

ORIGINAL

IN THE SUPREME COURT OF OHIO

12-1088

STATE OF OHIO

Plaintiff,

vs.

CURTIS L. BARBER

Defendant

; On Appeal from the common  
; Pleas Court; C.A. Case No. 24770  
; T.C.No. 00-CR-1272  
;  
;  
;  
;  
;  
;  
;

MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT CURTIS L. BARBER

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## EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case before the Ohio Supreme Court presents two critical issues of Law for the Ohio Supreme Court to resolve, based on decisions decided by this Ohio Supreme Court {yet} not resolved by the Court of Appeals in this case, nor in cases like this case before the Ohio Supreme Court.

Although, the allied offenses have been decided in several cases, over the past few decades R.C.2941.25(a), until recently in the Ohio Supreme Court's decision in *State v Johnson*, 128 Ohio St. 3d 153, 2010-Ohio-6314, 942 N.E.2d 1061 Courts remained unsettled on the issue of R.C.2941.25.

In the Decision before this Honorable Court, Defendant asserts that until the Ohio Supreme Court rule on cases that were affected by the [Misapplication] used in decisions relating to R.C.2941.25 over the past two decades, by decisions utilizing the Rance analysis, defendant's continue to suffer a great amount of Prejudice as in this case by the former Ambiguities of the Rance Analysis. Wherefore, in cases that were decided strictly under the false Authority of the Rance Theory, **(1) Does Ohio Court of Appeals have the Authority to now correct the Misapplications that relied upon the Rance Theory, or ;**

**(2) Does the Many Ohio Defendant's that were victims to the wrong interpretations of Rance, Cabrales, along with Other interpretation that resulted from R.C.2941.25 Pre Johnson, suffer prejudice by the Doctrine of Res Judicata?**

In the present case, the Court of Appeals recognized a error as being only Voidable, However, in the present case, defendant ask this Ohio Supreme Court, to resolve the Conflict that has now arises by the Court of Appeals decision to ignore prior Error made by Trial courts when deciding Allied offenses, along with Post Error's made by Ohio Court of Appeals in deciding cases without the Conduct Test that is now utilized in *State v Johnson*, 28 Ohio St. 3d 153-2010-6314 942 N.E. 2D 1061.

## STATEMENT OF THE CASE

In late 2001, Appellant Curtis Barber was convicted in the Montgomery County, Court of Common Pleas, in case no.2000CR497 of one count of Robbery and was sentenced to five years in prison to be served concurrently with the sentenced he received in Case No.2000CR1272. In That case, Defendant was convicted case no. 2000CR1272 of [Aggravated Robbery], and Felonious assault, aggravated Burglary, kidnapping, disrupting public services, and three counts of attempted Aggravated Murder.

Appellant was sentenced to a total of 41 ½ years in prison on theses charges. There was no direct appeal taken from Case No.2000CR497. On Direct appeal in Case No.2000CR1272, the Montgomery County Court of Appeals for the [Second District] affirmed Defendant's conviction and sentence. In State v Barber, Montgomery App. No. 18784, 2002-Ohio-7100.

On August 7, 2008, the trial court [Re sentenced] Defendant pursuant to [R.C.2929.191] in both case no.2000CR497 and 2000CR1272, because that court neglected to notify Defendant that he would be subject to a mandatory period of Post-Release Control following his release from prison. On August 8, 2008, the trial court filed a termination Entry in both cases, [Nunc Pro Tunc] to March 5, 2001, imposing the same sentence that had originally been imposed in both cases, but correcting the sentence to include a [Mandatory] period of Post Release Control. After timely appealing the August 7,2008 Re Sentencing to the Montgomery County Court of Appeals, the trial court's Judgment was affirmed on March 5, 2010.

