

ORIGINAL

IN THE SUPREME COURT OF OHIO

11-2116

STATE OF OHIO

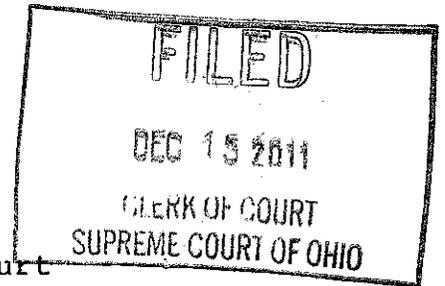
Case No. \_\_\_\_\_

Appellee

-vs-

RONALD D. BACHMAN

Appellant



On Appeal From The Fifth District Court  
Of Appeals, Stark County, Ohio  
Case No. 2011-CA-00125

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MEMORANDUM IN SUPPORT OF JURISDICTION

BY APPELLANT RONALD D. BACHMAN

---

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STATEMENT OF GREAT PUBLIC INTEREST  
AND SERIOUS CONSTITUTIONAL QUESTION

The great public interest and serious constitutional question in this case is rooted in the erroneous application of res judicata by the Fifth District Court of Appeals. The facts of this case show that, on May 3, 2011, the trial court invoked its jurisdiction in Case No. 1995-CR-0300, in the absence of a remand order from a superior Ohio court, and conducted a re-sentencing hearing for the stated purpose of: "properly address[ing] the imposition of court costs." (Opinion at ¶1).

On April 29, 2011, just prior to the re-sentencing hearing, Ronald D. Bachman, ("Bachman"), filed a sentencing memorandum in which he moved the court to declare a mistrial. The motion for mistrial was based on the wrongful publication to the jury of an Exhibit that the trial court ruled inadmissible during the course of trial.

The specific exhibit in question was presented to the trial court as State's Exhibit 1, and was rejected by the trial court, in significant part, on hearsay grounds and issues concerning Confrontation rights.

The jury verdict in this case was in July of 1995. However, it was not until April 20, 2000, Bachman first obtained documentation that State's Exhibit 1, was presented to the jury in violation of the trial court's ruling. Specifically, in a brief filed to the Ohio Supreme Court by Assistant Stark County Prosecutor, Ronald Mark Caldwell, in Case No. 00-527, the prosecutor admitted for the first time that State's Exhibit 1,

was erroneously admitted into evidence in violation of the trial court's ruling.

In addition to the motion for mistrial, in his pre-sentence motion, Bachman sought a waiver of court costs and requested that he be granted credit for all time served. By Judgment Entry issued May 11, 2011, the trial court overruled Bachman's motion for mistrial, and waiver of court costs. However, the trial court granted the request for credit for time served.

Bachman filed a timely appeal in which he argued abuse of discretion for denying the motion for mistrial, and a lack of authority to conduct a re-sentencing hearing to impose court costs. Bachman reasoned that either the trial court did not have authority to hold a re-sentencing in the absence of a remand order from a higher court, or if the trial court did have the authority to hold a re-sentencing hearing, the motion for mistrial was properly before the trial court and res judicata was not applicable.

Because the Fifth Appellate District had determined that the trial court was authorized to conduct a re-sentencing hearing to impose court costs, and in this case jail time credit, Bachman submits that the application of res judicata is unjust and he respectfully requests this Court accept jurisdiction of this matter to resolve the issue accordingly.

I. STATEMENT OF CASE AND FACTS

In 1995, Bachman was convicted following a jury trial of various offenses. As a result, on July 14, 1995, Bachman was sentenced to a term of life with parole eligibility after serving ten years.

Bachman, by and through counsel, filed a timely appeal. On September 23, 1996, the Fifth Appellate District Court affirmed the conviction and sentence. State v. Bachman, (5th Dist. No. 1995-CA-00266), 1996 WL 570854.

By and through counsel, Bachman sought discretionary review from the Ohio Supreme Court who declined jurisdiction to review the matter. State v. Bachman, 77 Ohio St.3d. 1543, (Table Authority).

In 1999, Bachman filed an application to reopen his direct appeal under Ohio App-R. 26(B). The Fifth Appellate District Court denied the application on the merits and Bachman again sought discretionary review from the Ohio Supreme Court. The Supreme Court declined jurisdiction on May 31, 2000. State v. Bachman, 89 Ohio St.3d. 1404, 729 N.E.2d. 381 (Table No. 00-527).

