

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 109444
v.	:	
	:	
RONALD E. STARKS,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 3, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-83-186387-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Katherine E. Mullin, Assistant Prosecuting Attorney, *for appellee*.

Ronald E. Starks, *pro se*.

EILEEN A. GALLAGHER, P.J.:

{¶ 1} This case came to be heard on the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Defendant-appellant Ronald Starks appeals, *pro se*, the

trial court's denial of his motion to correct his sentences. For the reasons that follow, we affirm the trial court.

Procedural History and Factual Background

{¶ 2} On October 19, 1983, Starks was indicted on two counts of aggravated murder in violation of R.C. 2903.01 and two counts of aggravated robbery in violation of R.C. 2911.01. The charges related to the February 20, 1978 robbery and murder of Thomas Kowal and Kim Shusta at their residence in Strongsville, Ohio.¹

{¶ 3} A jury trial commenced on or about February 27, 1984 and resulted in a mistrial. A second jury trial commenced on or about January 28, 1985. Starks was found guilty of all four counts. On or about February 15, 1985, the trial court sentenced Starks to life imprisonment on the aggravated murder counts and 4 to 25 years on the aggravated robbery counts. The sentences were ordered to be served concurrently. Stark appealed. This court affirmed his convictions. *State v. Starks*, 8th Dist. Cuyahoga No. 50087, 1986 Ohio App. LEXIS 5845 (Mar. 6, 1986).

{¶ 4} In 1996, Starks filed, pro se, a motion for relief from judgment. The trial court denied the motion. Over the next 23 years, Starks filed, pro se, five motions to correct his sentences. The trial court denied each of Starks' motions.

{¶ 5} In 2014, Starks appealed the trial court's denial of his fourth motion to correct his sentences, which Starks had filed, pro se, on November 20, 2013. In that motion Starks argued that the trial court had erred in sentencing him to "life

¹ The facts giving rise to Starks' convictions are detailed in *State v. Starks*, 8th Dist. Cuyahoga No. 50087, 1986 Ohio App. LEXIS 5845 (Mar. 6, 1986).

imprisonment” on the aggravated murder counts, instead of “15 full years to life.” On appeal, this court affirmed the trial court. *State v. Starks*, 8th Dist. Cuyahoga No. 100796, 2014-Ohio-5136. This court held that Starks’ arguments were barred by res judicata because (1) the issue could have been raised in his direct appeal and (2) Starks had raised the same issue in prior motions he had filed to correct his sentences. *Id.* at ¶ 7. The court further held that the trial court properly denied his motion because he did not meet the requirements for bringing an untimely petition for postconviction relief under R.C. 2953.21 and 2953.23. *Id.* at ¶ 6, 8-11.

{¶ 6} Starks filed his most recent motion to correct his sentences, titled “motion to correct a facially illegal sentence,” pro se, on August 21, 2019. Starks argued that his sentences on the aggravated murder counts were contrary to law and void because the trial court had imposed sentences of “life” imprisonment on those counts instead of sentences of “life imprisonment with parole eligibility after serving twenty years of imprisonment.” This was the same argument Starks had made in his first motion to correct his sentence, titled “motion to correct judgment entry of sentencing pursuant to Crim.R. 36(A),” which Starks had filed, pro se, in September 2012. The trial court denied the motion.

{¶ 7} Starks appealed, raising the following two assignments of error for review:

Assignment of Error No. I: A trial court commits prejudicial error in denying a motion to correct a facially illegal sentence when a defendant’s sentence is void as a matter of law.

Assignment of Error No. II: A trial court commits prejudicial error when a defendant is convicted on two aggravated murder counts involving a single killing when it imposes separate sentences on each count.

Law and Analysis

{¶ 8} In his first assignment of error, Starks contends that his sentences for aggravated murder are void because the version of R.C. 2929.03 in effect at the time he was sentenced required that he be sentenced to “life imprisonment with parole eligibility after serving twenty years of imprisonment.” The state maintains that Starks’ sentences for aggravated murder are not reviewable under R.C. 2953.08(D)(3) and that Starks was properly sentenced in accordance with the relevant sentencing statute in effect at the time he committed his offenses in February 1978.