On April 15, 2010 defendant appealed to the Ohio Supreme Court, Subsequently on June 23, 2010, the Ohio Supreme Court decline to accept Jurisdiction. In March 2011 defendant sought Habeas Corpus. However, on June 14<sup>th</sup> 2011, Defendant requested to be Re-Sentenced pursuant to the Merger Doctrine R.C.2941.25(A). On July 25, 2011, the trial court denied defendant's Motion, in which the defendant filed his timely notice of appeal on August 15, 2011 in which he filed his appellate Brief on Nov, 10<sup>th</sup> 2011. On May 25<sup>th</sup> 2012 the court of Appeals 2<sup>nd</sup> Dist erroneously affirmed the trial court's decision, Appellant timely appeals now to the Ohio Supreme Court asking the appropriate Questions.

**Proposition of Law No; 1 Does the Second District Court of Appeals ruling that Appellant's Allied offenses were voidable, in direct Contradiction to its prior decision in State v Underwood, were the Second District Ruled allied offenses that were not merged constituted Plain Error pursuant to Crim.R52(B).**

This case presents a critical Point of Law, that needs this Ohio Supreme Court's Guidance for all Ohio Appellate Court in determining whether allied offenses are to be deemed Voidable or the result of Plain Error as decided by the Ohio Supreme Court in *State v Underwood*, 922 N.E.2d 923 2010.

The Second District Court of Appeals stated in its May 25<sup>th</sup> 2012 Decision {¶ 15} in part;

**The arguments raised in Barber's "motion for re-sentencing" establish, at most, that his sentence is voidable.**

This Ohio Supreme Court decided in *State v Underwood*, 2010 that cases that were not merged at sentencing, constituted Plain Error pursuant to Crim.R. 52(B). However, in the present case the same second District Court of Appeals decided in *State v Barber*, the his sentences were voidable at most. In this case, the Court of Appeals decision for the Second District clearly is in contradiction of its earlier decision in *State v Underwood*, decided Jan 2010.

The Ohio Supreme Court would be reasonable to accept Jurisdiction in this case to answer the Constitutional Question and resolve the apparent conflict that exist within the Second district as to whether theses allied offenses are the product of Plain Error or resulted in Appellant's sentences being voidable. The Crux of the matter in the Second District Court of Appeals decision consist of whether the court should deem Appellant's Trial court's error as one of Plain Error or one of Voidable Error.

The Second District Court of Appeals stated in part;

**{¶ 15} "If we accept that the trial court erred at the time of sentencing when it failed to find that one or more of Barber's offenses were allied offenses of similar import, Barber's sentence is merely voidable and not void. Id**

The above decision only demonstrates the Second District Court of Appeals decision in the present case was in conflict with its prior decision rendered in *State v Underwood Supa*, the Question before this Ohio Supreme Court effects all citizens in Ohio on appeal, when the trial court's simply

fail to merge all allied offenses.

This Ohio Supreme Court clearly addressed this issue in Underwood, Stating; ¶25

**“Thus, a trial court is prohibited from imposing individual sentences for counts that constitute allied offenses of similar import.**

¶26 **“Thus, when the issue of allied offenses is before the court, the question is not whether a particular sentence is justified, but whether the defendant may be sentenced upon all the offenses.**

In the present case before this Ohio Supreme Court, the Second District acknowledge that the trial court possibly erred. However, the Question Appellant's ask this Ohio Supreme Court is; whether the Second District Court of Appeals decision correctly addressed the error made by the trial court in the present case. *Did the Second District Court of Appeals reach a erroneous decision of Appellant's allied offenses being only voidable pursuant to R.C.2941.25.*

Does Appellant's suffer prejudiced by the decision of the Second District Court of Appeals when determining that Allied offenses are deemed to only be voidable? While on Appeal the court of Appeals had authority to review defendant's [Conduct] in making its determination of Appellant's allied offenses as in this case.