On March 24, 2008, Bachman filed a motion for new trial based on the same argument presented to the trial court at the May 3, 2011 re-sentencing. Specifically, the wrongful introduction of State's Exhibit 1, to the jury during the original trial proceeding. By Judgment Entry filed April 29, 2010, the trial court denied Bachman's new trial motion on the basis of insufficient proof of Bachman's inability to file the motion with fourteen days of the jury verdict.

Bachman timely appealed the denial of his new trial motion, and on November 22, 2010, the Fifth Appellate District Court affirmed the trial court's denial. Significantly, the Fifth Appellate District found that Bachman did not discover the factual predicate upon which the new trial motion was based until 1999 or 2000. The Appellate Court, however, reasoned that Bachman failed to explained how he was unavoidably prevented from filing the new trial motion in the last ten years.

Accordingly, Bachman sought discretionary review from the Ohio Supreme Court, but was denied jurisdiction on April 6, 2011.

On July 10, 2009, while the new trial motion was pending in the trial court, Bachman filed a motion for re-sentencing related to the imposition of court costs. On April 23, 2011, following completion of the reviewing process for the new trial motion, the trial court notified Bachman that re-sentencing hearing had been scheduled for May 3, 2011.

Bachman moved the trial court for a mistrial, to waive imposition of court costs, and for credit for all time served. The trial court denied the motion for mistrial, and waiver of court costs, but granted Bachman's request for credit for all time served.

Bachman timely appealed, and on November 28, 2011, the Fifth Appellate District Court affirmed the trial court's ruling holding in significant part that the mistrial motion was barred under the doctrine of res judicata. (Opinion at ¶24).

This timely request for review now follows.

PROPOSITION OF LAW NO. I

WHEN A REVIEWING COURT BASES ITS DENIAL OF A MERIT REVIEW OF CLAIMED CONSTITUTIONAL ERROR ON THE ERRONEOUS APPLICATION OF RES JUDICATA, APPELLANT IS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

SUPPORTING ARGUMENT

II. Standard of Review:

"The law-of-the-case- doctrine holds that 'the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceeding in the case at both the trial and reviewing levels.'" State v. Davis, 2011-Ohio-5028, at ¶30 (citing Nolan v. Nolan, (1984), 11 Ohio St.3d. 1, 3, 11 OBR 1, 462 N.E.2d. 410. This doctrine prevents a litigant from relying on arguments at retrial that were fully litigated, or could have been fully litigated, in a first appeal. Davis at ¶30, (citing Hubbarg ex rel. Creed v. Sauline, (1996), 74 Ohio St.3d. 402, 404-405, 659 N.E.2d. 781.

Similarly, the doctrine of res judicata operates only to prevent defendants from raising claims that "[were] raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on appeal from that judgment." State v. Perry, (1967), 10 Ohio St.3d. 175, at paragraph nine of the syllabus. However, a judgment of conviction must include the sentence to be a final, appealable order under R.C. §2505.02.

As applied to the facts of this case, the application of res judicata was error.

A. Res Judicata & Final Orders:

Prior to the adoption of Crim. R. 32(C), Ohio jurisprudence required a finding of guilt and a sentence in order for a conviction to be considered a final appealable order. See State v. Thomas, (1964), 175 Ohio St. 563, 26 O.O.2d. 253, 197 N.E.2d. 197, at syllabus; State v. Chamberlain, (1964), 177 Ohio St. 104, 106-107, 29 O.O.2d. 268, 202 N.E.2d. 695.

In cases decided after the adoption of Crim. R. 32(C), this Court continued to recognize that a judgment of conviction is composed of two essential elements; the adjudication of guilt and the sentence. E.g., State v. Poindexter, (1988), 36 Ohio St.3d. 1, 5, 520 N.E.2d. 569. (" 'conviction' includes both the guilty determination and the penalty imposition."); State v. Whitfield, 124 Ohio St.3d. 319, 2010-Ohio-2, 922 N.E.2d. 182, ¶24. ("a 'conviction' consists of a guilty verdict and the imposition of a sentence or penalty.").

