

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:
	: Case No. 2015-1478
Plaintiff-Appellee,	:
	: On Appeal from the
vs.	: Summit County Court of Appeals,
	: Ninth Appellate District,
CAMERON D. WILLIAMS,	: C.A. Case No. 27482
	:
Defendant-Appellant.	:

MERIT BRIEF OF APPELLANT CAMERON D. WILLIAMS

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STATEMENT OF THE CASE AND FACTS

This case has extensive procedural history, as described by the Ninth District Court of Appeals. (Citations omitted.) *State v. Williams*, 9th Dist. Summit No. 27482, 2015-Ohio-2632, ¶ 2. In order to decide the disputed legal issue in this case, however, only a few facts are necessary.

Mr. Williams was convicted of multiple offenses, including two counts of aggravated murder, and one count of murder, each with firearm specifications. Journal Entry, March 25, 2008. The trial court merged the aggravated murder and murder charges into one count, but sentenced Mr. Williams on all three. *Id.* at pp. 44-45; *see also* tr. 1832-33.

The trial court explained Mr. Williams's sentence as follows:

I'm going to start with Count 3, a special felony of aggravated murder * * * I impose the sentence of life with parole after 30 years, and I merge into that Counts 1 and 2; Count 2 being another charge of aggravated murder, and I merge the sentence of life with parole after 30 years into Count 3; and as to Count 1, wherein the jury found the lesser-included offense of murder, I merge the 15-year to life sentence that is appropriate and required on that charge into Count 3.

Tr. 1832-33. As to the aggravated murder and murder convictions, the Sentencing Entry stated:

IT IS THEREFORE ORDERED AND ADJUDGED BY THIS COURT that the Defendant, CAMERON D. WILLIAMS, be committed to the Ohio Department of Rehabilitation and Corrections for * * * a definite term of LIFE WITH PAROLE after Fifteen (15) years, which is a mandatory term pursuant to O.R.C. 2929.13(F), for punishment for the crime of MURDER * * * for a definite term of LIFE WITH PAROLE after Thirty (30) years, which is a mandatory term pursuant to O.R.C. 2929.13(F), for punishment of the crime of AGGRAVATED MURDER, Ohio Revised Code Section 2903.01(B), a special felony, for a definite term of LIFE WITH PAROLE after Thirty (30) years, which is a mandatory term pursuant to O.R.C. 2929.13(F), for punishment of the crime of AGGRAVATED MURDER, Ohio Revised Code Section 2903.01(D).

* * *

THEREUPON, pursuant to Ohio Revised Code Section 2941.25(A), the Court hereby Orders that the offense of MURDER, as contained in the amended Count 1 of the indictment and the offense of AGGRAVATED MURDER, as contained in Count 2 of the indictment be merged into the offense of AGGRAVATED MURDER, as contained in Count 3 of the indictment for purposes of sentencing and that said sentencing be served concurrently and not consecutively with each other, for a total of LIFE WITH PAROLE AFTER Thirty (30) years for the three counts.

Journal Entry, March 25, 2008 at pp. 44-45. For all charges, Mr. Williams was sentenced as follows:

Count	Offense	R.C. Section	Prison Term	Relation to Other Charges
One	Murder	2903.02	Life with parole after fifteen years	Merged with and concurrent to Count Three
Two	Aggravated Murder with firearm specification	2903.01(B)	Life with parole after thirty years, and three years for firearm specification	Merged with and concurrent to Count Three. Firearm specification merged with and concurrent to Count Three.
Three	Aggravated Murder with firearm specification	2903.01(D)	Life with parole after thirty years, three years for firearm specification	Merged with and concurrent to Counts One and Two. Firearm Specification merged with and concurrent to Count Two.
Four	Kidnapping with firearm specification	2905.01(A)(1)(A)(2)	Ten years, and three years for firearm specification	Consecutive with Counts Three, Five, Eight and Nine, Concurrent with Seven. Firearm specification merged to and concurrent with Count Seven. ¹
Five	Aggravated Burglary with firearm specification	2911.11(A)(1)/(A)(2)	Five years, and three years for firearm specification	Consecutive with Counts Three, Four, Eight and Nine, Concurrent with Count Six. Firearm Specification merged to and concurrent with Count Six.

¹ Although the trial court imposed concurrent sentences as to the firearm specifications for Counts 4 & 7 and 5 & 6. The court also merged those specifications. Journal Entry, March 25, 2008 at pp. 44-45, Tr. 1832-33. However, this issue was not raised in the motion that Mr. Williams filed in the trial court, and is therefore not before this Court.

Count	Offense	R.C. Section	Prison Term	Relation to Other Charges
Six	Violating a Protection order with firearm specification	2917.27	Five years, and three years for firearm specification	Consecutive with Counts Three, Four, Eight and Nine, Concurrent with Count five. Firearm specification merged with and concurrent to Count Five. Later vacated on appeal
Seven	Intimidation of Crime Victim or Witness with firearm Specification	2921.04(B)	Five years and three years for firearm specification	Consecutive with Counts Three, Five, Eight and Nine, Concurrent with Count Four. Firearm specification merged with and concurrent to Count Four.
Eight	Escape	2921.34(A)(1)	Five years	Consecutive with Counts Three, Four, Five, and Nine, Concurrent with Seven
Nine	Having Weapon While Under Disability	2923.13(A)(1)(A)(2)/ (A)(3)(A)(4)	Five years	Consecutive with Counts Three, Four, Five, Seven and Eight, Concurrent with Count Ten
Ten	Carrying Concealed Weapons	2923.12(A)	Eighteen months	Consecutive with Counts Three, Four, Five, Seven and Eight, Concurrent with Count Nine

Journal Entry, March 25, 2008 at pp. 44-45. Mr. Williams received an aggregate sentence of sixty-nine years to life. *Id.*

Mr. Williams did not challenge the imposition of multiple sentences for allied offenses in his direct appeal. Subsequently, Mr. Williams filed a pro se motion in the trial court to correct the imposition of multiple sentences on Counts One, Two, and Three, which were determined to be allied offenses. April 23, 2014 Motion To Correct Sentences Which Are “Contrary to Law...”[sic]. The trial court denied the motion on the basis that the claims were barred by res judicata. Order, July 29, 2014.

Mr. Williams timely appealed the trial court’s denial of the motion. The Ninth District Court of Appeals acknowledged that the Eighth District Court of Appeals had held that the error

in this case would render Mr. Williams’s sentence void. *State v. Williams*, 9th Dist. Summit No. 27482, 2015-Ohio-2632, ¶ 8. However, the Ninth District Court of Appeals declined to adopt the position of the Eighth District. *Id.* at ¶ 9. The Ninth District stated that void-sentence analysis only applies in limited circumstances, and that it would not apply the analysis “without clear direction from the Supreme Court.” (Citation omitted.) *Id.*

Upon a motion by Mr. Williams, the Ninth District Court of Appeals certified a conflict between its decision below and *State v. Holmes*, 8th Dist. Cuyahoga No. 100388, 2014-Ohio-3816. This Court determined that a conflict exists.

ARGUMENT

CERTIFIED CONFLICT QUESTION

Where a trial court sentences a defendant on counts that it had previously determined were subject to merger, is the sentence void or do principles of res judicata apply to preclude a defendant from challenging the sentence after direct appeal?

APPELLANT’S ANSWER TO THE CERTIFIED QUESTION

Sentences for counts which were previously determined to be subject to merger are void, and res judicata does not preclude a defendant from challenging such sentences after direct appeal.

A. Introduction

The issue in this case is whether sentences on merged counts are void or voidable. This Court has ruled that an argument pertaining to multiple sentences for allied offenses may be asserted on appeal even if the sentence was jointly recommended by the parties. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶¶ 1, 33. Such a sentence is appealable because it was not authorized by law. *Id.* This Court has also held that a sentence which is not authorized by law is void, and res judicata does not prohibit a collateral attack on a void sentence. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 30; *State*

v. Billiter, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 9603, ¶ 1. It follows that because sentences for merged counts are not authorized by law, they are void, and res judicata does not preclude a subsequent collateral attack on such sentences.

B. Legal Standards

1. Allied offenses.

The Ohio Revised Code prohibits multiple convictions for allied offenses:

Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, **but the defendant may be convicted of only one.**

(Emphasis added.) R.C. 2941.25(A). That section codifies the protections of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution, which prohibits multiple punishments for the same offense.

Underwood at ¶ 23. Allied offenses of similar import are to be merged at sentencing. *See State v. Brown*, 119 Ohio St.3d 447, 2008-Ohio-4569, 895 N.E.2d 149, ¶ 43; *State v. McGuire*, 80 Ohio St.3d 390, 399, 686 N.E.2d 1112 (1997).

The duty to merge allied offenses is mandatory, not discretionary. *Underwood* at ¶ 26. This Court has held that imposition of multiple sentences for allied offenses of similar import is plain error. *State v. Yarbrough*, 104 Ohio St.3d 1, 2004-Ohio-6087, 817 N.E.2d 845, ¶ 96-102; *Underwood* at ¶ 26.

This Court has recently issued many decisions regarding allied sentences. However, those cases address whether certain offenses should or should not be considered allied.² Accordingly,

² *See State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 28 (failure to raise the issue of allied offenses of similar import in the trial court forfeits all but plain error); *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 1 (offenses with resulting harm that is separate and identifiable are offenses of dissimilar import); *State v. Earley*, Slip Opinion No.

because the trial court has already determined the offenses in the case sub judice to be allied, and there is no dispute that the offenses are allied, those decisions have no bearing on the instant case. Journal Entry, March 25, 2008 at pp. 44-45.