The Second District clearly erred in making its decision as to Appellant's Allied Offenses were merely voidable. This Ohio Supreme Court would be reasonable to accept Jurisdiction to answer the alternative Question in this case. Does Appellant's suffer prejudiced when the Court of Appeals only review the trial court's error's as voidable pursuant to R.C.2941.25? All citizens in Ohio Suffer by the decision in this case, which gives Appellate court's options to review allied offenses pursuant to R.C. 2941.25 as merely Voidable, in contradiction of the Ohio Supreme Court's ruling in State v Underwood as stated herein.

Defendant therefore, ask this Ohio Supreme Court to allow theses Questions of Conflict to be resolved by the Ohio Supreme Court as to whether R.C.2941.25 constitute Plain Error or voidable error.

**Proposition of Law No: 11** Did the Court of Appeals Decision to Accept Appellant's Allied offense Motion for Re Sentencing as a untimely petition for post Conviction relief, violate Appellant's Right to Due process in violation of the Sixth Amendment to the United States Constitution and the Ohio Constitution article 1 Section 10 § 16?

Appellant asserts to this Ohio Supreme Court that the Court of Appeals should not have accepted his timely Appeal of the Trial court's denial of his Motion for re sentencing pursuant to R.C.2941.25 as a untimely Petition for Post Conviction Relief.

All Ohio Citizens have a right to appeal allied offenses. In the present case at bar, Defendant asserts that his appeal should not have been interpreted as a Post Conviction Petition for two simple reasons; When a defendant is sentence to multiple convictions that should have merged at sentencing, was his sentence authorized by Ohio Law. The answer is no.

The Trial court committed Plain Error by imposing multiple sentences for allied offenses of similar import. Wherefore, a sentence that is "contrary to law" is appealable by a defendant. In the present case, Appellant ask the alternative Question; **Does Appellant have an appeal right if a sentence is "contrary to Law"?**

Appellant never filed any Petition for Post Conviction Relief, Appellant had a right to file his Motion requesting the court to correct its err and Re Sentence Appellant. Wherefore, the Ohio Supreme Court would be reasonable to accept Jurisdiction in this case, to prevent Appellant from being severely prejudiced and his Constitutional Right to Due Process Violated in this case. *State v Bezak, 114, Ohio St. 3d 94, 2007-Ohio-3250, 868 N.E.2d 961*. Stated; Sentences that do not comport with mandatory provisions are subject to total re sentencing.

Under Crim. R. 52(B), "[P]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." In *State v Yarbrough, 104 Ohio St. 3d 1, 2004-Ohio-6087, 817 N.E. 2D 845 ¶ 96-102* stated; " We have previously held that imposition of multiple sentences for allied offenses of similar import is plain Error. Wherefore, Did the Second Dist violate Appellant's Constitutional Right to due process when it failed to accept Plain Err in this case?

**Proposition of Law No: 111** Was the Second District Court of Appeals Required to issue a Nunc Pro Tunc to correct the Mistakes within Appellant's Judgment Entry pursuant to Crim.R.32(C).

In the present case, The court of appeals recognized the apparent error in the case Sub Judge, the Court of Appeals however, failed to issue any type of relief other than the acknowledgment of the error in the case.

The Question before this Honorable Court consist of the Proper method of correcting the Mistake made by the trial court pertaining to Crim. R. 32(C). The Second district cited *State v Lester, 130 Ohio St. 3d 303, 2011-Ohio-5204, 958 N.E.2d 142*. Consequently, the court of appeals failure to order the trial court to issue a Nunc pro Tunc violates Appellant's Constitutional Right on Appeal to have the error Corrected that is Apparent on the record.

Appellant ask this Ohio Supreme Court to accept Jurisdiction to address and correct the mistake within his Judgment Entry, as appellate court's around Ohio continue to acknowledge Mistakes within the trial court's pertaining to Crim. R. 32(C) {Yet} fail to issue correction methods for theses Mistakes. Appellant ask this Ohio Supreme Court to issue an order that allows clarification to all Ohio Court of Appeals when Crim. R. 32(C) Error's are notice on appeal, along with the proper method of correcting such mistakes on appeal.

