

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.	:

REPLY BRIEF OF APPELLANT CAMERON D. WILLIAMS

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STATEMENT OF THE CASE AND FACTS

Mr. Williams rests on the statement of the case and facts contained in his merit brief.

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.

Mr. Williams's sentence is in violation of plain statutory language that a defendant may only be convicted of one allied offense. R.C. 2941.25(A). This Court has held that multiple convictions on allied offenses are not authorized by law. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, syllabus, ¶ 1, 20, 26. This Court has also held that a sentence that is unauthorized by law 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. Accordingly, Mr. Williams's sentences on allied offenses are void.

The State concedes that the trial court erred in imposing multiple sentences on allied offenses. State's Brief at p. 6. It also concedes that this was plain error pursuant to *State v. Underwood*. *Id.* at p. 7. However, the State contends that multiple sentences on allied offenses are not void. *Id.* at pp. 6, 9. The State's arguments fail because it conflates counts that actually merged with counts that arguably should have merged. Multiple convictions on allied offenses

result in void sentences, but multiple convictions on counts that arguably should have merged may only result in voidable sentences.

The State's argument relies on *State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2549, 38 N.E.3d 860. However, reliance on *Rogers* is inapposite in the case sub judice, because *Rogers* merely held that it was not plain error for the trial court to fail to make determinations regarding whether offenses were allied. *Rogers* at ¶ 1. In the case sub judice, the trial court determined that offenses merged, but then sentenced Mr. Williams to more convictions than are authorized by law in light of the findings.

State v. Rogers is wholly distinguishable from this case in terms of both facts and law. In *Rogers*, the defendant pleaded guilty, and was sentenced to consecutive terms on multiple counts—including receiving stolen property and possessing criminal tools. *Rogers* at ¶ 10. At sentencing, *Rogers* did not assert that he had been convicted of allied offenses of similar import, nor did he object to the sentence imposed by the trial court. *Id.* *Rogers* argued for the first time on appeal that some of his convictions should have merged for sentencing. *Id.* at ¶ 11. This Court held that an accused's failure to raise the issue of whether offenses should merge forfeits all but plain error. *Id.* at ¶ 3. This Court found that *Rogers* could not demonstrate plain error because the record "failed to show any prejudicial effect on the outcome of the proceeding." *Id.* at ¶¶ 25-27. There was no evidence in *Rogers* that the trial court should have found the offenses to be allied. *Id.*

In the case sub judice, all parties agree that Mr. Williams received more sentences than are allowed by statute, which this Court has held to be prejudicial. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 31. This case differs from *Rogers* because *Rogers* deals with counts which arguably should have merged. Such an error, which concerns whether

offenses are allied, does not result in a void sentence. *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 8. (“The *Fischer* rule [regarding void sentences] does not apply * * * to challenges to a sentencing court’s determination whether offenses are allied.”). However, in the case sub judice, the issue is not the trial court’s determination of whether offenses are allied, but whether the trial court complied with the statutory mandate in light of its findings that they were, in fact, allied.

The State contends that it should make no difference that the trial court in this case had already found the offenses to be allied before imposing multiple sentences. State’s Brief at p. 10. This is because “[t]here will be instances when a sentencing court imposes separate sentences on allied offenses and no objection is made. The plain error test in *Rogers* will apply.” *Id.* But again, the State is conflating offenses that have been found to be allied with offenses that arguably should have been found to be allied. In *Rogers*, the defendant could not demonstrate prejudice on the record. *State v. Rogers*, 2015-Ohio-2549, ¶ 25. In the instant case, it is indisputable that Mr. Williams is prejudiced by the fact that the trial court imposed more convictions than are allowed by law. *Underwood* at ¶ 31.

This Court need not consider cases in which a defendant receives multiple convictions even though a trial court arguably should have found offenses to be allied. The issue before this Court only concerns only when the trial court imposes multiple sentences on offenses that it has already found to be allied. To discern whether the sentences in this case are void, this Court must determine whether the trial court’s actions were unauthorized by law, or merely erroneous and irregular. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 6, citing *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 27; *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶ 12. That question is answered in *State v.*

Underwood, where this Court found multiple sentences on allied offenses are not authorized by law. *Underwood* at ¶ 1. It is mandated by statute that a “defendant may be convicted of only one [allied offense].” R.C. 2941.25(A). Because the trial court was not authorized by law to impose multiple sentences on allied offenses, this Court should hold that the sentences are void, and res judicata does not preclude a defendant from challenging the sentences after direct appeal.

CONCLUSION

For the reasons explained above, 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 REPLY BRIEF OF DEFENDANT-APPELLANT CAMERON D. WILLIAMS has been sent by regular U.S. mail to Richard Kasay, Assistant Summit County Prosecutor, 53 University Avenue, Akron, Ohio 44308 on this 21st day of March, 2016.

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