In State v. Baker, 119 Ohio St.3d. 197, 2008-Ohio-3330, 893 N.E.2d. 163, this Court declared that "[a] judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) **the sentence**; (3) the signature of the judge; and (4) entry on the journal by the clerk of courts." Id. at syllabus. (bold added).

In this case, the trial court held a re-sentencing hearing on May 3, 2011. The stated purpose was to correct the erroneous imposition of court costs contained in the original sentencing journal entry.

During the course of the re-sentencing hearing, the trial court addressed three issues raised by Bachman relative to the re-sentencing proceedings. First, with respect to the motion for mistrial, the trial court stated:

And then you have the additional difficulty of that your motion for a mistrial, that's an issue that should have been raised on appeal and I can't grant that at this time.

(5/3/2011 Tr. P. 6)

In response to the trial court's concerns regarding the motion for mistrial, Bachman informed the court that the factual basis for the mistrial was not available for direct appeal. (Tr. P. 7). In addition, Bachman reasoned that the mistrial motion pertained to the issue of court costs because the legality of how the State obtained the conviction directly effected to whom court cost should be assessed. (Tr. P. 8).

With respect to the trial court's assertions that this issue should have been raised on direct appeal, the sentencing memorandum filed prior to the re-sentencing hearing explains this issue was never addressed by the original trial court because the facts upon which the mistrial motion is based were unknown until 1999 or 2000. Notwithstanding the clear record before the trial court, the motion for mistrial was overruled without a hearing.

The next issues addressed by the trial court concerned the erroneous imposition of court costs, the very issue upon which the trial court based its jurisdiction to conduct the re-sentencing hearing. Concerning this issue, the trial court stated:

Your second motion is indicating that at the time of your sentencing, Judge Gwin did not advise you that court costs were being imposed in your case, although it is reflected in the sentencing entry.

I therefore am going to go ahead and **assess costs in this matter** and pursuant to the Joseph case \*\*\* allowing the Defendant to move the Court for waiver of the payment of Court costs.

(5/3/2011 Tr. P. 9-10)(bold added)

After the trial court advised Bachman of his right to move for waiver of court costs, Bachman advised the court that he was indigent and request costs to be deferred until he was released. (TR. P. 10). Significant to this appeal, the trial court made the following statement:

No. Our county is in dire straits right now. While I use to do that when I first got on the bench, our county's coffers are nearly broke.

So I am not deferring Court costs for any **Defendants who are sentenced out of my Court.**

(5/3/2011 Tr. P. 10)(bold added)

The third and last issue addressed by the trial court during re-sentencing concerned jail time credit. Bachman informed the court both orally and in his pre-sentence memorandum, that similar to the court costs, the original judge never spoke of jail time credit during the first sentencing hearing. However, just like court costs, jail time credit was granted in the original sentencing entry. (Tr. P. 11).

Thereafter, the trial court granted Bachman "[C]redit for all time served." (Tr. P. 12).

The significance of the issues addressed by the trial court in the May 3, 2011 re-sentencing hearing, is clear. Regardless of whether the erroneous imposition of court costs rendered the original sentence void, the fact still remains that the trial court re-invoked its jurisdiction in this case to add subject matter to what was previously determined to be a closed case.

The listed procedural history by the Fifth District Court of Appeals in this case makes clear that this case was finalized on September 23, 1996, when the Fifth Appellate District affirmed the judgment of the trial court. State v. Bachman, Stark App. No. 1995-CA-00266. (Opinion at ¶5).

This Court declined review following direct appeal in this case in State v. Bachman, 77 Ohio St.3d. 1543, (Table Authority). This case was again finalized in 1999 when the Fifth Appellate District Court denied Bachman's application to reopen direct appeal, and this Court again declined jurisdiction to review the matter. State v. Bachman, 89 Ohio St.3d. 1404, (Table No. 00-527).

As a result of the State re-invoking its jurisdiction in this case to conduct the re-sentence hearing, the litigation has never truly closed, and continues to evolve as the process annexes additional subject matter to what was ruled closed at the completion of the above listed cases.

Having initiated such proceeding, the State cannot now cry foul and attempt to foreclose review of invited arguments on the basis of res judicata, law-of-the-case doctrine, or any other procedural default that may come to mind.