Even when allied offenses are to be served concurrently, “a defendant is prejudiced by having more convictions than are authorized by law.” *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 31.

2. Void sentences, voidable sentences, and res judicata.

A sentence is void when a court lacks authority to act, or imposes a sentence which is not in accordance with statutorily mandated terms. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332 , ¶ 6-8. In *Fischer*, this Court explained:

In general, a void judgment is one that has been imposed by a court that lacks subject-matter jurisdiction over the case or the authority to act. 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.

* * *

In the normal course, sentencing errors are not jurisdictional and do not render a judgment void. * * * Rather, void sentences are typically those in which a court lacked subject-matter jurisdiction over the defendant. * * * But in the modern era, Ohio law has consistently recognized a narrow, and imperative, exception to that general rule: **a sentence that is not in accordance with statutorily mandated terms is void.**

(Emphasis added.) (Citations omitted.) *Fischer* at ¶ 6-8.

2015-Ohio-4615 (a trial court may impose sentences for both aggravated vehicular assault and the predicate charge of operating a motor vehicle under the influence of alcohol or drugs); *State v. Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, 999 N.E.2d 661, at paragraph two of the syllabus (a court must review the entire record to determine whether offenses were committed separately or with a separate animus).

The doctrine of res judicata holds that if a defendant could have raised a claimed violation of due process in a direct appeal, then res judicata precludes the defendant from raising that issue in any other proceeding. *See State v. Szefcyk*, 77 Ohio St.3d 93, 95, 671 N.E. 233 (1996). However, res judicata does not apply to void sentences. A void sentence “is not precluded from appellate review by principles of res judicata, and may be reviewed at any time, on direct appeal or collateral attack.” *State v. Billiter*, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 9603, ¶ 1, 10; *Fischer* at paragraph three of the syllabus. Trial courts retain jurisdiction to correct a void sentence at any time, and have an obligation to do so when the error is apparent. *See Bowen v. Sheldon*, 124 Ohio St.3d 551, 2010-Ohio-921, 925 N.E.2d 129, ¶ 15.

C. Sentences on previously merged counts are void because they are unauthorized by law and in clear violation of a statutory mandate.

Multiple convictions on allied offenses are in violation of the unambiguous statutory mandate that a “defendant may only be convicted of one [allied offense].” R.C. 2941.25(A). As such, multiple convictions are in violation of a statutory mandate, and are not authorized by law. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 1. Because the sentences are not authorized by law, they are void, and not subject to the limitations imposed by the doctrine of res judicata. *Billiter* at ¶ 1, 10; *Fischer* at paragraph three of the syllabus.

This Court’s ruling in *Underwood* is instructive to the instant case. In *Underwood*, the trial court sentenced the defendant to concurrent sentences on counts which the parties agreed were subject to merger. *Underwood* at ¶ 6-7. On appeal, the State contended that *Underwood* could not challenge the multiple sentences for allied offenses, because the sentence had been jointly recommended. *Id.* at ¶ 7. This Court disagreed, finding that although jointly recommended sentences generally cannot be challenged on appeal, such challenges are

permissible when the sentence is not authorized by law. *Id.* at ¶ 20. Further, multiple convictions for allied offenses are not authorized by law. *Id.* at ¶ 1. This Court explained:

Because a sentence is authorized by law only if it comports with all mandatory sentencing provisions, we must now determine whether the directive in R.C. 2941.25 contains such a provision* * * R.C. 2941.25(A) clearly provides that there may be only one conviction for allied offenses of similar import. Because a defendant may be convicted of only one offense for such conduct, the defendant may be sentenced for only one offense* * * This duty is mandatory, not discretionary.

Underwood at ¶ 23-26.

As explained in *Underwood*, multiple sentences for offenses which are subject to merger are not merely erroneous, but unauthorized by law. “As [this Court has] consistently stated, if a trial court imposes a sentence that is unauthorized by law, the sentence is void.” *State v. Billiter*, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 9603, ¶ 10; *see also State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, at paragraph three of the syllabus. “The doctrine of res judicata does not preclude review of a void sentence,” and a void sentence may be reviewed at any time, either on direct appeal or by collateral attack. *Fischer* at paragraph three of the syllabus, ¶ 30. It follows that sentences on counts which were previously merged are unauthorized by law and in violation of a statutory mandate, therefore void, and therefore not subject to the doctrine of res judicata. As such, this Court should hold that sentences for counts which were previously determined to be subject to merger are void, and res judicata does not preclude a defendant from challenging the imposition of such sentences after his or her direct appeal has concluded.

Accordingly, Mr. Williams respectfully requests that this Court rule that his sentences on counts which were merged are void. The correct remedy is that the trial court resentence Mr.

Williams on all counts affected by the allied-offenses sentencing error. *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, at paragraph one of the syllabus, ¶ 14.

D. Certified Conflict Cases.

It bears noting that the Eighth District followed the above reasoning and concluded that the defendant’s sentences from merged counts were void because they were not authorized by law. *State v. Holmes*, 8th Dist. Cuyahoga No. 100388, 2014-Ohio-3816, ¶ 21-22, citing *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 26. Conversely, the Ninth District concluded 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. Williams*, 9th Dist. Summit No. 27482, 2015-Ohio-2632, ¶ 9. This Court should follow the clear reasoning of the Eighth District and hold that sentences for counts which were previously determined to be subject to merger are void. Such a holding would also provide the Ninth District with the guidance that it seeks from this Court.

CONCLUSION

This Court should find multiple sentences for allied offenses to be void because they are not authorized by law and violate the statutory mandate of O.R.C. 2941.25(A). Accordingly, Mr. Williams respectfully requests that this Court reverse the judgment of the Ninth District Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify a copy of the foregoing MERIT BRIEF OF APPELLANT CAMERON D. WILLIAMS has been sent by regular U.S. mail to Richard Kasay, Assistant Summit County Prosecutor, 53 University Avenue, 7th Floor, Akron, Ohio 44308 on this 25th day of January, 2016.

/s Allen Vender _____
Allen Vender (0087040)
Assistant State Public Defender

COUNSEL FOR CAMERON D. WILLIAMS

#458344

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:
	: Case No. 2015-1478
Plaintiff-Appellee,	:
	: On Appeal from the
vs.	: Summit County Court of Appeals,
	: Ninth Appellate District,
CAMERON D. WILLIAMS,	: C.A. Case No. 27482
	:
Defendant-Appellant.	:

APPENDIX TO

MERIT BRIEF OF APPELLANT CAMERON D. WILLIAMS

IN THE SUPREME COURT OF OHIO

State of Ohio,
Plaintiff-Appellee,

Case No.: 15-1478

-v-

On Appeal From the
Summit County Court of Appeals,
Ninth Appellate District

Cameron D. Williams,
Defendant-Appellant

Court of Appeals
Case No. 27482

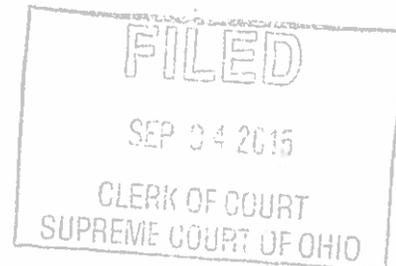
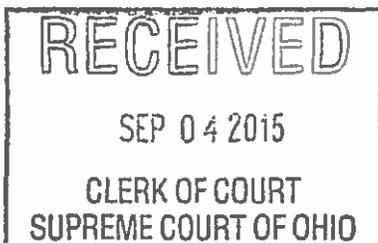
NOTICE OF CERTIFIED CONFLICT

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Defendant-Appellant-Pro se

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44308

Counsel for Appellee, State of Ohio



NOTICE OF CERTIFIED CONFLICT

Pursuant to section 1 of S. Ct. R. IV, Appellant Cameron Williams gives notice that on August 24, 2015, the Summit County Court of Appeals, Ninth Appellate District issued an order certifying the judgment it entered in State v. Williams, 2015-Ohio-2632; 2015 Ohio App. LEXIS 2633, to this Court for resolution of a conflict. The Court of Appeals has found that the judgment it entered in this case is in conflict with the judgment rendered by the Eighth Appellate District in State v. Holmes, 2014-Ohio-3816; 2014 Ohio App. LEXIS 3742.

The Court of Appeals determined that a conflict exists on the following issue: Where a trial court sentences a defendant on count's that it has previously determined were subject to merger, is the sentence void or do principles of res judicata apply to preclude a defendant from challenging the sentence after direct appeal?

Copies of the order certifying a conflict and the conflicting appellate decision are attached to this Notice.

Respectfully submitted,

Cameron D. Williams # 543-790
CAMERON D. WILLIAMS #543-790
R.C.I.
P.O. Box 7010
Chillicothe, Ohio
45601

Defendant-Appellant-Pro se

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Certified Conflict was served upon Richard S. Kasay, Assistant Summit County Prosecuting Attorney, 53 University Ave., Akron, Ohio 44308 by regular U.S. Mail on this 31st day of August, 2015.