This case presents a constitutional question that would settle this issue for the general public and defendant's throughout Ohio on appeal. *State v Lester* issued a correction method for Appellant court's and trial court's to utilize when mistakes are notice. The Crux of the matter in this case and cases such as the case before the Ohio Supreme Court consist of not so much as to render the Judgment a nullity, but to correct the error's that are presented on the Judgment Entries.

Constitutional Question; When a court of Appeals acknowledge the error, does the Ohio Court of Appeals commit reversible error by not correcting or ordering the trial court to correct the error noticed? Appellant ask this Ohio Supreme Court to resolve the Constitutional violation committed when Ohio Court of Appeals fails to correct error Made pursuant to Crim. R. 32(C) on Appeal.

## CONCLUSION

Appellant ask this Ohio Supreme Court to address the error's made by the Second District Court of Appeals in this case, the directly affect all Ohio Defendant's on Appeal. Appellant as it stands continue to have a Journal Entry that does not reflect exactly what happen at his Trial. Until the Ohio Supreme Court address this very issue/mistake all Defendant's continue to be affected by Ohio Court of Appeals failure to correct Crim. R. 32(C) errors on appeal.

Moreover, Appellant ask this Ohio Supreme Court to resolve the Conflict by the Second District Court of Appeals decision in this case, the is in direct conflict with this Ohio Supreme Court's decision in State v Underwood, Supra. Where this Ohio Supreme Court ruled that failure to Merge Offenses that were allied Offenses constitute Plain Error pursuant to 52(B).

In the present case, the Second District court of appeals decision to render Appellant's allied offenses as only "Voidable" creates a Conflict in not only this court's decision in Underwood Supra, but also in the Second District Court of Appeals Prior decisions pertaining to R.C.2941.25.

This court's guidance is necessary to correct the Misinterpretation created in this case pertaining to R.C.2941.25 whether voidable or Plain Error pursuant to 52(B). Appellant ask this court to now address theses issues to protect the public and all Ohio Defendant's on appeal faced with the same issues as in the present case.

Appellant prays this court accept Jurisdiction in this case to resolve the Misinterpretation of whether theses offenses of similar import, should be rendered "Voidable" or rendered Plain Error. Did the Ohio Court of Appeals for the Second District get it wrong in this case and cases similar to this case by its decision to render theses offenses only "Voidable"?

## CETIFICATE OF SERVICE

I do certify that a copy of Memorandum In support has been forward to the Prosecutor's Office for the Montgomery County Second District Court of appeals at 41 North Perry St. Po. Box 972 Dayton Ohio 45422 on this 20 day of JUNE 2012 by Regular U.S. Mail.

RESPECTFULLY SUBMITTED



CURTIS L. BARBER #410-414

PO.BOX 57

MARION OHIO

43301

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

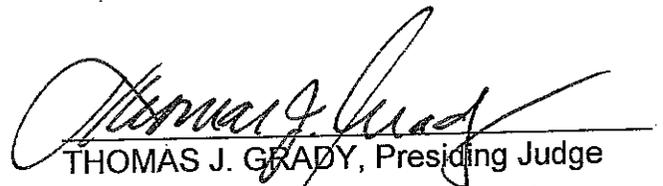
STATE OF OHIO :  
Plaintiff-Appellee : C.A. CASE NO. 24770  
v. : T.C. NO. 00CR1272  
CURTIS L. BARBER : FINAL ENTRY  
Defendant-Appellant :  
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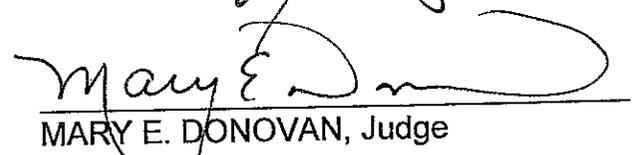
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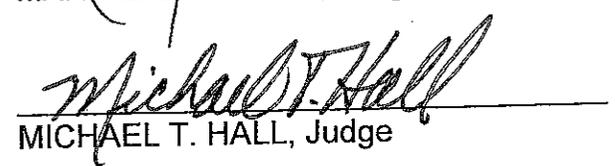
Pursuant to the opinion of this court rendered on the 25<sup>th</sup> day of May, 2012,  
the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Montgomery  
County Court of Appeals shall immediately serve notice of this judgment upon all parties and  
make a note in the docket of the mailing.