Moreover, the record reflects that the trial court in this case did not limit the re-sentencing to the erroneous imposition of court costs. The court addressed the motion for mistrial, as presented, and incorrectly argued the issue should have been raised on direct appeal. Likewise, the Fifth Appellate District Court based its res judicata determination on the faulty assertion that Bachman argued the original sentence was void. That assertion was incorrect.

Although in his arguments to the appellate court Bachman compared post release control to the imposition of court costs, it was not in the context asserted by that court. Bachman essentially argued that, unlike post release control, which is an isolated portion of the sentence, court costs is assessed against the losing party to an entire action. Thus, Bachman reasoned that when a conviction is obtained in violation of the Ohio and United States Constitutions, and the trial court attempts to assess costs against the losing party, arguments related to constitutionality of the conviction is appropriate subject matter for the trial and reviewing courts.

Having asserted this argument at a re-sentencing proceeding initiated by the trial court, and having presenting the same argument to the appellate court on a direct appeal from that re-sentencing hearing, res judicata is not applicable. Thus, the question turns on whether Bachman is entitled to relief for the reasons argued in his mistrial motion. Bachman submits that he is and respectfully offers the following in support of that assertion.

B. Abuse of Discretion:

The factual basis for the motion for mistrial is the wrongful publication of evidence to the jury that had been ruled inadmissible by the trial court Judge. This fact is not in dispute. Absent any procedural concerns, the only question is whether the trial court's actions constitutes an abuse of discretion as defined in Blakemore v. Blakemore, 5 Ohio St.3d. 217, 219, 450 N.E.2d. 1140.

To that point, clearly established United States Supreme Court precedent dictates that "[w]hen a trial court is presented with evidence that an extrinsic influence has reached the jury, due process requires that the trial court take steps to determine the effect such extraneous information actually was on that jury." See Remmer v. United States, 347 U.S. 227, 74 S.Ct. 450, 98 L.Ed.2d. 654. See also; Nevers v. Killinger, 169 F.3d. 352, 373, (6th Cir. 1999), overruled on other grounds by Harris v. Stovall, 212 F.3d. 940 (6th Cir. 2000); cf. United States v. Rigsby, 45 F.3d. 120, 124-25, (6th Cir. 1995) ("when there is a credible allegation of extraneous influence, the court must investigate sufficiently to assure itself that constitutional rights of the criminal defendant have not been violated.").

In Remmer, the United States Supreme Court prescribed that a certain procedure be followed when, as in this case, there is an unauthorized private communication or contact with the jury; "The trial court should ... determine the circumstances, the impact thereof upon the jury, and whether or not it was prejudicial, in a hearing, with all interested parties permitted to participate."

Remmer, 347 U.S. at 229-30. (underline added).

With respect to the resulting prejudice from the illegal admission of State's Exhibit 1 to the jury, the error fits squarely within the well recognized definition of structural error as defined by the Ohio Supreme Court. In State v. Fisher, 99 Ohio St.3d. 127, 784 N.E.2d. 222, the Ohio Supreme Court defined structural error as error that "def[ies] analysis by the harmless error standard, because they effect the framework within which a trial proceeds, rather than simply being an error in the trial process itself." Id.

The Court in Fisher re-affirmed their earlier holding in State v. Hill, 92 Ohio St.3d. 191, 2001-Ohio-141, that structural error mandates a finding of per se prejudice. Id., quoting Arizona v. Fulminante, 499 U.S. 279, 111 S.Ct. 1264. Moreover, "such errors effect the entire trial process." Brecht v. Abrahamson, 507 U.S. 619, 630, 113 S.Ct. 1710, 1717.

Significantly, the Ohio Supreme Court stated in Hill, "[t]hese errors deprive a defendant of the basic protections 'without which' a criminal trial cannot reliably serve its function as a vehicle for determining guilt or innocence, and no criminal punishment may be regarded as fundamentally fair." Hill, quoting Rose v. Clark, 478 U.S. 570, 577, 106 S.Ct. 3101, 3106.

For the following reasons, the analysis in Hill should apply to the facts of this case.