Cameron D. Williams # 543-790
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Defendant-Appellant-Pro se

IN THE SUPREME COURT OF OHIO

State of Ohio,
Plaintiff-Appellee,

-v-

Cameron D. Williams,
Defendant-Appellant

Case No.:

On Appeal From the
Summit County Court of Appeals,
Ninth Appellate District

Court of Appeals
Case No. 27482

APPENDIX TO NOTICE OF CERTIFIED CONFLICT

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STATE OF OHIO)
COUNTY OF SUMMIT)

COURT OF COMMON PLEAS
SUMMIT COUNTY
JUL 30 AM 8:47

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

COURT OF COMMON PLEAS
SUMMIT COUNTY
CLERK OF COURTS

C.A. No. 27482

Appellee

v.

CAMERON D. WILLIAMS

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 2007-08-2540

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.

1.

{¶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.

COPY

APPENDIX A-8

STATE OF OHIO)
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27482

Appellee

v.

CAMERON D. WILLIAMS

Appellant

JOURNAL ENTRY

On July 10, 2015, Appellant moved this Court to certify a conflict under App.R. 25 between this Court's June 30, 2015 decision and the following case: *State v. Holmes*, 8th Dist. Cuyahoga No. 100388, 2014-Ohio-3816. Appellee has not responded in opposition.

Article IV, Section 3(B)(4) of the Ohio Constitution requires this Court to certify the record of the case to the Ohio Supreme Court whenever the "judgment * * * is in conflict with the judgment pronounced upon the same question by any other court of appeals in the state[.]" "[T]he alleged conflict must be on a rule of law – not facts." *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596 (1993).

Upon review, we conclude that a conflict exists between this Court's judgment and the Eighth District's judgment in *Holmes*. Accordingly, we certify the following question:

Where a trial court sentences a defendant on counts that it had previously determined were subject to merger, is the sentence void or do principles of res judicata apply to preclude a defendant from challenging the sentence after direct appeal?



Judge

Concur:
Carr, P.J.
Whitmore, J.

2014-Ohio-3816, *: 2014 Ohio App. LEXIS 3742, **

STATE OF OHIO, PLAINTIFF-APPELLEE vs. DESMON HOLMES, DEFENDANT-APPELLANT

No. 100388

COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT, CUYAHOGA COUNTY

2014-Ohio-3816; 2014 Ohio App. LEXIS 3742

September 4, 2014, Released
September 4, 2014, Journalized

PRIOR HISTORY: [**1] Criminal Appeal from the Cuyahoga County Court of Common Pleas. Case No. CR-07-502442.

State v. Holmes, 2009 Ohio 3736, 2009 Ohio App. LEXIS 3175 (Ohio Ct. App., Cuyahoga County, July 30, 2009)

DISPOSITION: REVERSED AND REMANDED.

CASE SUMMARY

OVERVIEW: HOLDINGS: [1]-Defendant's challenge to his jury verdict forms was barred by res judicata, as he could have and should have raised such an error in his direct appeal; [2]-Defendant's sentence was void because having determined that the two offenses were allied, the trial court, contrary to R.C. 2941.25, imposed a sentence on both counts instead of merging both counts and imposing a sentence on one; [3]-Res judicata did not bar consideration of this issue, as correcting this error in defendant's sentence was both fair and just and res judicata should not be used to permit a void sentence to stand.

OUTCOME: Reversed and remanded.

CORE TERMS: sentence, sentencing, allied, void, res judicata, journal entry, merger, direct appeal, merge, assignments of error, collateral attack, mandatory, challenging, postrelease, voidable, mandated, vacate, jury verdicts, postconviction, ordering, nunc pro tunc, elect, trial counsel, sentencing errors, unauthorized, statutorily, kidnapping, sentenced, voidness, override

LexisNexis® Headnotes

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[Criminal Law & Procedure > Verdicts > General Overview.](#)

[Criminal Law & Procedure > Double Jeopardy > Res Judicata.](#)

HN1. Where the appellant filed and argued a direct appeal but did not raise any arguments related to the inadequacy of the jury verdict form, res judicata applies to subsequent appeals. [More](#)

Like This Headnote

Criminal Law & Procedure > Trials > Entry of Judgments.

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction.

Governments > Courts > Authority to Adjudicate.

HN2. A judgment will be deemed void when it is issued by a court which did not have subject matter jurisdiction or otherwise lacked the authority to act. On the other hand, 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. More Like This Headnote

Criminal Law & Procedure > Double Jeopardy > Res Judicata.

Criminal Law & Procedure > Sentencing > General Overview.

HN3. If a judgment is void, the doctrine of res judicata has no application, and the propriety of the decision can be challenged on direct appeal or by collateral attack. If a sentencing judgment is voidable, the doctrine of res judicata applies and any argument regarding the merits of the decision is considered waived for all purposes unless it is asserted as part of the direct appeal. More Like This Headnote

Criminal Law & Procedure > Sentencing > General Overview.

HN4. Generally, sentencing errors do not render a judgment void because such errors have no effect upon the trial court's jurisdiction. One exception to this general rule is that a sentencing judgment will be considered void when the imposed sentence does not lie within the statutorily mandated terms. More Like This Headnote

Criminal Law & Procedure > Sentencing > General Overview.

HN5. The commonality of the voidness cases is that they all involve situations where the court has failed to impose a sentence term that it was mandated by law to impose (postrelease control, driver's license suspension, statutorily mandated fine), or where a court has attempted to impose a sentence that was completely unauthorized by statute. They involve instances where a trial court has refused or neglected to do what the General Assembly has commanded with respect to a mandatory criminal sentencing term, rather than where the trial court got the law wrong. Either something that was required was left out of the sentences, or the trial court simply decided to create its own sentence despite statutory dictates to the contrary. More Like This Headnote

Criminal Law & Procedure > Sentencing > Merger.

Criminal Law & Procedure > Double Jeopardy > Res Judicata.

HN6. In applying the "void v. voidable" concept to allied offenses and merger, courts of Ohio have

consistently held that sentences that involve alleged errors in the merger of allied offenses are voidable and not void; thus, res judicata will prevent any collateral attack challenging the imposition of allied offenses. [More Like This Headnote](#)

[Criminal Law & Procedure](#) > [Sentencing](#) > [Merger](#).

HN7. [R.C. 2941.25](#) codifies the protections of the Double Jeopardy Clause, and it clearly provides that there may be only one conviction for allied offenses of similar import; a defendant may be sentenced for only one offense. Thus, a trial court is prohibited from imposing individual sentences for counts that constitute allied offenses of similar import. This duty is mandatory, not discretionary. A sentence that contains an allied-offenses error is contrary to law. Because a sentence is authorized by law only if it comports with all mandatory sentencing provisions, the directive in [R.C. 2941.25](#) contains such mandatory provision. [More Like This Headnote](#)

[Criminal Law & Procedure](#) > [Sentencing](#) > [Merger](#).

HN8. Once a trial court determines that two offenses are allied and are subject to merger, the trial court acts without authority when it imposes a sentence on both offenses. Thus, acting without authority renders the sentence void. [More Like This Headnote](#)

[Criminal Law & Procedure](#) > [Sentencing](#) > [Concurrent Sentences](#).

HN9. Even when the sentences are to be served concurrently, a defendant is prejudiced by having more convictions than are authorized by law. [More Like This Headnote](#)

[Criminal Law & Procedure](#) > [Double Jeopardy](#) > [Res Judicata](#).

[Criminal Law & Procedure](#) > [Sentencing](#) > [General Overview](#).

HN10. Res judicata is a rule of fundamental and substantial justice, that is to be applied in particular situations as fairness and justice require, and that is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice. A court would achieve neither fairness nor justice by permitting a void sentence to stand. Although res judicata is an important doctrine, it is not so vital that it can override society's interest in enforcing the law, and in meting out the punishment the legislature has deemed just. Every judge has a duty to impose lawful sentences. Confidence in and respect for the criminal-justice system flow from a belief that courts and officers of the courts perform their duties pursuant to established law. The interests that underlie res judicata, although critically important, do not override the court's duty to sentence defendants as required by the law. [More Like This Headnote](#)

[Criminal Law & Procedure](#) > [Double Jeopardy](#) > [Res Judicata](#).

[Criminal Law & Procedure](#) > [Sentencing](#) > [Merger](#).

HN11. Res judicata will continue to bar any collateral attack challenging a determination of

whether a defendant's sentence contains allied offenses. More Like This Headnote

COUNSEL: FOR APPELLANT: Joseph V. Pagano, Rocky River, Ohio.

FOR APPELLEE: Timothy J. McGinty, Cuyahoga County Prosecutor, By: Joseph J. Ricotta, Assistant Prosecuting Attorney, Cleveland, Ohio.

JUDGES: BEFORE: Keough, J., Rocco, P.J., and Kilbane, J. KATHLEEN ANN KEOUGH, JUDGE. KENNETH A. ROCCO, P.J., and MARY EILEEN KILBANE, J., CONCUR.

OPINION BY: KATHLEEN ANN KEOUGH

OPINION

JOURNAL ENTRY AND OPINION

KATHLEEN ANN KEOUGH, J.:

[*P1] Defendant-appellant, Desmon Holmes, appeals the trial court's decision denying his motion to vacate and from the nunc pro tunc sentencing entry issued in May 2012. For the reasons that follow, we reverse and remand for resentencing.

