

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 108385  
 v. :  
 :  
 TYRONE LOYED, :  
 :  
 Defendant-Appellant. :  
 :  
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**JOURNAL ENTRY AND OPINION**

**JUDGMENT:** AFFIRMED IN PART, REVERSED IN PART,  
 AND REMANDED FOR RESENTENCING  
**RELEASED AND JOURNALIZED:** December 26, 2019  
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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-02-430383-ZA  
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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Callista Plemel, Assistant Prosecuting  
Attorney, *for appellee*.

Tyrone Loyed, *pro se*.

EILEEN T. GALLAGHER, J.:

{¶ 1} Defendant-appellant, Tyrone Loyed, appeals pro se from his prison sentence. He raises the following assignments of error for review:

1. Trial court abused its discretion when it denied defendant's motion to correct illegal/void sentence as it is contrary to law.

2. The trial court abused its discretion when it denied defendant's motion to request a resentencing hearing as his current sentence is contrary to law, without holding an evidentiary hearing.

{¶ 2} After careful review of the record and relevant case law, we affirm in part, reverse in part, and remand to the trial court to resentence Loyed in accordance with the applicable sentencing statutes. The trial court imposed a sentence that does not comport with the statutory language set forth in former R.C. 2929.03(A). Thus, the trial court exceeded its authority in sentencing. However, Loyed's arguments pertaining to the jury verdict forms could have been raised in his direct appeal and, therefore, are barred by res judicata.

### **I. Procedural and Factual History**

{¶ 3} On May 20, 2003, a jury convicted Loyed of aggravated murder in violation of R.C. 2903.01, with a firearm specification, and having weapons while under disability in violation of R.C. 2923.13. On May 27, 2003, the court sentenced Loyed to a three-year term of imprisonment on the firearm specification, 20 years to life on the aggravated murder charge, and 11 months on the disability charge. The court ordered the firearm specification to be served consecutively with, and prior to, the aggravated murder offense.

{¶ 4} On June 25, 2003, Loyed filed a direct appeal and this court affirmed his convictions. *State v. Loyed*, 8th Dist. Cuyahoga No. 83075, 2004-Ohio-3961. In his direct appeal, Loyed's only assignments of error related to an allegedly improper jury instruction and an allegedly improper limitation of testimony at trial.

{¶ 5} On December 12, 2013, Loyed filed a motion captioned “Motion to Vacate Sentence” with the trial court. In his motion, Loyed argued that the court should vacate his sentence because the court improperly imposed postrelease control. His motion also argued that the trial court erred in convicting him of the disability charge because his prior felony conviction was also void due to the improper imposition of postrelease control. On February 10, 2014, the trial court denied Loyed’s motion to vacate his sentence.

{¶ 6} On appeal, this court found no merit to Loyed’s argument that postrelease control was improperly imposed because he was not notified of the consequences of a violation. *State v. Loyed*, 8th Dist. Cuyahoga No. 101054, 2014-Ohio-5141, ¶ 5. However, this court determined that the trial court erred by imposing the wrong period of postrelease control on Loyed’s having weapons while under disability conviction. *Id.* at ¶ 10. Because Loyed had already served his prison sentence on the disability charge, this court vacated the order of postrelease control on that offense. *Id.* at ¶ 11.

{¶ 7} On December 7, 2017, Loyed filed a motion to vacate void sentence, arguing the trial court lacked jurisdiction to sentence him because the court failed to file the jury verdict forms with the clerk of courts. The trial court denied the motion on January 4, 2019. Loyed attempted to appeal the trial court’s judgment. However, this court sua sponte dismissed the appeal for failure to comply with App.R. 4(A).

{¶ 8} On March 1, 2019, Loyed filed a “motion to correct illegal/void sentence as it is contrary to law.” Loyed argued that the 20-years-to-life prison term imposed on his aggravated murder conviction was void as a matter of law. On March 25, 2019, Loyed filed a “motion to request a resentencing hearing as current sentence is contrary to law.” In the motion, Loyed reiterated his previously raised assertion that the trial court was without jurisdiction to sentence him because the jury verdict forms “were not filed and made part of the record.” The trial court denied both motions without a hearing.

{¶ 9} Loyed now brings this timely appeal.

## **II. Law and Analysis**

### **A. Authorized Prison Term**

{¶ 10} In his first assignment of error, Loyed argues the trial court abused its discretion in denying his motion to correct his illegal and/or void sentence. Loyed contends that the trial court exceeded its authority in sentencing him to a term of imprisonment that is not authorized by the Ohio Revised Code.

{¶ 11} In this case, Loyed was convicted of aggravated murder in violation of R.C. 2903.01. At the time of his sentencing in 2003, the penalty for this offense was codified at R.C. 2929.03(A), which stated in relevant part:

[T]he trial court shall impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment.

{¶ 12} Relying on this court’s decision in *State v. Smith*, 8th Dist. Cuyahoga No. 106893, 2019-Ohio-155, Loyed contends that his prison term is contrary to law

because a sentence of “twenty (20) years to life” is not an authorized sentence for aggravated murder.

