[Cite as *State v. Williams*, 2015-Ohio-2632.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO	C.A. No. 27482
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
CAMERON D. WILLIAMS	CASE No. CR 2007-08-2540
Appellant	

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

MOORE, Judge.

{¶1} Defendant, Cameron D. Williams, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} This Court has addressed the procedural history of this case in a prior appeal as follows:

> This case has a long procedural history which has been discussed in varying amounts of detail by this Court and the Supreme Court of Ohio. *See State ex rel. Williams v. Hunter*, Slip Opinion [No. 2014]-Ohio-1022; *State v. Williams*, 9th Dist. Summit No. 26353, 2012-Ohio-4140; *State v. Williams*, 9th Dist. Summit No. 25879, 2011-Ohio-6141; *State v. Williams*, 9th Dist. Summit No. 24169, 2009-Ohio-3162. * * *
>
> "A jury convicted [Mr.] Williams in March 2008 of a number of offenses, including two counts of aggravated murder with capital specifications." *State ex rel. Williams* at ¶ 3. The trial court merged the aggravated-murder convictions and an additional murder conviction and sentenced Mr. Williams to a total sentence of life in prison with parole eligibility after 69 years. *Id.* On direct appeal, we reversed a conviction for violating a protection order, but otherwise affirmed. *See Williams*, 2009-Ohio-3162, at ¶ 55, 61. The trial court denied Mr.

Williams' initial petition for post-conviction relief while his direct appeal was pending. *State ex rel. Williams* at ¶ 3.

The Supreme Court summarized Mr. Williams' post-conviction filings as follows:

"[Mr.] Williams then filed a number of motions, including one for a new trial and one to dismiss an aggravated-burglary count, both of which were denied. He did not appeal the order denying the motion for a new trial, and his appeal of the order denying the motion to dismiss was dismissed when he failed to file a brief. He also filed a motion for resentencing, arguing that he had been improperly sentenced on allied offenses of similar import. That motion was denied. The court of appeals affirmed the denial on the basis that the motion was in fact an impermissible successive post[-]conviction petition. In August and December 2011, [Mr.] Williams filed additional motions for resentencing and for a final, appealable order, which were denied as barred by res judicata and by the prohibition against successive petitions for post[-]conviction relief. The court of appeals affirmed." (Internal citations omitted.) *Id.* at ¶ 4-5.

Mr. Williams continued to file various motions, including one in December 2012 entitled "Petition to Vacate or Set Aside Judgment of Conviction or Sentence" and another in April 2013 entitled "Motion to Correct an Illegal Sentence Pursuant to[ ] R.C. 2967.28(B), R.C. 2953.08(G)(2)(b), R.C. 2929.191[.]" On May 30, 2013, the trial court issued an entry denying Mr. Williams' motion for a final, appealable order and petition to vacate or set aside judgment of conviction or sentence but granting his motion to correct an illegal sentence "only as it relates to the imposition of post-release control." The trial court concluded that it was required to hold a resentencing hearing to correct the post-release control notifications. Mr. Williams did not appeal from the trial court's May 30, 2013 entry.

Mr. Williams continued to file various motions in the trial court, including July 2013 motions for de novo resentencing, for waiver of prosecution costs, to correct illegal sentences, and for a new trial. In August 2013, he filed a motion "requesting a 'plain error' analysis pursuant to Criminal Rule 52(B), and hearing scheduled to correct post-release control error." In September 2013, he filed another motion for resentencing.

The trial court conducted a hearing on September 10, 2013, "to correct notification to [Mr. Williams] of his post-release control requirements." That entry was journalized on September 30, 2013. Additionally, on September 30, 2013, the trial court denied Mr. Williams' motion for plain error analysis and motion for a new trial. On October 8, 2013, Mr. Williams filed a notice of appeal from the trial court's "judgment and sentence" of September 30, 2013. The only entry attached to the docketing statement was the trial court's September 30, 2013 entry correcting post-release control notification.

State v. Williams, 9th Dist. Summit No. 27101, 2014-Ohio-1608, ¶ 2-7. On appeal from the September 30, 2013 entry correcting his post-release control notification, this Court affirmed, but we remanded the matter solely for the trial court to correct the September 30, 2013 entry to reflect that it was issued as a nunc pro tunc entry. *Id.* at ¶ 13.

{¶3} In 2014, Mr. Williams filed a motion entitled "motion to correct sentences which are 'contrary to law' pursuant to: *State v. Burns*, [9th Dist. Summit No. 26332,] 2013-Ohio-4784, *State v. Roper*, [9th Dist. Summit Nos. 26631, 26632,] 2013-Ohio-2176, and *State v. Kalish*, 120 Ohio St.3d 23[, 2008-Ohio-4912,] and motion to waive prosecution costs, including any fees permitted pursuant to R.C. 2929.18(A)(4) pursuant to: R.C. 2949.092." In his motion, Mr. Williams argued that the trial court, despite merging counts one and two of his indictment into the third count of his indictment, impermissibly proceeded to sentence him on all three of those counts and on firearm specifications attendant to counts two and three. Mr. Williams further argued that the trial court impermissibly ordered him to pay prosecution costs after his release from prison without orally informing him of this obligation at the time of sentencing. The trial court denied Mr. Williams' motion in an entry dated July 29, 2014. Mr. Williams timely appealed from the July 29, 2014 entry, and he now raises two assignments of error for our review. We have consolidated the assignments of error to facilitate our discussion.

