

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 110257  
 v. :  
 :  
 TREMAIN MARTIN, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: July 22, 2021**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-09-526971-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Frank Romeo Zeleznikar, Assistant Prosecuting Attorney, *for appellee*.

Tremain Martin, *pro se*.

EILEEN T. GALLAGHER, J.:

{¶ 1} Defendant-appellant, Tremain Martin (“Martin”), appeals the denial of his motion to vacate a void order and claims the following error:

The trial court abused its discretion in failing to vacate a revival order that court officials lacked the jurisdiction to enforce.

{¶ 2} We find no merit to the appeal and affirm the trial court’s judgment.

### **I. Facts and Procedural History**

{¶ 3} In November 2009, Martin pleaded guilty to one count of receiving stolen property and one count of drug possession. The court sentenced him to 12 months on each count, to be served concurrently, and ordered him to pay \$700 in restitution and court costs. Martin did not appeal his convictions or sentence. Three months later, in April 2010, Martin filed a motion to vacate or to suspend court costs, and the trial court denied the motion.

{¶ 4} In August 2017, the clerk of courts issued an assessment of Martin’s court costs to a correctional institution, where Martin was serving a prison term in an unrelated case. Thereafter, Martin filed another motion to vacate court costs and, again, the trial court denied the motion. Martin then filed a writ of mandamus, seeking an order mandating that the trial court hold a hearing pursuant to R.C. 2947.23(B). This court dismissed the writ and held, in relevant part, that “if relator believes that the imposition of court costs in the first two criminal cases or the imposition of a cognovit judgment in the third criminal case was improper, he possessed an adequate remedy at law through direct appeal.” *State ex rel. Martin v. Russo*, 8th Dist. Cuyahoga No. 108231, 2019-Ohio-2242, ¶ 13. This court also recognized that collateral attacks on the trial court’s issuance of court cost costs are barred by res judicata. *Id.* at ¶ 8.

{¶ 5} In December 2020, Martin filed a motion to vacate a void order, again challenging the court’s imposition of court costs. Martin argued that the clerk’s

assessment of court costs in August 2017, constituted a revival of a dormant judgment. The trial court denied the motion. This appeal followed.

## II. Law and Analysis

{¶ 6} In his sole assignment of error, Martin argues the trial court abused its discretion in failing to vacate an order reviving a dormant judgment of court costs. He contends the order reviving the dormant judgment is void because the trial court lacked authority to revive it. However, Martin did not appeal the original judgment imposing the court costs, nor did he appeal the 2017 judgment that allegedly revived the dormant order.

{¶ 7} Martin contends the trial court lacked jurisdiction to revive the assessment of court costs because it failed to provide him prior notice and hearing on the issue of court costs. However, there is no dispute that the trial court had subject-matter jurisdiction over the original action and personal jurisdiction over Martin. Therefore, despite Martin's assertion to the contrary, any error regarding Martin's sentence, including the assessment of court costs, does not render the sentence void, but voidable. *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 26; *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 27. If a sentencing error renders the defendant's sentence voidable, the error must be challenged on direct appeal, or the sentence is barred by res judicata. *State v. Ratliff*, 8th Dist. Cuyahoga No. 109473, 2021-Ohio-1187, ¶ 8, citing *Harper* at ¶ 43.

{¶ 8} 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 to the previous action.” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 653 N.E.2d 226 (1995). Thus, any issue that a defendant could have raised, but failed to raise in a direct appeal, is “barred by res judicata and not subject to review in subsequent proceedings.” *State v. Quarterman*, 8th Dist. Cuyahoga No. 101064, 2014-Ohio-3925, ¶ 7. *See also State v. Sands*, 11th Dist. Lake No. 2020-L-078, 2021-Ohio-078 (holding that failure to appeal judgment reviving costs results in res judicata where the defendant attempts to subsequently challenge the judgment with a new motion).

{¶ 9} Martin could have appealed from the 2017 judgment assessing the remainder of unpaid court costs, but he did not. Nor did he appeal the original assessment of court costs imposed in the sentencing entry. Any error in the issue of court costs is now barred by res judicata.

{¶ 10} The sole assignment of error is overruled.

{¶ 11} Judgment affirmed.

It is ordered that 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.

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EILEEN T. GALLAGHER, JUDGE

LISA B. FORBES, P.J., and  
EMANUELLA D. GROVES, J., CONCUR