

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
ERICK CHAPMAN	:	Case No. 15CA20
	:	
Defendant - Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of Common Pleas, Case No. 1981-CR-354 and 1982-CR-18

JUDGMENT: Affirmed

DATE OF JUDGMENT: July 29, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

BAMBI COUCH PAGE
Prosecuting Attorney

ERICK CHAPMAN, pro se
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Baldwin, J.

{¶1} Appellant Erick Chapman appeals a judgment of the Richland County Common Pleas Court overruling his motion to find his sentencing judgment void. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} On February 18, 1982, appellant was convicted of receiving stolen property and aggravated robbery upon a plea of guilty. He was sentenced to 2 to 10 years incarceration for receiving stolen property and 5 to 25 years incarceration for aggravated robbery, to be served concurrently. He was released on these charges in 1989.

{¶3} On December 31, 2014, appellant filed a motion to find his judgment void. He argued that the court failed to ask for the factual basis for his guilty pleas at his change of plea hearing, failed to impose court costs, and failed to advise him of his right to appeal. The trial court found that the motion was a petition for postconviction relief pursuant to R.C. 2953.21, and as such was filed more than 30 years late. The court further found that all of appellant's arguments could have been raised on direct appeal, and in any event, the sentence was not void.

{¶4} Appellant assigns two errors on appeal:

{¶5} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THAT THE APPELLANT'S JUDGMENT ENTRY 'IS NOT' VOID, WHERE THE TRIAL COURT FAILED TO IMPOSE THE MANDATORY COURT COSTS IN THE SENTENCING ENTRY PURSUANT TO R.C. 2947.23(A)(1) AS STATUTORY [SIC] REQUIRED.

{¶6} "II. THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THAT THE APPELLANT'S SENTENCE 'IS NOT VOID,' WHERE THE TRIAL COURT FAILED TO COMPLY WITH CRIM. R. 32(A)(2) TO NOTIFY THE APPELLANT OF HIS APPELLATE RIGHTS DURING SENTENCING AT ANYTIME DURING SENTENCING OR IN THE JUDGMENT OF CONVICTION."

I.

{¶7} Appellant argues that the sentencing judgment is void because it fails to impose mandatory court costs as required by R.C. 2947.23(A)(1). While the State concedes that the entry fails to impose court costs, the State argues that appellant's petition is untimely, his argument is barred by res judicata, and failure to impose costs does not render a judgment void.

{¶8} A motion to correct or vacate a sentence, despite its caption, meets the definition of a motion for postconviction relief set forth in R.C. 2953.21(A)(1), if it was (1) filed subsequent to direct appeal, (2) claims a denial of constitutional rights, (3) seeks to render the judgment void, and (4) asks for vacation of the judgment and sentence. *State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131 (1997). Appellant's motion in the instant case met the definition of a motion for postconviction relief.

{¶9} Appellant did not file a direct appeal from his sentencing entry. Pursuant to R.C. 2953.21(A)(2), where no appeal is taken, a petition for postconviction relief shall be filed no later than three hundred sixty-five days after the expiration of the time for filing the appeal. Appellant's petition therefore was required to be filed in March of 1983, and was filed more than 30 years late in December of 2014. Therefore, his petition is untimely.

{¶10} Further, 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 other than a direct appeal from that judgment, any defense or claimed lack of due process that could have been raised on direct appeal. *State v. Perry*, 10 Ohio St. 2d 176, 180, 226 N.E.2d 104, 108 (1967). Appellant could have raised the issue of the court's failure to impose court costs on direct appeal, and the claim is therefore barred by res judicata.

{¶11} Finally, the Ohio Supreme Court has held that "[t]he civil nature of the imposition of court costs does not create the taint on the criminal sentence that the failure to inform a defendant of postrelease control does." *State v. Joseph*, 125 Ohio St.3d 76, 79, 2010-Ohio-954, 926 N.E.2d 278, 282, ¶ 21 (2010). Therefore, the failure of the court to notify a defendant of the obligation to pay costs so that he may move for a waiver of costs may be error cognizable on direct appeal, but it does not render the sentence void. *Id.* at ¶ 22.

{¶12} The first assignment of error is overruled.

II.

{¶13} In his second assignment of error, appellant argues that his sentence was void because the court failed to notify him of his right to appeal his sentence.

{¶14} As discussed in the first assignment of error, appellant's motion was properly treated as a petition for postconviction relief, and as such the petition was untimely. Further, appellant's argument that the court failed to notify him of his right to appeal could have been raised on direct appeal and is therefore barred by res judicata. *Perry, supra.*

{¶15} In addition, appellant has failed to provide this Court with a transcript of the proceedings demonstrating that the trial court failed to properly advise him of his right to appeal. We therefore must presume regularity in the proceedings in the trial court. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197,199, 400 N.E.2d 384,385 (1980).

{¶16} The second assignment of error is overruled. The judgment of the Richland County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Farmer, J. concur.