II.

ASSIGNMENT OF ERROR I

> THE TRIAL COURT ERRED BY APPLYING RES JUDICATA WHEN MR. WILLIAMS['] DIRECT APPEAL WAS PENDING ON THE ANNOUNCEMENT DATE OF *KALISH*.

ASSIGNMENT OF ERROR II

> THE TRIAL COURT IMPROPERLY IMPOSED A PENALTY ENHANCEMENT UNDER CIRCUMSTANCES WHERE THERE CAN BE NO

SENTENCE IMPOSED FOR AN UNDERLYING PREDICATE OFFENSE WHICH IS CONTRARY TO LAW AND ABUSED IT[S] DISCRETION BY IMPERMISSIBLY SENTENCING [MR.] WILLIAMS ON THE MERGED COUNTS.

{¶4} In his assignments of error, Mr. Williams argues that the trial court erred in applying res judicata to his motion and that the trial court erred in sentencing him on merged counts and on two firearm specifications attendant to the counts that had merged.

{¶5} In *Williams*, 2011-Ohio-6141, at ¶ 12, we addressed the trial court's denial of Mr. Williams' motion for resentencing wherein he argued "that the trial court committed plain error in sentencing him on his convictions for murder and two counts of aggravated murder, as the crimes were allied offenses of similar import." We concluded that the motion must be construed as a petition for post-conviction relief. *See id.* at ¶ 13. We then determined that the petition was untimely and successive. *See id.* at ¶ 14-16. *See also* R.C. 2953.21 and R.C. 2953.23(A). Because Mr. Williams had not advised the trial court as to any manner by which he was unavoidably prevented from discovering the facts upon which his petition was based, and he did not claim a new retroactive right that had been recognized by the United States Supreme Court, we concluded that the trial court lacked authority to consider his petition. *Williams*, 2011-Ohio-6141, at ¶ 16.

{¶6} As part of his April 23, 2014 motion, Mr. Williams again raised the argument that the trial court impermissibly sentenced him on counts that had merged. However, again, Mr. Williams did not advise the trial court as to how he was unavoidably prevented from discovering the facts upon which his petition was based, and he did not claim a new retroactive right that had been recognized by the United States Supreme Court. *See id.* at ¶ 16. Therefore, for the same reasons set forth in *Williams*, 2011-Ohio-6141, the trial court lacked authority to consider Mr. Williams' April 23, 2014 motion.

{¶7} Moreover, in *Williams*, 2014-Ohio-1608, Mr. Williams appealed from the trial court's September 30, 2013 entry correcting the imposition of postrelease control. *Id.* at ¶ 7-8. There, he assigned as error several arguments pertaining to his sentence. *Id.* at ¶ 16. We concluded that these arguments were barred by res judicata. *Id.* at ¶ 18. Although Mr. Williams distinguishes his 2014 appeal from his present appeal in that his 2014 appeal was taken from his resentencing entry, such a procedural difference does not alter the principal that res judicata bars "the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal." *State v. Knuckles*, 9th Dist. Summit No. 26830, 2013-Ohio-4024, ¶ 7, quoting *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, ¶ 59, citing *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus. Here, because Mr. Williams could have raised his arguments pertaining to his sentence and court costs in a direct appeal, he is now barred from asserting these arguments under the doctrine of res judicata.

{¶8} Lastly, we note that, in his reply brief, Mr. Williams directed this Court to the decision of the Eighth District in *State v. Holmes*, 8th Dist. Cuyahoga No. 100388, 2014-Ohio-3816, in support of his position that his argument is not barred by res judicata. There, the Eighth District addressed, in an appeal from a post-conviction motion to vacate, a situation where the trial court had found the offenses at issue to be allied, but the trial court imposed a sentence on each of the counts prior to ordering that the counts merge. *Id.* at ¶ 18. In concluding that res judicata did not bar the defendant's argument that the trial court improperly imposed sentence on both counts, the Eighth District determined that the sentence was void. *Id.* at ¶ 21-22.

{¶9} However, this Court has held that "the Ohio Supreme Court has applied its void-sentence analysis in limited circumstances[,][and][we] will not extend its reach without clear direction from the Supreme Court." *State v. Jones*, 9th Dist. Wayne No. 10CA0022, 2011-Ohio-

1450, ¶ 10, quoting *State v. Culgan*, 9th Dist. Medina No. 09CA0060-M, 2010-Ohio-2992, ¶ 20. Mr. Williams has not directed this Court to any Ohio Supreme Court cases holding that the imposition of a concurrent sentence for a count that has been merged with another count in the indictment results in a void sentence. Therefore, we decline to adopt the position of the Eighth District in *Holmes*. *See State v. Coleman*, 9th Dist. Lorain No. 06CA008877, 2006-Ohio-6329, ¶ 9 ("[T]his Court is not bound by the decisions of its sister districts.").

{¶10} Accordingly, Mr. Williams' assignments of error are overruled.

III.

{¶11} Mr. Williams' assignments of error are overruled. The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

CAMERON D. WILLIAMS, pro so, Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.