[*P2] On July 17, 2008, a jury found Holmes guilty of rape and kidnapping, and the trial court sentenced him to a ten-year term of imprisonment. Holmes directly appealed his conviction challenging the manifest weight of the evidence, and issues pertaining to speedy trial, confrontation of witnesses, and effective assistance of trial counsel. State v. Holmes, 8th Dist. Cuyahoga No. 91948, 2009-Ohio-3736 ("Holmes I"). This court affirmed his convictions. *Id.*

[*P3] Subsequent to his appeal, Holmes filed a petition for postconviction relief [**2] pursuant to R.C. 2953.21, arguing that his trial counsel was ineffective. The trial court dismissed his petition on the grounds of res judicata. Holmes appealed and this court affirmed the trial court's decision. State v. Holmes, 8th Dist. Cuyahoga No. 96479, 2011-Ohio-5848 ("Holmes II").

[*P4] In May 2012, the trial court issued a nunc pro tunc sentencing journal entry to reflect that the five-year term of postrelease control ordered at sentencing in 2008 was mandatory. In April 2013, Holmes moved the trial court to vacate or set aside his judgment and sentence, which the trial court summarily denied.

[*P5] This court granted Holmes's request for a delayed appeal to challenge the trial court's nunc pro tunc sentencing journal entry and the denial of his motion to vacate or set aside the judgment and sentence. Holmes raises three assignments of error for our review, which will be addressed out of order.

I. Finding of Guilt

[*P6] In his second assignment of error, Holmes contends that the trial court erred by denying his motion to vacate or set aside judgment and sentence because the jury verdicts and judgment were insufficient to sustain a first-degree felony offense.

[*P7] Holmes's challenge to the jury verdict forms are barred by res judicata. He could have and should have raised [**3] such errors in his direct appeal. Appellate courts, including this court, that have addressed this issue have found that, *HN1*, where the appellant filed and argued a direct appeal but did not raise any arguments related to the inadequacy of the jury verdict form, res judicata applies to subsequent appeals. *See, e.g., State v. Cardamone*, 8th Dist. Cuyahoga No. 94405, 2011-Ohio-818, ¶ 19; *State v. Garner*, 11th Dist. Lake No. 2010-L-111, 2011-Ohio-3426; *State v. Evans*, 9th Dist. Wayne No. 10CA0027, 2011-Ohio-1449; *State v. Foy*, 5th Dist. Stark No. 2009-CA-00239, 2010-Ohio-2445.

[*P8] Accordingly, Holmes's second assignment of error is overruled.

II. Void Entry of Conviction

[*P9] In his first assignment of error, Holmes contends that the trial court erred by denying his motion to set aside his conviction and sentence because the sentencing journal entries were void and violated his constitutional rights to due process and protection against double jeopardy. Specifically, he challenges (1) the trial court's imposition of a sentence on a count that the court found to be allied and subject to merger; (2) the state's failure to elect which count survived merger; and (3) the trial court's assessment of court costs in the sentencing journal entry when he was not advised at sentencing that costs would be imposed. We find the first issue dispositive.

[*P10] The trial court at sentencing and upon recommendation by the state, [**4] found that both Count 1, rape and Count 2, kidnapping were allied offenses and subject to merger. In its announcement of the sentence, the trial court stated on the record: "[t]he court does find the two offenses merge for the purposes of sentencing. And it is ordered the defendant serve a stated term of ten years in prison on the merged counts." The court's sentencing journal entry ordered: "10 years on each of Counts 1 and 2, Counts 1 and 2 merge for sentencing."

[*P11] Holmes contends that the imposition of a sentence on a count that was allied and the state's subsequent failure to elect which count survives merger renders his sentence void. While the state concedes that it did not elect which count Holmes should receive his sentence, the state claims that Holmes's challenge regarding allied offenses is barred by res judicata because he could have raised this issue in his direct appeal.

[*P12] *HN2*: "A judgment will be deemed void when it is issued by a court which did not have subject matter jurisdiction or otherwise lacked the authority to act." *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 6. On the other hand, "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, [**5] or erroneous." *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 12.

[*P13] *HN3*: If a judgment is void, the doctrine of res judicata has no application, and the propriety of the decision can be challenged on direct appeal or by collateral attack. *Fischer* at paragraph one of the syllabus (a void sentence "is not precluded from appellate review by principles of res judicata, and may be reviewed at any time, on direct appeal or collateral attack"); *State v. Billiter*, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 960, ¶ 10 ("if a trial court imposes a sentence that is unauthorized by law, the sentence is void"). If a sentencing judgment is voidable, the doctrine of res judicata applies and any argument regarding the merits of the decision is considered waived for all purposes unless it is asserted as part of the direct appeal. *State ex rel. Porterfield v. McKay*, 11th Dist. Trumbull No. 1012-T-0012,

2012-Ohio-5027, ¶ 13.

[*P14] Therefore, the issue before this court is whether Holmes's sentence is void because the trial court imposed a prison sentence on both counts that were determined to be allied. We find that it is.

[*P15] *HN4* Generally, sentencing errors do not render a judgment void because such errors have no effect upon the trial court's jurisdiction. Fischer, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 7. One exception to this general rule is that a sentencing judgment will be considered void when the imposed [*6] sentence does not lie within the statutorily mandated terms. Id. at ¶ 8.

[*P16] The First Appellate District recently explained and summarized the Ohio Supreme Court's holdings as it applies to void sentences.

HN5 The commonality of the voidness cases is that they all involve situations where the court has failed to impose a sentence term that it was mandated by law to impose (postrelease control, driver's license suspension, statutorily mandated fine), or where a court has attempted to impose a sentence that was completely unauthorized by statute. They involve instances where a trial court has refused or neglected to do what the General Assembly has commanded with respect to a mandatory criminal sentencing term, *see Fischer, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 15 and fn. 1,* rather than where the trial court got the law wrong. Either something that was required was left out of the sentences, or the trial court simply decided to create its own sentence despite statutory dictates to the contrary.

State v. Grant, 1st Dist. Hamilton No. C-120695, 2013-Ohio-3421, ¶ 15. See Fischer; State v. Harris, 132 Ohio St.3d 318, 2012-Ohio-1908, 972 N.E.2d 509; State v. Moore, 135 Ohio St.3d 151, 2012-Ohio-5479, 985 N.E.2d 432.

[*P17] *HN6* In applying the "void v. voidable" concept to allied offenses and merger, courts of this state, including this court, have consistently held that sentences that involve alleged errors in the merger of allied offenses are voidable and [*7] not void; thus, res judicata will prevent any collateral attack challenging the imposition of allied offenses. *See, e.g., State v. Hough, 2013-Ohio-1543, 990 N.E.2d 653, State v. Segines, 8th Dist. Cuyahoga No. 99789, 2013-Ohio-5259* (res judicata bars postconviction appeals collaterally attacking the trial court's failure to merge allied offenses at sentencing when the issue was not raised on direct appeal); Grant.

[*P18] However, those line of cases involved the issue of whether certain offenses were allied — the determination stage of the allied analysis. Whereas in this case before this court, the trial court found the offenses allied, yet imposed a sentence on both counts prior to ordering that the counts "merge."

[*P19] *HN7* R.C. 2941.25, codifies the protections of the Double Jeopardy Clause, and it "clearly provides that there may be only one conviction for allied offenses of similar import; a defendant may be sentenced for only one offense." State v. Underwood, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 26. "Thus, a trial court is prohibited from imposing individual sentences for counts that constitute allied offenses of similar import. This duty is mandatory, not discretionary." *Id.* "A sentence that contains an allied-offenses error is contrary to law." State v. Wilson, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 14. In *Underwood*, the Ohio Supreme Court found that because a sentence is authorized by [*8] law only if it comports with all mandatory sentencing provisions, the directive in R.C. 2941.25 contains such mandatory provision. Underwood at ¶ 23-30.

[*P20] In this case, on the face of the sentencing journal entry, the sentence imposed on these allied offenses is contrary to R.C. 2941.25(A), not authorized by law, and thus void. The trial court when sentencing Holmes determined that the two offenses were allied. However, instead of merging both counts and imposing a sentence on one, the court imposed a sentence on both counts. ^{HN8}Once a trial court determines that two offenses are allied and are subject to merger, the trial court acts without authority when it imposes a sentence on both offenses. Thus, acting without authority renders the sentence void. Although the court stated "counts 1 and 2 merge," the sentencing journal entry does not reflect which count Holmes is serving his ten-year sentence on.

[*P21] In so far as the trial court in this case stated that the ten-year sentence on each count "merged," this action is equivalent to a court ordering sentences to run concurrent when the offenses are allied. The trial court's failure to properly merge the offenses as required means that Holmes has two "convictions" which [*9] are more than authorized by law. Underwood at ¶ 26, citing State v. Gibson, 8th Dist. Cuyahoga No. 92275, 2009-Ohio-4984, ¶ 29 (^{HN9}"Even when the sentences are to be served concurrently, a defendant is prejudiced by having more convictions than are authorized by law.")

[*P22] Accordingly, because Holmes's sentence is contrary to R.C. 2941.25 and not authorized by law, we find his sentence is void. This limited conclusion falls in the narrow exception of instances where a sentencing error does not lie within the statutory mandated terms. This error is apparent from the face of the sentencing journal entry.