  
THOMAS J. GRADY, Presiding Judge

  
MARY E. DONOVAN, Judge

  
MICHAEL T. HALL, Judge

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Hon. Dennis J. Langer  
Common Pleas Court  
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Dayton, Ohio 45422

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :  
Plaintiff-Appellee : C.A. CASE NO. 24770  
v. : T.C. NO. 00CR1272  
CURTIS L. BARBER : (Criminal appeal from  
Defendant-Appellant : Common Pleas Court)

.....  
**OPINION**

Rendered on the 25th day of May, 2012.  
.....

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CURTIS L. BARBER, #410-414, Marion Correctional Institute, P. O. Box 57, Marion, Ohio  
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Defendant-Appellant

.....  
DONOVAN, J.

{¶ 1} Defendant-appellant Curtis L. Barber appeals from a decision of the  
Montgomery County Court of Common Pleas dismissing his *pro se* "Motion for Re-

Sentencing Pursuant to [R.C.] 2941.25 State V [sic] Johnson 12-23-2010." The trial court filed its decision overruling Barber's motion on July 25, 2011. Barber filed a timely notice of appeal with this Court on August 15, 2011.

{¶ 2} In March of 2001, Barber was convicted in Case No. 2000 CR 497 of one count of robbery and was sentenced to five years in prison, to be served concurrently with the sentence in Case No. 2000 CR 1272. In Case No. 2000 CR 1272, Barber was convicted of aggravated robbery, felonious assault, aggravated burglary, kidnaping, disrupting public services, and three counts of attempted aggravated murder. Barber was sentenced to a total of forty-one and one-half years in prison on those charges. No direct appeal was taken from the conviction in Case No. 2000 CR 497. On direct appeal in Case No. 2000 CR 1272, we affirmed Barber's conviction and sentence. *State v. Barber*, 2d Dist. Montgomery No. 18784, 2002-Ohio-7100.

{¶ 3} On August 7, 2008, the trial court re-sentenced Barber pursuant to R.C. 2929.191 in both Case Nos. 2000 CR 497 and 2000 CR 1272, because the court had neglected to notify Defendant that he would be subject to a mandatory period of post-release control following his release from prison. On August 8, 2008, the trial court filed a judgment of conviction in both cases, nunc pro tunc to March 5, 2001, imposing the same sentence that had originally been imposed in both cases, but correcting the sentence to include a mandatory period of post-release control.

{¶ 4} Barber appealed, and on March 5, 2010, we affirmed the trial court's decision. *State v. Barber*, 2d Dist. Montgomery No. 22929, 2010-Ohio-831. We note that on appeal from the August 8, 2008, decision, Barber argued in a supplemental assignment of error that the trial court erred by imposing multiple punishments for allied offenses of similar

import at his original sentencing in 2001 in Case No 2000 CR 1272.

{¶ 5} In overruling Barber's supplemental assignment, we stated as follows:

With respect to the allied offenses issue, we note that the trial court did merge some of the offenses for purposes of sentencing, including the felonious assault and all of the attempted aggravated murder counts. We further note that the record before us does not include either a transcript of the August 7, 2008 re-sentencing hearing or the trial transcript in Case No. 2000CR1272. Absent those materials, this record is inadequate to permit a review of the claimed error because we are unable to review Defendant's conduct to determine whether Defendant's offenses of kidnaping and aggravated robbery were committed separately or with a separate animus as to each. R.C. 2941.25(B). Under those circumstances, we must presume the regularity and validity of the trial court's proceedings and affirm its judgment. (Citations omitted).