{¶ 9} While there is no constitutional right to appellate review of a criminal sentence, R.C. 2953.08 confers statutory rights upon a defendant to appeal from some felony sentences. *State v. Smith*, 80 Ohio St.3d 89, 97, 684 N.E.2d 668 (1997). R.C. 2953.08(D)(3), however, expressly excludes sentences imposed for aggravated murder from appellate review. R.C. 2953.08(D)(3) states: “A sentence imposed for aggravated murder or murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under [R.C. 2953.08].” Accordingly, evidentiary review of a sentence imposed by a trial court for aggravated murder is precluded. *See, e.g., State v. Reddick*, 8th Dist. Cuyahoga No. 108747, 2020-Ohio-

925, ¶ 16; *State v. Hilliard*, 8th Dist. Cuyahoga No. 102214, 2015-Ohio-3142, ¶ 31; *State v. Jackson*, 8th Dist. Cuyahoga No. 100125, 2014-Ohio-3583, ¶ 64.

{¶ 10} In this case, however, Starks does not challenge the evidentiary basis for his sentence. Rather, Starks contends that the trial court imposed a sentence that is not authorized by statute and is, therefore, void.

{¶ 11} A void sentence can be attacked anytime. *See, e.g., State v. Brooks*, 8th Dist. Cuyahoga No. 108919, 2020-Ohio-3286, ¶ 7, citing *State v. Williams*, 148 Ohio St.3d 403, 2016-Ohio-7658, 71 N.E.3d 234, ¶ 22, and *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 25. In support of his argument that his sentences are void, Starks cites this court’s decision in *State v. Houston*, 8th Dist. Cuyahoga No. 107538, 2019-Ohio-355. In *Houston*, this court held that where the trial court failed to include a reference to “parole eligibility after serving 20 years of imprisonment” in the defendant’s sentence as mandated by former R.C. 2929.03(A), the sentence was “contrary to law and void because the trial court imposed a sentence that was not authorized by law.” *Id.* at ¶ 7. *Houston*, however, involved a crime that was committed in November 1993. *See State v. Houston*, 8th Dist. Cuyahoga No. 67049, 1995 Ohio App. LEXIS 1737, 1-2 (Apr. 27, 1999). This case involved a crime that was committed in February 1978.

{¶ 12} Furthermore, after *Houston* was decided, the Ohio Supreme Court decided *State v. Harper*, Slip Opinion No. 2020-Ohio-2913. In *Harper*, the Ohio Supreme Court “realign[ed]” its “void-sentence jurisprudence” with “the traditional understanding of what constitutes a void judgment.” *Id.* at ¶ 4. The Ohio Supreme

Court held that the trial court's failure to properly impose postrelease control rendered the defendant's sentence voidable, not void, and that, therefore, the sentence was not subject to collateral attack. *Id.* at ¶ 5-6. The court explained:

A sentence is void when a sentencing court lacks jurisdiction over the subject-matter of the case or personal jurisdiction over the accused. When the sentencing court has jurisdiction to act, sentencing errors in the imposition of postrelease control render the sentence voidable, not void, and the sentence may be set aside if successfully challenged on direct appeal.

Id. at ¶ 42. The court explicitly “overrule[d] [its] precedent to the extent that it holds that the failure to properly impose postrelease control in the sentence renders that portion of a defendant's sentence void.” *Id.* at ¶ 40.

{¶ 13} In *State v. Brooks*, 8th Dist. Cuyahoga No. 108919, 2020-Ohio-3286, this court applied the Ohio Supreme Court's reasoning in *Harper* to another type of alleged sentencing error. In that case, the defendant argued that his sentence was void and that the trial court had erred in denying his motion to vacate his sentence because his sentence of “life, without the possibility of parole until serving twenty (20) years” was contrary to the language of former R.C. 2929.03(C)(2) that required a sentence of “twenty *full* years.” *Id.* at ¶ 4-5. The defendant argued that the absence of the word “full” in his sentence “render[ed] his sentence void and illegal, subject to correction at any time.” *Id.* at ¶ 5. The defendant had filed prior petitions for postconviction relief and to correct his sentence. *Id.* at ¶ 3-4.