{¶ 13} As in this case, the defendant in *Smith* appealed his “20 years to life sentence” for aggravated murder, arguing that the sentence was contrary to law and void because R.C. 2929.03(A) did not authorize such a sentence. In response, the state conceded that the defendant’s sentence “[did] not precisely track the statutory language used in R.C. 2929.03(A),” but argued that because the defendant’s sentence had the “same ‘practical effect[,]” the defendant’s argument on appeal was a “‘distinction without a difference.’” *Id.* at ¶ 18. After noting that R.C. 2929.03(A) only authorized a sentence of “life imprisonment with parole eligibility after serving twenty years of imprisonment,” we agreed with the defendant. *Id.* at ¶ 16. Despite recognizing the practicality of the state’s approach, we found that “[b]ecause the trial court imposed a sentence that does not comport with the statutory language set forth in R.C. 2929.03(A), \* \* \* the trial court exceeded its authority in sentencing.” *Id.* at ¶ 25. We accordingly found that the defendant’s sentence was void, vacated the sentence, and remanded for resentencing. *Id.* at ¶ 25-26. We further explained that res judicata did not bar the defendant’s argument, stating:

We further note that the procedural history of this case, including the significant delay between the imposition of Smith’s sentence and this appeal, does not preclude our review. Generally, “if the sentencing court had jurisdiction and statutory authority to act, sentencing errors do not render the sentence void and the sentence can be set aside only if successfully challenged on direct appeal.” *Williams* at ¶ 23, citing *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332 ¶ 6-7. However, because “[n]o court has the authority to impose a sentence that is contrary to law,’ when the trial court disregards

statutory mandates, ‘[p]rinciples of res judicata, including the doctrine of the law of the case, do not preclude appellate review. The sentence may be reviewed at any time, on direct appeal or by collateral attack.’” *Id.* at ¶ 22, quoting *Fischer* at ¶ 23, 30.

*Smith* at ¶ 15.

{¶ 14} The state recognizes our holding in *Smith*, but contends that the case was wrongly decided and reiterates the “practicality argument” it raised in *Smith*. We disagree and find no reason to divert from *Smith*’s holding. As a result, we find that Loyed’s sentence of “20 years to life” for aggravated murder is also void, vacated, and must be remanded for resentencing, at which the trial court must sentence Loyed in accordance with the applicable statutory language.

{¶ 15} Loyed’s first assignment of error is sustained.

### **B. Jury Verdict Forms**

{¶ 16} In his second assignment of error, Loyed argues the trial court abused its discretion in denying his request for a resentencing hearing. Loyed contends that the trial court violated his constitutionally guaranteed rights to due process by failing to file and enter the jury verdict forms into the record.

{¶ 17} 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 such judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial that resulted in that judgment of conviction, or on direct appeal from the

judgment. *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus.

{¶ 18} In this case, Loyed was represented by counsel during his direct appeal and any argument pertaining to the trial court’s alleged failure to file the verdict forms with the clerk should have been raised at that time. Accordingly, we find the issues presently raised by Loyed are barred by res judicata. See *State v. Lawrence*, 2d Dist. Montgomery No. 27014, 2016-Ohio-7626, ¶ 14 (“Several courts have held that issues related to jury verdict forms must be raised in the direct appeal, and any attempt to raise those issues in a subsequent appeal is barred by res judicata.”), citing *State v. Holmes*, 8th Dist. Cuyahoga No. 100388, 2014-Ohio-3816; *State v. Pesci*, 11th Dist. Lake No. 2011-L-057, 2011-Ohio-6211; *State v. Garner*, 11th Dist. Lake No. 2010-L-111, 2011-Ohio-3426; *State v. Evans*, 9th Dist. Wayne No. 10CA0027, 2011-Ohio-1449; *State v. Foy*, 5th Dist. Stark No. 2009-CA-00239, 2010-Ohio-2445.

{¶ 19} Moreover, even if this court were to address Loyed’s arguments, we find them to be meritless. Here, Loyed’s original sentencing entry contains the manner of conviction, the sentence, the signature of the judge, and the time stamp indicating the entry upon the journal by the clerk. In analogous circumstances, this court has held that “where the verdict, conviction, and sentence are properly journalized, the failure to file the jury verdict forms with the clerk does not create reversible error.” *State v. Lumbus*, 8th Dist. Cuyahoga No. 102273, 2016-Ohio-5920, ¶ 7, citing *State v. Wright*, 8th Dist. Cuyahoga No. 93068, 2011-Ohio-3575,

¶ 64, citing *State v. Clark*, 2d Dist. Montgomery No. CA 9722, 1987 Ohio App. LEXIS 5485 (Jan. 6, 1987).

{¶ 20} Accordingly, Loyed's second assignment of error is overruled.

{¶ 21} The trial court's judgment is affirmed in part and reversed in part. Loyed's sentence is vacated in part, and the matter is remanded for the trial court to impose a sentence of life imprisonment with parole eligibility after serving 20 years of imprisonment, in accordance with former R.C. 2929.03(A).

It is ordered that appellant and appellee share 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 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.

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EILEEN T. GALLAGHER, JUDGE

MARY EILEEN KILBANE, A.J., and  
MICHELLE J. SHEEHAN, J., CONCUR