ohio App.3d 22, 24, 572 N.E.2d 132. We have not been provided with a transcript, so there is no basis upon which we may conclude that the court improperly employed the nunc pro tunc procedure or that the corrected entry does not reflect the truth. *State v. L.M.*, 8th Dist. Cuyahoga Nos. 94896 and 94897, 2010-Ohio-5614.

Similarly, with regard to the substantive correctness of the trial court's ruling, there has been no showing that defendant would not have entered the plea absent the erroneous reference to postrelease control. In *State v. Stokes*, 8th Dist. Cuyahoga No. 93154, 2010-Ohio-3181, this court concluded that where the defendant failed to establish that he would not have entered the plea absent the erroneous reference to postrelease control, the correct remedy is to remand the matter to the trial court "to correct the sentencing entry and to delete the reference to postrelease control." *Id.*, citing *State v. Jordan*, 8th Dist. Cuyahoga No. 91413, 2009-Ohio-4037.

Id. at ¶ 11-12.

{¶4} This court also held that Rolling was barred by the doctrine of res judicata from challenging the validity of his plea because he "waited seven years to raise this issue, but the matter was known to him immediately upon sentencing and should have been raised in a direct appeal." *Id.* at ¶ 22. In October 2017, Rolling filed a motion requesting another resentencing hearing arguing the same issue. The trial court denied his motion. Rolling filed an appeal assigning two errors for our review:

- I. The trial court erred as a matter of law, and abused its discretion, when the trial court failed to resentence appellant Rolling, when the trial court imposed postrelease control upon Appellant that was convicted of murder. Postrelease control is inapplicable, and the trial court imposed the wrong order of postrelease control, violating the separation of powers sentencing statutes, causing appellant's sentence to be contrary to law, where the trial court failed to impose a mandatory term of postrelease control at the plea colloquy, sentencing hearing, and the judgment entry, violating R.C. 2929.19(B)(3)(c)-(e) and R.C. 2967.28, failing to comply with statutory provisions required by law, making appellant's sentence void in part; and,
- II. The trial court erred as a matter of law, and abused its discretion, when the trial court failed to address appellant's parole eligibility pursuant to R.C. 2967.13, or if appellant was not eligible for parole, but, imposed postrelease control upon the appellant convicted of murder.

I. Res Judicata

{¶5} Rolling's claims are barred by res judicata.

Under the doctrine of res judicata, “a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *State v. Patrick*, 8th Dist. Cuyahoga No. 99418, 2013-Ohio-5020, ¶ 7, citing *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 653 N.E.2d 226 (1995). In order to overcome the res judicata bar, the petitioner must show, through the use of extrinsic evidence, that he or she could not have appealed the original constitutional claim based on the information in the original trial record. *State v. Combs*, 100 Ohio App.3d, 90, 652 N.E.2d 205 (1st Dist.1994). Said another way, issues properly raised in a petition for postconviction relief are only those that could not have been raised on direct appeal because the evidence supporting such issues is outside the record. *State v. Milanovich*, 42 Ohio St.2d 46, 50, 325 N.E.2d 540 (1975).

State v. Jackson, 8th Dist. Cuyahoga No. 104132, 2017-Ohio-2651, ¶ 53.

{¶6} As this court decided in *Rolling I*, the trial court did not err because it already corrected the record by striking the imposition of postrelease control. At this point, there is nothing else the court can do for *Rolling*.

Res judicata, also known as “claim preclusion,” is the doctrine under which a final judgment on the merits bars a party from bringing another lawsuit based upon the same claim. *Whitehead v. Gen. Tel. Co.*, 20 Ohio St.2d 108, 254 N.E.2d 10 (1969). Res judicata extends to bar not only claims which were actually litigated, but “every question which might have properly been litigated.” *Stromberg v. Bratenahl Bd. of Edn.*, 64 Ohio St.2d 98, 413 N.E.2d 1184 (1980).

State v. Goodwin, 8th Dist. Cuyahoga No. 72043, 1999 Ohio App. LEXIS 2436 (May 27, 1999).

{¶7} Both assigned errors were decided or could have been decided in a previous appeal. Therefore, *Rolling*’s assignments of error are overruled.

{¶8} Judgment is affirmed.

It is ordered that the appellee recover from appellant 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.

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

ANITA LASTER MAYS, JUDGE

EILEEN A. GALLAGHER, A.J., and
MARY J. BOYLE, J., CONCUR