*Barber*, 2010-Ohio-831.

{¶ 6} On June 14, 2011, Barber filed a *pro se* motion for re-sentencing pursuant to R.C. 2941.25 and the Ohio Supreme Court's recent holding in *State v. Johnson* which set out a new analysis regarding the determination of allied offenses of similar import. 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061. The State filed a memorandum in opposition on July 5, 2011, in which it argued that Barber's motion was merely an untimely petition for post-conviction relief (his third) which the trial court lacked jurisdiction to

entertain. The State also argued that the Ohio Supreme Court's 2010 holding in *Johnson* does not apply retroactively to Barber who was originally convicted and sentenced in 2001. The trial court adopted the State's reasoning and dismissed Barber's petition in an entry issued on July 25, 2011.

{¶ 7} It is from this judgment that Barber now appeals *pro se*.

{¶ 8} Barber's first assignment of error is as follows:

{¶ 9} "TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT SENTENCED DEFENDANT TO MULTIPLE OFFENSES STEMMING FROM THE SAME CONDUCT WITHOUT HOLDING A MERGER HEARING TO MAKE A DETERMINATION IF DEFENDANT'S CONDUCT CONSTITUTED MULTIPLE OFFENSES."

{¶ 10} In his first assignment, Barber contends that the trial court erred when it overruled his motion for re-sentencing. Specifically, he asserts that the Ohio Supreme Court's holding in *Johnson* requires that he be granted a hearing to determine whether some or all of the offenses for which he was convicted and sentenced in 2001 are allied offenses of similar import.

{¶ 11} R.C. 2953.21(A)(2) provides that a petition for post-conviction relief must be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction. R.C. 2953.23(A) provides that a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of R.C. 2953.21 unless division (A)(1) or (2) applies:

(1) Both of the following apply:

(a) The petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner

must rely to present the claims for relief.

(b) Subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable fact-finder would have found the petitioner guilty of the offense of which the petitioner was convicted.

{¶ 12} Initially we note that Barber's *pro se* "motion for re-sentencing" is, as the State suggests, an untimely petition for post-conviction relief. In the context of a petition for post-conviction relief, the trial court lacks jurisdiction to consider an untimely petition. *State v. Beavers*, 2d Dist. Montgomery No. 20572, 2005-Ohio-1205, ¶ 19 (" \* \* \* the provisions of O.R.C. § 2953.23(A) are jurisdictional in nature, and \* \* \* absent a petitioner's showing that the requisites contained therein have been met, a trial court is without jurisdiction to entertain an untimely petition for post-conviction relief. Unless it appears from the record that [Petitioner] was unavoidably prevented from discovering facts upon which he relied in his petition, or that the United States Supreme Court has recognized a new federal or state right that applies retroactively to [Petitioner], and that but for constitutional error at trial no reasonable factfinder would have found [Petitioner] guilty, we are bound to conclude the trial court was without jurisdiction to consider his petition for

post-conviction relief.”)

{¶ 13} In the instant case, Barber cannot rely on the *Johnson* decision because “[a] new judicial ruling may be applied only to cases that are pending on the announcement date. \*\*\* The new judicial ruling may not be applied retroactively to a conviction that has become final, i.e., where the accused has exhausted all of his appellate remedies.” *State v. Parson*, 2d Dist. Montgomery No. 24641, 2012-Ohio-730, citing *State v. Ali*, 104 Ohio St.3d 328, 2004-Ohio-6592, 819 N.E.2d 687, ¶ 6. Barber’s petition, filed more than ten years after his conviction and sentence, is dependent on the new rule of law stated in *Johnson*. Clearly, Barber’s conviction and sentence had been final for some time at the time that *Johnson* was decided. Accordingly, *Johnson* does not retroactively apply to Barber’s sentence.