[*P23] Even if the voidness doctrine does not apply in this instance, we find that res judicata should not bar consideration of this issue. As the Ohio Supreme Court explained,

^{HN10}Res judicata is a rule of fundamental and substantial justice, that "is to be applied in particular situations as fairness and justice require, and that * * * is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice." We would achieve neither fairness nor justice by permitting a void sentence to stand.

Although res judicata is an important doctrine, it is not so vital that it can override "society's interest in enforcing the law, and in meting out the punishment the [*10] legislature has deemed just."

Every judge has a duty to impose lawful sentences. "Confidence in and respect for the criminal-justice system flow from a belief that courts and officers of the courts perform their duties pursuant to established law." The interests that underlie res judicata, although critically important, do not override our duty to sentence defendants as required by the law.

(Citations omitted.) State v. Simpkins, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 25-27. Correcting this error in Holmes's sentence is both fair and just and res judicata should not be used to permit a void sentence to stand.

[*P24] Our review of the case law reveals that this issue is fact specific and likely will not present itself again. Our decision is not to be read broadly encapsulating all collateral attacks on allied offenses. Nor does our holding create any conflict in our district concerning this court's treatment and disposition of postconviction attacks on allied offenses. It remains that ^{HN11}res judicata will continue to bar any collateral attack challenging a determination of whether a defendant's sentence contains allied offenses. *See, e.g., Hough, 8th Dist. Cuyahoga Nos. 98480 and 98482, 2013-Ohio-1543, 990 N.E.2d 653,*

[*P25] Accordingly, we reverse Holmes's sentence and remand to the trial court [**11] to conduct a new sentencing hearing to allow the state to make an election on which count survives merger. The trial court must then impose sentence only on that count, advise Holmes regarding the assessment of costs, unless waived, and also properly advise Holmes of postrelease control.

[*P26] Having sustained the first issue raised by Holmes in his first assignment error and ordering a new sentencing hearing, we find the second issue presented in this assignment of error regarding the imposition of court costs and the third assignment of error challenging postrelease control, moot.

[*P27] Reversed and remanded for further proceedings consistent with this court's opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE
KENNETH A. ROCCO, P.J., and
MARY EILEEN KILBANE, J., CONCUR

DANIEL W. MORGAN

2014 JUL 29 AM 8:31

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

STATE OF OHIO,

CASE NUMBER CR 2007 08 2540

Plaintiff,

JUDGE CHRISTINE CROCE

VS.

CAMERON D. WILLIAMS,

Defendant.

ORDER

On February 29, 2008, a jury found the Defendant, Cameron D. Williams (Williams), guilty of Murder, Aggravated Murder with specifications, Kidnapping with specifications, Aggravated Burglary with specifications, Violating a Protection Order with specifications, Escape, Having Weapon While Under Disability and Carrying a Conceal Weapon. Williams was subsequently sentenced to a total of life without parole for thirty years. On April 17, 2008, Williams appealed to the Ninth District Court of Appeals. While the first appeal was still pending, Williams began to file pro se motions including a pro se appeal on November 17, 2008 which was later dismissed. On June 30, 2009, the Ninth District issued a decision which affirmed the judgment in part, reversed the judgment in part and remanded the case. Subsequently, the post release control component of Williams' sentence was corrected, Williams was resentenced and numerous appeals and pro se Motions were filed.

This case is now before the Court upon Defendant's pro se Motion to Correct Sentences and Motion to Waive Prosecution Costs and Fees filed on April 23, 2014. Williams argues that

the Court should not have sentenced him on counts that were merged including the specifications.

In Response to the Motion, the State argues that the Ninth District previously ruled in *State v. Williams*, 9th Dist. No. 27101, 2014-Ohio-1608, that Williams is barred from raising issues relating to his original trial and sentencing.

In Williams latest appeal to the Ninth District, he brought up the same issue of merged counts and allied offenses relating to his original sentence. See *State v. Williams*, 9th Dist. No. 27101, 2014-Ohio-1608 at ¶18. Because these issues did not have anything to do Williams' resentencing hearing, the Court declined to rule on them, stating:

Thus, as Mr. Williams' second, fourth, fifth, sixth, seventh, and eighth assignments of error do not relate to issues that would have arisen at the hearing held pursuant to R.C. 2929.191, they are outside the scope of this appeal and are barred by res judicata. *Id.* At paragraphs three and four of the syllabus; see also *State v. Knuckles*, 9th Dist. Summit No. 26830, 2013-Ohio-4024, ¶ 7-8.

Further, the Ninth District Court of Appeals previously examined this issue in *State v. Dee*, 2000 Ohio App. LEXIS 3078, 3-5 (Ohio Ct. App., Summit County July 12, 2000) and stated as follows:

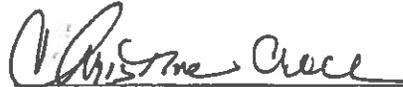
Under the doctrine of *res judicata*, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment. *State v. Perry* (1967), 10 Ohio St. 2d 175, 226 N.E.2d 104, paragraphs eight and nine of the syllabus. Sentencing questions merge with the judgment of conviction and are also barred by res judicata if not raised on direct appeal. *State v. Ishmail* (1981), 67 Ohio St. 2d 16, 18, 423 N.E.2d 1068. To survive preclusion by res judicata, a petitioner must produce new evidence that would render the judgment void or voidable and must also show that he could not have appealed the claim based

upon information contained in the original record. State v. Nemchik, 2000 Ohio App. LEXIS 836, *4 (Mar. 8, 2000), Lorain App. No. 98CA007279, unreported

In addition to raising issues regarding merged counts, Williams also contends that the Court failed to inform him of his obligation to pay costs at the time of sentencing. This issue also relates to the original sentence and is barred by *res judicata*.

The Court finds that Cameron D. Williams' Motion to Correct Sentences and Motion to Waive Prosecution Costs are not well taken and must be denied.

IT IS ORDERED AND ADJUDGED that the Motion filed by the Defendant, Michael W. Hendricks, is hereby DENIED.



JUDGE CHRISTINE CROCE

cc: Cameron D. Williams, *pro se*, #543-790, TCI, P.O. Box 901, Leavittsburg, Ohio, 44430
Asst. Prosecutor Richard Kasay

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**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

DANIEL M. HORNIGAN

THE STATE OF OHIO

Case No. CR 07 08 2540

2008 MAR 25 PM 2:31

vs.

JOURNAL ENTRY

CAMERON D. WILLIAMS
(page 1 of 4)

SUMMIT COUNTY
CLERK OF COURTS

THIS DAY, to-wit: The 17th day of March, A.D., 2008, the Defendant's sentencing hearing was held pursuant to O.R.C. 2929.19. Defense counsel, Kerry O'Brien and John Greven, were present as was the Defendant who was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, oral statements, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12.

The Court finds that the Defendant, having previously pled NOT GUILTY to the charges to the Indictment, on August 10, 2007; on February 29, 2008, was found GUILTY by a jury trial of the lesser included offense of MURDER, pursuant to Count 1 of the Indictment, which offense occurred on or about July 28, 2007; GUILTY of the crimes of AGGRAVATED MURDER with SPECIFICATIONS ONE, TWO and THREE TO COUNT TWO AND COUNT THREE, as contained in Count 2 and Count 3 of the Indictment, which offenses occurred on or about July 28, 2007; GUILTY of the crime of KIDNAPPING with SPECIFICATION ONE TO COUNT FOUR, as contained in Count 4 of the Indictment, which offense occurred on or about July 28, 2007 through on or about July 29, 2007; GUILTY of the crime of AGGRAVATED BURGLARY with SPECIFICATION ONE TO COUNT FIVE, as contained in Count 5 of the Indictment, which offense occurred on or about July 28, 2007; GUILTY of the crime of VIOLATING A PROTECTION ORDER with SPECIFICATION ONE TO COUNT SIX, as contained in Count 6 of the Indictment, which offense occurred on or about July 26, 2007 through on or about July 29, 2007; GUILTY of the crime of INTIMIDATION OF CRIME VICTIM OR WITNESS and SPECIFICATION ONE TO COUNT SEVEN, as contained in Count 7 of the Indictment, which offense occurred on or about July 28, 2007 through on or about July 29, 2007; GUILTY of the crime of ESCAPE, as contained in Count 8 of the Indictment, which offense occurred on or about July 23, 2007 through on or about July 29, 2007; GUILTY of the crime of HAVING WEAPONS WHILE UNDER DISABILITY, as contained in Count 9 of the Indictment, which offense occurred on or about July 28, 2007 through on or about July 29, 2007; GUILTY of the crime of CARRYING CONCEALED WEAPONS, as contained in Count 10 of the Indictment, which offense occurred on or about July 28, 2007 through on or about July 29, 2007.

The FIREARM SPECIFICATION THREE TO COUNT ONE, as contained in Count 1 of the Indictment, was DISMISSED.

Thereupon, the Court inquired of the said Defendant if he had anything to say why judgment should not be pronounced against him; and having nothing but what he had already said and showing no good and sufficient cause why judgment should not be pronounced.

APP NO. 5
ALL-STATE LEGAL

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The Court further finds the Defendant is not amenable to community control and that prison is consistent with the purposes of O.R.C. 2929.11.