On June 27, 1995, prior to trial, the State of Ohio filed a motion in limine to preclude the introduction of evidence related to the sexual abuse of the victim by the victim's maternal

grandfather. The trial court deferred ruling on the motion until the beginning of trial. At the beginning of trial and before voir dire of the jury, the State Motion in Limine was discussed. Based on the arguments of counsel, the court refused to allow any evidence that the victim also accused the grandfather of sexual abuse. (Trial Tr. P. 8).

Accordingly, defense counsel proceeded under the presumption that no such evidence was introduced and was unable to cross examine the victim concerning this issue.

At the close of the defense's case, the State moved to admit State Exhibit 1, with the exception of the evidence related to the maternal grandfather. State Exhibit 1 originally consisted of 12 pages including examination reports from Akron Childrens Hospital, a two page type-written report, (author unknown), and a hand written report from Sherri Roberts, a social worker.

Following arguments by both parties, the trial court ruled State Exhibit 1 inadmissible with the exception of the two cover-pages. (Trial Tr. P. 293).

Because State Exhibit 1, contained evidence that was ruled inadmissible by the trial court on hearsay grounds and issues related to the Confrontation Clause, and because defense proceeded with trial under the presumption this evidence was not introduced to the jury, the fact that the exhibit was introduced mandates a finding of prejudice.

It thus follows, that the trial and appellate court abused their discretion in this case and Bachman requests relief accordingly.

CONCLUSION

For all of the above reasons, Bachman requests this Court accept jurisdiction and resolve the issues presented herein.

Respectfully submitted,



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Appellant pro se

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing, memorandum in Support of Jurisdiction, has been sent, via Regular U.S. mail, to the office of counsel for Appellee, Ronald Mark Caldwell, Assistant Prosecutor, at 110 Central Plaza, South, Canton, Ohio, 44702-1413, on this 12<sup>th</sup> day of December, 2011.

By:



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Appellant pro se

NANCY S. REINHOLD  
CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

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STATE OF OHIO

Plaintiff-Appellee

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Julie A. Edwards, J.

-vs-

Case No. 2011CA00125

RONALD D. BACHMAN

Defendant-Appellant

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of  
Common Pleas, Case No. 1995-CR-0300

*Heck*

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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NANCY S. REINHOLD, CLERK  
Deputy  
11-28-11

FILED

*Hoffman, P.J.*

(¶1) Defendant-appellant Ronald Bachman appeals the May 11, 2011 Judgment Entry entered by the Stark County Court of Common Pleas resentencing him to properly address the imposition of court costs. Plaintiff-appellee is the State of Ohio.

#### STATEMENT OF THE CASE

(¶2) On April 4, 1995, the Stark County Grand Jury indicted Appellant Ronald Bachman on four counts of rape, one count of sexual battery, one count of corruption of a minor and one count of gross sexual imposition. The four counts of rape each contained a force specification. These charges were based on allegations Appellant sexually abused his daughter from the time she was five years old.

(¶3) Appellant was tried before a jury, which found him guilty as charged in the indictment.

(¶4) By Judgment Entry filed July 27, 1995, and a Nunc Pro Tunc Entry filed August 29, 1995, the trial court sentenced Appellant to the mandatory life sentences on the four rape convictions and imposed a determinate term of two years on all the remaining charges. The sentences were then either merged or imposed to run concurrently with each other.

(¶5) This Court affirmed Appellant's conviction via Judgment Entry of September 23, 1996, *State v. Bachman* Stark App. No. 1995-CA-00266.

(¶6) In April, 2004, an action was filed in the Stark County Court of Common Pleas recommending that Appellant be classified a sexual predator.

(¶7) On April 12, 2004, a hearing was held to determine Appellant's status pursuant to the Sex Offender Registration Act, R.C. Chapter 2950. By judgment entry filed April 20, 2004, the trial court classified Appellant a "sexual predator."

(¶8) Appellant filed an appeal and this Court upheld such classification.

(¶9) On March 24, 2008, Appellant filed a motion for a new trial and on July 10, 2009, Appellant filed a motion for resentencing. Via Judgment Entry of April 29, 2010, the trial court denied Appellant's motion for new trial. Appellant filed an appeal with this Court. This Court affirmed the trial court's denial of Appellant's motion for new trial via Judgment Entry of November 22, 2010.