{¶ 14} Lastly, we note that “unlike a void judgment, a voidable judgment is one rendered by a court that has both jurisdiction and authority to act, but the court’s judgment is invalid, irregular, or erroneous.” *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 12. Moreover, “defendants with a voidable sentence are entitled to resentencing only upon a successful challenge on direct appeal.” *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 30.

{¶ 15} The arguments raised in Barber’s “motion for re-sentencing” establish, at most, that his sentence is voidable. *Parson, supra*. As the defendant failed to do in *Parson*, Barber does not argue that his sentence is not in conformity with statutorily mandated terms, or is not provided for by law, nor even that his sentence fails to comply with the formal requirements of R.C. 2941.25. If we accept that the trial court erred at the time of sentencing when it failed to find that one or more of Barber’s offenses were allied

offenses of similar import, Barber's sentence is merely voidable and not void. *Id.*

{¶ 16} Arguments challenging the imposition of a sentence that is voidable are barred by the doctrine of res judicata if not raised on direct appeal. *Parson, supra*, citing *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 30. Because Barber's sentence, assuming his allied offense argument had merit, would be voidable, he is barred by the doctrine of res judicata from challenging his sentence on those grounds collaterally through his "motion for re-sentencing." *Smith v. Voorhies*, 119 Ohio St.3d 345, 2008-Ohio-4479, 894 N.E.2d 44, ¶ 10-11. ("allied-offense claims are non-jurisdictional," and, thus, barred by the doctrine of res judicata where they were raised, or could have been raised, on direct appeal).

{¶ 17} Barber's first assignment of error is overruled.

{¶ 18} Barber's second and final assignment of error is as follows:

{¶ 19} "THIS HONORABLE COURT DOES NOT HAVE JURISDICTION TO ENTERTAIN THIS APPEAL, AS THE JUDGMENT ENTRY DOES NOT COMPLY WITH CRIM. R. 32(C) WHEREFORE, THERE IS NO FINAL APPEALABLE ORDER."

{¶ 20} In his final assignment, Barber argues that he is not barred from litigating his claim of error regarding re-sentencing because the trial court's judgment entries issued in March of 2001, and on August 7, 2008, did not comply with Crim. R. 32(C) insofar as neither entry set forth the manner in which Barber was convicted. Therefore, Barber contends that neither entry was a final appealable order. Barber's argument is without merit.

{¶ 21} A nunc pro tunc entry is the proper method for correcting clerical errors such as the error in this case. "Clerical mistakes in judgments, orders, or other parts of the

record, and errors in the record arising from oversight or omission, may be corrected by the court at any time.” Crim.R. 36. “A nunc pro tunc entry is often used to correct a sentencing entry that, because of a mere oversight or omission, does not comply with Crim.R. 32(C).” *State ex rel. DeWine v. Burge*, 128 Ohio St.3d 236, 2011-Ohio-235, 943 N.E.2d 535, at ¶17 (citations omitted). “Consistent with the treatment of Crim.R. 32(C) errors as clerical mistakes that can be remedied by a nunc pro tunc entry, [the Supreme Court of Ohio has] expressly held that ‘the remedy for a failure to comply with Crim.R. 32(C) is a revised sentencing entry rather than a new hearing.’” *Id.* at ¶18, quoting *State ex rel. Alicea v. Krichbaum*, 126 Ohio St.3d 194, 2010-Ohio-3234, 931 N.E.2d 1079, at ¶2. And “the technical failure to comply with Crim.R. 32(C) by not including the manner of conviction \* \* \* is not a violation of a *statutorily* mandated term, so it does not render the judgment a nullity.” *Burge* at ¶19 (emphasis sic) (citations omitted). Also see *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142.

{¶ 22} Barber’s final assignment of error is overruled.

{¶ 23} Both of Barber’s assignments of error having been overruled, the judgment of the trial court is affirmed.

.....

GRADY, P.J. and HALL, J., concur.

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