IT IS THEREFORE ORDERED AND ADJUDGED BY THIS COURT that the Defendant, CAMERON D. WILLIAMS, be committed to the Ohio Department of Rehabilitation and Corrections for an actual Three (3) year mandatory sentence for the FIREARM SPECIFICATION, on Count 2; for an actual Three (3) year mandatory sentence for the FIREARM SPECIFICATION, on Count 3; for an actual Three (3) year mandatory sentence for the FIREARM SPECIFICATION, on Count 4; for an actual Three (3) year mandatory sentence for the FIREARM SPECIFICATION, on Count 5; for an actual Three (3) year mandatory sentence for the FIREARM SPECIFICATION, on Count 6; for an actual Three (3) year mandatory sentence for the FIREARM SPECIFICATION, on Count 7; for a definite term of LIFE WITH PAROLE after Fifteen (15) years, which is a mandatory term pursuant to O.R.C. 2929.13(F), for punishment of the crime of MURDER, Ohio Revised Code Section 2903.02, a special felony; for a definite term of LIFE WITH PAROLE after Thirty (30) years, which is a mandatory term pursuant to O.R.C. 2929.13(F), for punishment of the crime of AGGRAVATED MURDER, Ohio Revised Code Section 2903.01(B), a special felony; for a definite term of LIFE WITH PAROLE after Thirty (30) years, which is a mandatory term pursuant to O.R.C. 2929.13(F), for punishment of the crime of AGGRAVATED MURDER, Ohio Revised Code Section 2903.01(D), a special felony; for a definite term of Ten (10) years, which is not a mandatory term pursuant to O.R.C. 2929.13(F), for punishment of the crime of KIDNAPPING, Ohio Revised Code Section 2905.01(A)(1)/(A)(2)/(A)(3)(b), a felony of the 1st degree; for a definite term of Ten (10) years, which is not a mandatory term pursuant to O.R.C. 2929.13(F) for punishment of the crime of AGGRAVATED BURGLARY, Ohio Revised Code Section 2911.11(A)(1)/(A)(2), a felony of the 1st degree; for a definite term of Five (5) years, which is not a mandatory term pursuant to O.R.C. 2929.13(F), for punishment of the crime of VIOLATING A PROTECTION ORDER, Ohio Revised Code Section 2919.27, a felony of the 3rd degree; for a definite term of Five (5) years, which is not a mandatory term pursuant to O.R.C. 2929.13(F), for punishment of the crime of INTIMIDATION OF CRIME VICTIM OR WITNESS, Ohio Revised Code Section 2921.04(B), a felony of the 3rd degree; for a definite term of Five (5) years, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of ESCAPE, Ohio Revised Code Section 2921.34(A)(1), a felony of the 3rd degree; for a definite term of Five (5) years, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of HAVING WEAPONS WHILE UNDER DISABILITY, Ohio Revised Code Section 2923.13(A)(1)/(A)(2)/(A)(3)/(A)(4), a felony of the 3rd degree; for a definite term of Eighteen (18) months, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of CARRYING CONCEALED WEAPONS, Ohio Revised Code Section 2923.12(A)(2), a felony of the 4th degree, and that the said Defendant pay the costs of this prosecution for which execution is hereby awarded; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 S. High Street, Akron, Ohio 44308-1662.

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**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

THE STATE OF OHIO

vs.

CAMERON D. WILLIAMS
(page 3 of 4)

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Case No. CR 07 08 2540

JOURNAL ENTRY

IT IS FURTHER ORDERED, pursuant to the above sentence, that the Defendant be conveyed to the Lorain Correctional Institution at Grafton, Ohio, to commence the prison intake procedure.

THEREUPON, pursuant to Ohio Revised Code Section 2941.25(A), the Court hereby Orders that the FIREARM SPECIFICATION, as contained in Count 2 of the Indictment be merged into the FIREARM SPECIFICATION, as contained in Count 3 of the Indictment for purposes of sentencing, and that said sentences be served concurrently and not consecutively with each other, for a total of Three (3) years, but to be served consecutively to all other counts.

THEREUPON, pursuant to Ohio Revised Code Section 2941.25(A), the Court hereby Orders that the FIREARM SPECIFICATIONS from Count 4 and Count 7 of the Indictment merged for purposes of sentencing, and be served concurrently and not consecutively with each other, for a total of Three (3) years, but to be served consecutively to all other counts.

THEREUPON, pursuant to Ohio Revised Code Section 2941.25(A), the Court hereby Orders that the FIREARM SPECIFICATIONS from Count 5 and Count 6 of the Indictment be merged for purposes of sentencing, and be served concurrently and not consecutively with each other, for a total of Three (3) years, but to be served consecutively to all other counts.

THEREUPON, pursuant to Ohio Revised Code Section 2941.25(A), the Court hereby Orders that the offense of MURDER, as contained in the amended Count 1 of the Indictment and the offense of AGGRAVATED MURDER, as contained in Count 2 of the Indictment be merged into the offense of AGGRAVATED MURDER, as contained in Count 3 of the Indictment for purposes of sentencing and that said sentencing be served concurrently and not consecutively with each other, for a total of LIFE WITH PAROLE AFTER Thirty (30) years for the three counts.

IT IS FURTHER ORDERED that the sentences imposed in Count 4, Count 5, Count 8 and Count 9 be served CONSECUTIVELY and not concurrently with each other, for a total of Thirty (30) years.

IT IS FURTHER ORDERED that the sentence imposed in Count Six (6) be served concurrently with the sentence imposed in Count Five (5); that the sentence imposed in Count Seven (7) be served concurrently with the sentence imposed in Count Four (4); and that the sentence imposed in Count Ten (10) be served concurrently with the sentence imposed in Count Nine (9).

Accordingly, the total sentence the Court imposes is LIFE WITH PAROLE after Sixty-Nine (69) years, recapitulated, in sum, as follows: on Counts One, Two and Three, a **mandatory**

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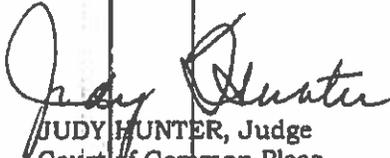
sentence of LIFE WITH PAROLE after Thirty (30) years; On the six FIREARM SPECIFICATIONS appended to Counts Two, Three, Four, Five, Six and Seven, a combined, **mandatory** sentence of Nine (9) years, served consecutively; and on the remaining Counts, a combined sentence of Thirty (30) years, which are to be served consecutively to the sentences on the Counts relating to Murder and the FIREARM SPECIFICATIONS.

After release from prison, the Defendant is ordered subject to post-release control of 5 years, as provided by law. Defendant is ORDERED to pay all prosecution costs, including any fees permitted pursuant to O.R.C. 2929.18(A)(4).

IT IS FURTHER ORDERED that the Defendant be given credit for 233 days served in the Summit County Jail as of the date of sentencing, March 17, 2008, as agreed to by all parties.

Thereupon, the Court informed the Defendant of his right to appeal pursuant to Rule 32A2, Criminal Rules of Procedure, Ohio Supreme Court, and further the Court appoints counsel Robert Roe Fox to represent the said Defendant for purposes of appeal due to said Defendant's indigency. A Notice of Appeal is to be filed within 30 days.

APPROVED:
March 24, 2008
dcs


JUDY HUNTER, Judge
Court of Common Pleas
Summit County, Ohio

cc: Prosecutor Susan Manofsky/Michael Carroll
Criminal Assignment
Attorney Kerry O'Brien - 15
Attorney John Greven - #27
Attorney Robert Roe Fox
Adult Probation Department
Registrar's Office
Court Convey (emailed)

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 10 [Trial of accused persons and their rights; depositions by state and comment on failure to testify in criminal cases.]

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense. (As amended September 3, 1912.)

ORC Ann. 2903.01

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 45 (SB 223) with the exception of file 38 (HB 237), file 39 (HB 259), file 40 (HB 340), file 41 (SB 10), and file 44 (SB 190).

Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2903: Homicide and Assault > Homicide

§ 2903.01 Aggravated murder.

- (A) No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy.
- (B) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, trespass in a habitation when a person is present or likely to be present, terrorism, or escape.
- (C) No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense.
- (D) No person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention shall purposely cause the death of another.
- (E) No person shall purposely cause the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either of the following applies:
 - (1) The victim, at the time of the commission of the offense, is engaged in the victim's duties.
 - (2) It is the offender's specific purpose to kill a law enforcement officer.
- (F) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code.
- (G) As used in this section:
 - (1) "Detention" has the same meaning as in section 2921.01 of the Revised Code.
 - (2) "Law enforcement officer" has the same meaning as in section 2911.01 of the Revised Code.

History

134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v S 239 (Eff 9-6-96); 147 v S 32 (Eff 8-6-97); 147 v H 5 (Eff 6-30-98); 147 v S 193 (Eff 12-29-98); 149 v S 184. Eff 5-15-2002; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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ORC Ann. 2903.02

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Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2903: Homicide and Assault > Homicide

§ 2903.02 Murder.

- (A) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy.
- (B) No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code.
- (C) Division (B) of this section does not apply to an offense that becomes a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense.
- (D) Whoever violates this section is guilty of murder, and shall be punished as provided in section 2929.02 of the Revised Code.

History

134 v H 511 (Eff 1-1-74); 146 v S 239 (Eff 9-6-96); 147 v H 5. Eff 6-30-98.

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ORC Ann. 2905.01

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Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2905: Kidnapping and Extortion > Kidnapping and Related Offenses

§ 2905.01 Kidnapping.