{¶ 14} The court found that the trial court had subject matter jurisdiction over the defendant's case and had personal jurisdiction over him. *Id.* at ¶ 9. Based

on *Harper*, the court held that “[e]ven if the trial court’s omission of the term ‘full’ from [the defendant’s] sentence was contrary to former R.C. 2929.03(C)(2), the sentencing error would render [the] sentence voidable, not void. Thus, [the] sentence could be challenged only on direct appeal.” *Id.* at ¶ 9. Because the defendant had not challenged his sentence on that basis on direct appeal, the court held that the issue was barred by res judicata. *Id.* at ¶ 10. The court also noted that the defendant did not satisfy the requirements of R.C. 2953.23(A) to allow the trial court to consider a successive petition for postconviction relief. *Id.* at ¶ 11-14. As such, the trial court had no authority to consider, and had properly denied, the defendant’s motion to vacate his sentence. *Id.* at ¶ 14.

{¶ 15} A similar conclusion is warranted in this case. Here, the trial court had subject matter jurisdiction over Starks’ case and had personal jurisdiction over him. R.C. 2931.03; *Brooks* at ¶ 9; *Smith v. Sheldon*, 157 Ohio St.3d 1, 2019-Ohio-1677, 131 N.E.3d 1, ¶ 8 (“[A] common pleas court has subject-matter jurisdiction over felony cases.”). Even if the trial court had improperly omitted language regarding parole eligibility from Starks’ sentences, the sentencing error would render Starks’ sentences voidable, not void. *Harper*, Slip Opinion No. 2020-Ohio-2913, at ¶ 5-6, 42. Thus, Starks’ sentences could be challenged only on direct appeal.

{¶ 16} “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, 226 N.E.2d 104 (1967), paragraph nine of the syllabus. It is well settled that the doctrine of res judicata bars claims that were raised or could have been raised on direct appeal. *State v. Davis*, 119 Ohio St.3d 422, 2008-Ohio-4608, 894 N.E.2d 1221, ¶ 6. Because Starks could have, but did not, raise any issue regarding the omission of alleged required parole eligibility language from his sentences in his direct appeal, “[r]es judicata * * * precludes [his] appeal.” *Brooks*, 2020-Ohio-3286, at ¶ 10. Further, Starks raised the same issue in other prior motions to correct his sentences. “[R]es judicata precludes [a defendant] from re-litigating the same issues with the hope of obtaining a different result.” *State v. Rogers*, 8th Dist. Cuyahoga No. 99246, 2013-Ohio-3246, ¶ 20, quoting *State v. Hildebrand*, 2d Dist. Clark No. 2012-CA-48, 2013-Ohio-2122, ¶ 5. Finally, Starks has not met the requirements for an untimely or successive petition for postconviction relief. *See* R.C. 2953.21; R.C. 2953.23. The trial court, therefore, properly denied Starks’ motion to correct his sentences. *Brooks*, 2020-Ohio-3286, at ¶ 14; *Starks*, 2014-Ohio-5136, at ¶ 14.

{¶ 17} Accordingly, we overrule Starks’ first assignment of error.

{¶ 18} In his second assignment of error, Starks argues that his aggravated murder convictions were allied offenses that should have merged for sentencing and that the trial court erred in sentencing him on both counts. However, this is an appeal only from Starks’ motion to correct a facially illegal sentence. Starks’ allied offenses argument was not raised below and is outside the scope of the present

appeal. As such, that issue is not properly before this court. *See, e.g., State v. Briscoe*, 8th Dist. Cuyahoga No. 98414, 2012-Ohio-4943, ¶ 9 (“This [c]ourt need not address an assignment of error pertaining to issues outside the scope of an appeal.”), citing *State v. Pollard*, 8th Dist. Cuyahoga No. 97468, 2012-Ohio-2311, ¶ 9.

{¶ 19} Accordingly, Starks’ second assignment of error is overruled.

{¶ 20} 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 Cuyahoga County Court of Common Pleas 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.

EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
RAYMOND C. HEADEN, J., CONCUR