(¶10) Via Entry of April 23, 2011, the trial court notified Appellant of a limited resentencing hearing solely on the imposition of court costs. The video resentencing was scheduled for May 3, 2011. On April 29, 2011, Appellant filed a sentencing memorandum and a motion for mistrial. On May 3, 2011, the trial court resentedenced Appellant, and via Judgment Entry of May 11, 2011, denied Appellant's sentencing memorandum and motion for mistrial. The court further denied Appellant's waiver of court costs, but granted Appellant's motion for time served.

(¶11) Appellant now appeals, assigning as error:

(¶12) "I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE MOTION FOR MISTRIAL IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

(¶13) "II. THE TRIAL COURT ABUSED ITS DISCRETION IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

WHEN IT HELD A RESENTENCING HEARING TO CORRECT ERRORS IN THE IMPOSITION OF COURT COST.”

I & II

(¶14) The alleged errors assigned by Appellant raise common and interrelated issues; therefore, we will address Appellant’s arguments together.

(¶15) Appellant asserts he was entitled to a de novo sentencing hearing due to the trial court’s alleged error in imposing court costs at his original sentencing. The sole argument raised in Appellant’s motion for resentencing was the entry originally issued by the trial court was void because it included the imposition of court costs which were not orally imposed at the sentencing hearing.

(¶16) As set forth in the statement of the case, supra, the trial court conducted a limited resentencing hearing on May 3, 2011. At the limited resentencing hearing, Appellant moved the trial court to waive court costs. The trial court overruled the motion in its May 11, 2011 Judgment Entry.

(¶17) In *State v. Joseph* 125 Ohio St.3d 76, 2010-Ohio-954, the Ohio Supreme Court held:

(¶18) “Here, Joseph was not given an opportunity at the sentencing hearing to seek a waiver of the payment of costs, because the trial court did not mention costs at the sentencing hearing. Joseph argues that the court’s failure to orally inform him of court costs is akin to a court’s failure to alert a defendant at his sentencing hearing to the court’s imposition of postrelease control. When postrelease control is statutorily mandated-thus leaving no discretion with the trial judge in regard to its imposition-we have held that failure of the judge to notify the defendant on the record regarding

postrelease control results in a void sentence, necessitating complete resentencing. *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568.

(¶19) \*\*\*\*

(¶20) "While the failure of the court to orally notify Joseph that it was imposing court costs on him does not void Joseph's sentence, it was error: Crim.R. 43(A) states that a criminal defendant must be present at every stage of his trial, including sentencing. The state urges that any error is harmless. However, Joseph was harmed here. He was denied the opportunity to claim indigency and to seek a waiver of the payment of court costs before the trial court. He should have had that chance.

(¶21) "We therefore remand the cause to the trial court for the limited purpose of allowing Joseph to move the court for a waiver of the payment of court costs. Should Joseph file such a motion, the court should rule upon it within a reasonable time.

(¶22) "Accordingly, we affirm the judgment of the court of appeals insofar as it held that Joseph is not entitled to a complete resentencing. \*\*\*\*"

(¶23) Accordingly, the Court in *Joseph* expressly limited resentencing proceedings on court costs to the limited issue of the proper imposition of court costs. It did not find the judgment entry was void. We find the situation is not analogous to when a trial court fails to properly impose mandatory post release control. Therefore, we conclude the trial court did not error in limiting the resentencing hearing to the issue of the proper imposition of court costs.

(¶24) Furthermore, we find Appellant's arguments relative to his motion for a mistrial are barred by the doctrine of res judicata as they were previously raised or

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By .....  
Date: .....

were capable of being raised on direct appeal. *State of Szefcyk* (1996), 77 Ohio St.3d 93.

(¶25) The May 11, 2011 Judgment Entry of the Stark County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Edwards, J. concur

  
HON. WILLIAM B. HOFFMAN

  
HON. SHEILA G. FARMER

  
HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RONALD D. BACHMAN

Defendant-Appellant

JUDGMENT ENTRY

Case No. 2011CA00125

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NANCY S. RENBOLD  
CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO

For the reasons stated in our accompanying Opinion, the May 11, 2011  
Judgment Entry of the Stark County Court of Common Pleas is affirmed. Costs to  
Appellant.

  
HON. WILLIAM B. HOFFMAN

  
HON. SHEILA G. FARMER

  
HON. JULIE A. EDWARDS