- (A) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes:
- (1) To hold for ransom, or as a shield or hostage;
 - (2) To facilitate the commission of any felony or flight thereafter;
 - (3) To terrorize, or to inflict serious physical harm on the victim or another;
 - (4) To engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will;
 - (5) To hinder, impede, or obstruct a function of government, or to force any action or concession on the part of governmental authority;
 - (6) To hold in a condition of involuntary servitude.
- (B) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall knowingly do any of the following, under circumstances that create a substantial risk of serious physical harm to the victim or, in the case of a minor victim, under circumstances that either create a substantial risk of serious physical harm to the victim or cause physical harm to the victim:
- (1) Remove another from the place where the other person is found;
 - (2) Restrain another of the other person's liberty.
- (C)
- (1) Whoever violates this section is guilty of kidnapping. Except as otherwise provided in this division or division (C)(2) or (3) of this section, kidnapping is a felony of the first degree. Except as otherwise provided in this division or division (C)(2) or (3) of this section, if an offender who violates division (A)(1) to (5), (B)(1), or (B)(2) of this section releases the victim in a safe place unharmed, kidnapping is a felony of the second degree.
 - (2) If the offender in any case also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code and, except as otherwise provided in division (C)(3) of

this section, shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code.

(3) If the victim of the offense is less than thirteen years of age and if the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, kidnapping is a felony of the first degree, and, notwithstanding the definite sentence provided for a felony of the first degree in section 2929.14 of the Revised Code, the offender shall be sentenced pursuant to section 2971.03 of the Revised Code as follows:

(a) Except as otherwise provided in division (C)(3)(b) of this section, the offender shall be sentenced pursuant to that section to an indefinite prison term consisting of a minimum term of fifteen years and a maximum term of life imprisonment.

(b) If the offender releases the victim in a safe place unharmed, the offender shall be sentenced pursuant to that section to an indefinite term consisting of a minimum term of ten years and a maximum term of life imprisonment.

(D) As used in this section:

(1) "Involuntary servitude" has the same meaning as in section 2905.31 of the Revised Code.

(2) "Sexual motivation specification" has the same meaning as in section 2971.01 of the Revised Code.

History

134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 146 v S 2, Eff 7-1-96; 152 v S 10, § 1, eff. 1-1-08; 152 v H 280, § 1, eff. 4-7-09; 153 v S 235, § 1, eff. 3-24-11; 2011 HB 86, § 1, eff. Sept. 30, 2011.

Page's Ohio Revised Code Annotated

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ORC Ann. 2911.11

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Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2911: Robbery, Burglary, Trespass and Safecracking > Burglary

§ 2911.11 Aggravated burglary.

- (A) No person, by force, stealth, or deception, shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, if any of the following apply:
- (1) The offender inflicts, or attempts or threatens to inflict physical harm on another;
 - (2) The offender has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control.
- (B) Whoever violates this section is guilty of aggravated burglary, a felony of the first degree.
- (C) As used in this section:
- (1) "Occupied structure" has the same meaning as in section 2909.01 of the Revised Code.
 - (2) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

History

134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 140 v S 210 (Eff 7-1-83); 146 v S 2 (Eff 7-1-96); 146 v S 269. Eff 7-1-96.

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ORC Ann. 2917.27

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Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2917: Offenses Against the Public Peace > Harassment

§ 2917.27 Repealed.

Repealed, 134 v H 511, § 2 [RS §§ 6897, 6906; S&C 405, 432, 546, 547, 607, 1171; 29 v 144; 33 v 33; 38 v 146; 39 v 13; 52 v 27; 54 v 83; 59 v 91; 68 v 27; 69 v 62; 73 v 58; GC §§ 12842—12844; 104 v 7; 112 v 177; Bureau of Code Revision, 10-1-53]. Eff 1-1-74.

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ORC Ann. 2921.04

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 45 (SB 223) with the exception of file 38 (HB 237), file 39 (HB 259), file 40 (HB 340), file 41 (SB 10), and file 44 (SB 190).

Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2921: Offenses Against Justice and Public Administration > Bribery and Intimidation

§ 2921.04 Intimidation of attorney, victim or witness in criminal case.

- (A) No person shall knowingly attempt to intimidate or hinder the victim of a crime or delinquent act in the filing or prosecution of criminal charges or a delinquent child action or proceeding, and no person shall knowingly attempt to intimidate a witness to a criminal or delinquent act by reason of the person being a witness to that act.
- (B) No person, knowingly and by force or by unlawful threat of harm to any person or property or by unlawful threat to commit any offense or calumny against any person, shall attempt to influence, intimidate, or hinder any of the following persons:
 - (1) The victim of a crime or delinquent act in the filing or prosecution of criminal charges or a delinquent child action or proceeding;
 - (2) A witness to a criminal or delinquent act by reason of the person being a witness to that act;
 - (3) An attorney by reason of the attorney's involvement in any criminal or delinquent child action or proceeding.
- (C) Division (A) of this section does not apply to any person who is attempting to resolve a dispute pertaining to the alleged commission of a criminal offense, either prior to or subsequent to the filing of a complaint, indictment, or information, by participating in the arbitration, mediation, compromise, settlement, or conciliation of that dispute pursuant to an authorization for arbitration, mediation, compromise, settlement, or conciliation of a dispute of that nature that is conferred by any of the following:
 - (1) A section of the Revised Code;
 - (2) The Rules of Criminal Procedure, the Rules of Superintendence for Municipal Courts and County Courts, the Rules of Superintendence for Courts of Common Pleas, or another rule adopted by the supreme court in accordance with section 5 of Article IV, Ohio Constitution;
 - (3) A local rule of court, including, but not limited to, a local rule of court that relates to alternative dispute resolution or other case management programs and that authorizes the referral of disputes pertaining to the alleged commission of certain types of criminal offenses to appropriate and available arbitration, mediation, compromise, settlement, or other conciliation programs;
 - (4) The order of a judge of a municipal court, county court, or court of common pleas.

- (D) Whoever violates this section is guilty of intimidation of an attorney, victim, or witness in a criminal case. A violation of division (A) of this section is a misdemeanor of the first degree. A violation of division (B) of this section is a felony of the third degree.
- (E) As used in this section, "witness" means any person who has or claims to have knowledge concerning a fact or facts concerning a criminal or delinquent act, whether or not criminal or delinquent child charges are actually filed.

History

140 v S 172 (Eff 9-26-84); 146 v H 88. Eff 9-3-96; 2012 HB 20, § 1, eff. June 4, 2012.

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Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2921: Offenses Against Justice and Public Administration > Obstructing and Escape

§ 2921.34 Escape.

(A)

(1) No person, knowing the person is under detention, other than supervised release detention, or being reckless in that regard, shall purposely break or attempt to break the detention, or purposely fail to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement.

(2)

(a) Division (A)(2)(b) of this section applies to any person who is sentenced to a prison term pursuant to division (A)(3) or (B) of section 2971.03 of the Revised Code.

(b) No person to whom this division applies, for whom the requirement that the entire prison term imposed upon the person pursuant to division (A)(3) or (B) of section 2971.03 of the Revised Code be served in a state correctional institution has been modified pursuant to section 2971.05 of the Revised Code, and who, pursuant to that modification, is restricted to a geographic area, knowing that the person is under a geographic restriction or being reckless in that regard, shall purposely leave the geographic area to which the restriction applies or purposely fail to return to that geographic area following a temporary leave granted for a specific purpose or for a limited period of time.

(3) No person, knowing the person is under supervised release detention or being reckless in that regard, shall purposely break or attempt to break the supervised release detention or purposely fail to return to the supervised release detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement.

(B) Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, is not a defense to a charge under this section if the detention is pursuant to judicial order or in a detention facility. In the case of any other detention, irregularity or lack of jurisdiction is an affirmative defense only if either of the following occurs:

(1) The escape involved no substantial risk of harm to the person or property of another.

(2) The detaining authority knew or should have known there was no legal basis or authority for the detention.

- (C) Whoever violates this section is guilty of escape.
- (1) If the offender violates division (A)(1) or (2) of this section, if the offender, at the time of the commission of the offense, was under detention as an alleged or adjudicated delinquent child or unruly child, and if the act for which the offender was under detention would not be a felony if committed by an adult, escape is a misdemeanor of the first degree.
 - (2) If the offender violates division (A)(1) or (2) of this section and if either the offender, at the time of the commission of the offense, was under detention in any other manner or the offender is a person for whom the requirement that the entire prison term imposed upon the person pursuant to division (A)(3) or (B) of section 2971.03 of the Revised Code be served in a state correctional institution has been modified pursuant to section 2971.05 of the Revised Code, escape is one of the following:
 - (a) A felony of the second degree, when the most serious offense for which the person was under detention or for which the person had been sentenced to the prison term under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code is aggravated murder, murder, or a felony of the first or second degree or, if the person was under detention as an alleged or adjudicated delinquent child, when the most serious act for which the person was under detention would be aggravated murder, murder, or a felony of the first or second degree if committed by an adult;
 - (b) A felony of the third degree, when the most serious offense for which the person was under detention or for which the person had been sentenced to the prison term under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code is a felony of the third, fourth, or fifth degree or an unclassified felony or, if the person was under detention as an alleged or adjudicated delinquent child, when the most serious act for which the person was under detention would be a felony of the third, fourth, or fifth degree or an unclassified felony if committed by an adult;
 - (c) A felony of the fifth degree, when any of the following applies:
 - (i) The most serious offense for which the person was under detention is a misdemeanor.
 - (ii) The person was found not guilty by reason of insanity, and the person's detention consisted of hospitalization, institutionalization, or confinement in a facility under an order made pursuant to or under authority of section 2945.40, 2945.401, or 2945.402 of the Revised Code.
 - (d) A misdemeanor of the first degree, when the most serious offense for which the person was under detention is a misdemeanor and when the person fails to return to detention at a specified time following temporary leave granted for a specific purpose or limited period or at the time required when serving a sentence in intermittent confinement.
 - (3) If the offender violates division (A)(3) of this section, except as otherwise provided in this division, escape is a felony of the fifth degree. If the offender violates division

(A)(3) of this section and if, at the time of the commission of the offense, the most serious offense for which the offender was under supervised release detention was aggravated murder, murder, any other offense for which a sentence of life imprisonment was imposed, or a felony of the first or second degree, escape is a felony of the fourth degree.

