

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

ABRAHAM ISA

Defendant-Appellant

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C.A. CASE NO. 2014-CA-31

T.C. NO. 07CR207

(Criminal Appeal from
Common Pleas Court)

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OPINION

Rendered on the 17th day of July, 2015.

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FROELICH, P.J.

{¶ 1} Abraham Isa appeals from a judgment of the Champaign County Court of
Common Pleas, which denied his motion for resentencing. For the following reasons,
the trial court's judgment will be affirmed.

{¶ 2} In 2007, Isa was convicted of thirteen counts of gross sexual imposition and

two counts of rape, and the trial court sentenced him to an aggregate term of 24½ years in prison. Isa's conviction was affirmed on direct appeal. *State v. Isa*, 2d Dist. Champaign No. 07-CA-37, 2008-Ohio-5906 (*Isa I*).

{¶ 3} Isa subsequently filed several motions, many of which were construed as petitions for post-conviction relief. In 2009, Isa filed two motions for re-sentencing, one of which alleged that the sentence was void due to a post-release control defect and the other of which alleged that the sentence was improperly computed. We affirmed the trial court's denial of these motions. *State v. Isa*, 2d Dist. Champaign Nos. 10-CA-1, 10-CA-2, 2010-Ohio-3770 (*Isa II*). With respect to the issue of post-release control, raised in Case No. 10-CA-1, we stated: "Based upon the record, we find no merit to Isa's contention that his sentence is void due either to a failure to provide for post-release control or a failure to advise him of post-release control." *Id.* at ¶ 16.

{¶ 4} Isa later filed a "Motion to Vacate Sentence [as] Contrary to Law," in which he asserted ineffective assistance of defense counsel, in part for allegedly advising him to reject a favorable plea bargain. The trial court treated the motion as a petition for post-conviction relief, and we affirmed the trial court's denial of that motion. *State v. Isa*, 2d Dist. Champaign No. 2012-CA-44, 2013-Ohio-3382 (*Isa III*). Isa subsequently filed a motion for leave to file a delayed motion for a new trial and a motion for a new trial. We affirmed the trial court's denial of this motion, as well. *State v. Isa*, 2d Dist. Champaign No. 2013-CA-20, 2014-Ohio-139 (*Isa IV*).

{¶ 5} Isa filed three additional motions in late 2013, seeking resentencing, to contest his classification under the Adam Walsh Act, a new trial, a change of venue, and for disqualification of the elected trial judge. In February 2014, a visiting judge denied

each of these motions/petitions. Isa did not appeal these rulings.

{¶ 6} On August 13, 2014, Isa filed a “Motion for Re-Sentencing Based on Void Judgment.” Isa claimed that the trial court “made a number of statutory errors” at sentencing which rendered his sentence void in part. Specifically, he argued that the trial court failed to notify him about the possibility of community service in lieu of court costs, and that the trial court failed to impose post-release control as to counts 1 through 13 and counts 16 and 17. Isa states that the trial court did not properly incorporate post-release control and other notifications into its judgment entry.

{¶ 7} On August 26, 2014, the trial court (visiting judge) overruled his motion for resentencing. The court reasoned that the court of appeals had addressed and rejected Isa’s argument regarding the imposition of post-release control in *Isa II*, and that the law of the case doctrine barred re-litigation of that issue. With respect to cost costs, the trial court noted that a court “errs if it fails to inform the defendant that he can be ordered to perform community service if he fails to pay court costs.” However, the trial court found that Isa’s motion with respect to the imposition of court costs was barred by res judicata.

{¶ 8} Isa appeals from the trial court’s August 26, 2014 judgment. His assignment of error states:

THE TRIAL COURT COMMITTED PLAIN AND REVERSIBLE ERROR IN
RULING THAT APPELLANT’S MOTION FOR RESENTENCING BASED
ON A VOID SENTENCE WAS BARRED BY RES JUDICATA.

{¶ 9} On appeal, Isa argues that his sentence is void “because it lacked statutorily mandated notifications regarding costs of prosecution and the potential for being ordered to perform community service.” He asserts that res judicata does not prevent an attack

on a void sentence.

{¶ 10} As an initial matter, Isa does not challenge the trial court's ruling regarding the imposition of post-release control. Because that issue is not raised on appeal, we need not address it.

{¶ 11} With respect to court costs, the trial court rejected Isa's argument on the basis of res judicata. "Pursuant to the doctrine of res judicata, a valid final judgment on the merits bars all subsequent actions based on any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *State v. Collins*, 2d Dist. Montgomery No. 25612, 2013-Ohio-3645, ¶ 9, citing *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 653 N.E.2d 226 (1995). Res judicata applies to any defense that was raised or could have been raised in a criminal defendant's prior direct appeal from his conviction. *Id.*, citing *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967).

{¶ 12} In its appellate brief, the State agrees with Isa that "Defendant Isa did not receive proper notification under R.C. 2947.23(A)(1)(a) at the time of his sentencing" and that the trial court's error "renders Defendant Isa's sentence, with regard to his obligation to pay court costs, void." The State indicates that the proper remedy is to remand the case to the trial court for the limited purpose of properly assessing court costs.

{¶ 13} We appreciate the State's willingness to recognize possible errors by the trial court and to offer appropriate remedies. In this case, however, the trial court's failure to notify Isa of the possibility of community service should he fail to pay court costs did not render that portion of Isa's judgment entry void.

{¶ 14} The Supreme Court of Ohio had held that "the time to appeal a trial court's failure to provide the notice required by R.C. 2947.23(A)(1) begins to run from the date of

the trial court's sentencing entry. See *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, paragraph three of the syllabus (a sentencing entry is a final, appealable order as to costs.).” *State v. Smith*, 131 Ohio St.3d 297, 2012-Ohio-781, 964 N.E.2d 423, ¶ 10. In light of that statement, we have held that a defendant must challenge on direct appeal the trial court's failure to provide the notice required by R.C. 2947.23(A)(1)(a), and the failure to do so renders the issue barred by res judicata. See *State v. Thompson*, 2d Dist. Montgomery No. 26364, 2015-Ohio-1984 (“Since Thompson could have raised his argument regarding the court's failure to comply with R.C. 2947.23 in his direct appeal from his 2009 conviction and failed to do so, res judicata bars him from subsequently raising the issue.”); see also, e.g., *State v. Barnes*, 12th Dist. Warren No. CA2014-03-049, 2015-Ohio-651, ¶ 11 (“While a void judgment may be challenged at any time, a trial court's failure to properly advise a defendant as to court costs does not render a judgment void.”).

{¶ 15} The trial court's alleged failure to provide the notice required by R.C. 2947.23 did not render the imposition of court costs – let alone the sentence -- void. Consequently, Isa was required to raise that issue on direct appeal; he failed to do so. Accordingly, the trial court correctly concluded that Isa's claim regarding the imposition of court costs was barred by res judicata. Isa's assignment of error is overruled.

{¶ 16} The trial court's judgment will be affirmed.

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DONOVAN, J. and WELBAUM, J., concur.

Copies mailed to:

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Hon. David C. Faulkner