- (D) As used in this section, "supervised release detention" means detention that is supervision of a person by an employee of the department of rehabilitation and correction while the person is on any type of release from a state correctional institution, other than transitional control under section 2967.26 of the Revised Code or placement in a community-based correctional facility by the parole board under section 2967.28 of the Revised Code.

History

134 v H 511 (Eff 1-1-74); 144 v H 298 (Eff 7-26-91); 144 v S 37 (Eff 7-31-92); 144 v H 725 (Eff 4-16-93); 145 v H 42 (Eff 2-9-94); 146 v S 2 (Eff 7-1-96); 146 v H 180 (Eff 1-1-97); 146 v S 285, Eff 7-1-97; 150 v H 473, § 1, eff. 4-29-05; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2923: Conspiracy, Attempt, and Complicity: Weapons Control: Corrupt Activity > Weapons Control

§ 2923.12 Carrying concealed weapons.

- (A) No person shall knowingly carry or have, concealed on the person's person or concealed ready at hand, any of the following:
 - (1) A deadly weapon other than a handgun;
 - (2) A handgun other than a dangerous ordnance;
 - (3) A dangerous ordnance.
- (B) No person who has been issued a concealed handgun license shall do any of the following:
 - (1) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, fail to promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a concealed handgun license and that the person then is carrying a concealed handgun;
 - (2) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;
 - (3) If the person is stopped for a law enforcement purpose, if the person is carrying a concealed handgun, and if the person is approached by any law enforcement officer while stopped, knowingly remove or attempt to remove the loaded handgun from the holster, pocket, or other place in which the person is carrying it, knowingly grasp or hold the loaded handgun, or knowingly have contact with the loaded handgun by touching it with the person's hands or fingers at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person removes, attempts to remove, grasps, holds, or has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer;
 - (4) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the person is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight.

(C)

- (1) This section does not apply to any of the following:
 - (a) An officer, agent, or employee of this or any other state or the United States, or to a law enforcement officer, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns and is acting within the scope of the officer's, agent's, or employee's duties;
 - (b) Any person who is employed in this state, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns, and who is subject to and in compliance with the requirements of section 109.801 of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (C)(1)(b) of this section does not apply to the person;
 - (c) A person's transportation or storage of a firearm, other than a firearm described in divisions (G) to (M) of section 2923.11 of the Revised Code, in a motor vehicle for any lawful purpose if the firearm is not on the actor's person;
 - (d) A person's storage or possession of a firearm, other than a firearm described in divisions (G) to (M) of section 2923.11 of the Revised Code, in the actor's own home for any lawful purpose.
- (2) Division (A)(2) of this section does not apply to any person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid concealed handgun license, unless the person knowingly is in a place described in division (B) of section 2923.126 of the Revised Code.
- (D) It is an affirmative defense to a charge under division (A)(1) of this section of carrying or having control of a weapon other than a handgun and other than a dangerous ordnance that the actor was not otherwise prohibited by law from having the weapon and that any of the following applies:
 - (1) The weapon was carried or kept ready at hand by the actor for defensive purposes while the actor was engaged in or was going to or from the actor's lawful business or occupation, which business or occupation was of a character or was necessarily carried on in a manner or at a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed.
 - (2) The weapon was carried or kept ready at hand by the actor for defensive purposes while the actor was engaged in a lawful activity and had reasonable cause to fear a criminal attack upon the actor, a member of the actor's family, or the actor's home, such as would justify a prudent person in going armed.
 - (3) The weapon was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home.
- (E) No person who is charged with a violation of this section shall be required to obtain a concealed handgun license as a condition for the dismissal of the charge.
- (F)
 - (1) Whoever violates this section is guilty of carrying concealed weapons. Except as otherwise provided in this division or division (F)(2) of this section, carrying concealed

weapons in violation of division (A) of this section is a misdemeanor of the first degree. Except as otherwise provided in this division or division (F)(2) of this section, if the offender previously has been convicted of a violation of this section or of any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons in violation of division (A) of this section is a felony of the fourth degree. Except as otherwise provided in division (F)(2) of this section, if the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons in violation of division (A) of this section is a felony of the third degree.

- (2) If a person being arrested for a violation of division (A)(2) of this section promptly produces a valid concealed handgun license, and if at the time of the violation the person was not knowingly in a place described in division (B) of section 2923.126 of the Revised Code, the officer shall not arrest the person for a violation of that division. If the person is not able to promptly produce any concealed handgun license and if the person is not in a place described in that section, the officer may arrest the person for a violation of that division, and the offender shall be punished as follows:
- (a) The offender shall be guilty of a minor misdemeanor if both of the following apply:
- (i) Within ten days after the arrest, the offender presents a concealed handgun license, which license was valid at the time of the arrest to the law enforcement agency that employs the arresting officer.
 - (ii) At the time of the arrest, the offender was not knowingly in a place described in division (B) of section 2923.126 of the Revised Code.
- (b) The offender shall be guilty of a misdemeanor and shall be fined five hundred dollars if all of the following apply:
- (i) The offender previously had been issued a concealed handgun license, and that license expired within the two years immediately preceding the arrest.
 - (ii) Within forty-five days after the arrest, the offender presents a concealed handgun license to the law enforcement agency that employed the arresting officer, and the offender waives in writing the offender's right to a speedy trial on the charge of the violation that is provided in section 2945.71 of the Revised Code.
 - (iii) At the time of the commission of the offense, the offender was not knowingly in a place described in division (B) of section 2923.126 of the Revised Code.
- (c) If neither division (F)(2)(a) nor (b) of this section applies, the offender shall be punished under division (F)(1) of this section.
- (3) Except as otherwise provided in this division, carrying concealed weapons in violation of division (B)(1) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for a violation of division (B)(1) of this section, the offender's concealed handgun license shall be suspended pursuant

to division (A)(2) of section 2923.128 of the Revised Code. If, at the time of the stop of the offender for a law enforcement purpose that was the basis of the violation, any law enforcement officer involved with the stop had actual knowledge that the offender has been issued a concealed handgun license, carrying concealed weapons in violation of division (B)(1) of this section is a minor misdemeanor, and the offender's concealed handgun license shall not be suspended pursuant to division (A)(2) of section 2923.128 of the Revised Code.

(4) Carrying concealed weapons in violation of division (B)(2) or (4) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(2) or (4) of this section, a felony of the fifth degree. In addition to any other penalty or sanction imposed for a misdemeanor violation of division (B)(2) or (4) of this section, the offender's concealed handgun license shall be suspended pursuant to division (A)(2) of section 2923.128 of the Revised Code.

(5) Carrying concealed weapons in violation of division (B)(3) of this section is a felony of the fifth degree.

(G) If a law enforcement officer stops a person to question the person regarding a possible violation of this section, for a traffic stop, or for any other law enforcement purpose, if the person surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this division, division (B) of section 2923.163 of the Revised Code applies.

History

134 v H 511 (Eff 1-1-74); 135 v H 716 (Eff 1-1-74); 141 v H 51 (Eff 7-30-86); 146 v S 2, Eff 7-1-96; 150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07; 152 v S 184, § 1, eff. 9-9-08; 2012 HB 495, § 1, eff. Mar. 27, 2013.

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§ 2923.13 Having weapons while under disability.

- (A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:
- (1) The person is a fugitive from justice.
 - (2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.
 - (3) The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.
 - (4) The person is drug dependent, in danger of drug dependence, or a chronic alcoholic.
 - (5) The person is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a mentally ill person subject to court order, or is an involuntary patient other than one who is a patient only for purposes of observation. As used in this division, "mentally ill person subject to court order" and "patient" have the same meanings as in section 5122.01 of the Revised Code.
- (B) Whoever violates this section is guilty of having weapons while under disability, a felony of the third degree.
- (C) For the purposes of this section, "under operation of law or legal process" shall not itself include mere completion, termination, or expiration of a sentence imposed as a result of a criminal conviction.

History

134 v H 511 (Eff 1-1-74); 146 v S 2, Eff 7-1-96; 150 v H 12, § 1, eff. 4-8-04; 2011 HB 54, § 1, eff. Sept. 30, 2011; 2014 SB 43, § 1, eff. Sept. 17, 2014; 2014 HB 234, § 1, effective March 23, 2015.

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§ 2941.25 Multiple counts.

- (A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.
- (B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

History

134 v H 511. Eff 1-1-74.

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