

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
REGINALD SNELLING	:	Case No. 13CA3
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 2010-CR-0043D

JUDGMENT: Affirmed

DATE OF JUDGMENT: September 23, 2013

APPEARANCES:

For Plaintiff-Appellee

JOHN C. NIEFT
38 South Park Street
Mansfield, OH 44902

For Defendant-Appellant

CYNTHIA D. LOWENKAMP
598 Dirlam Lane
Mansfield, OH 44904

Farmer, J.

{¶1} On February 4, 2010, the Richland County Grand Jury indicted appellant, Reginald Snelling, on one count of abduction in violation of R.C. 2905.02, two counts of failure to comply with the order or signal of a police officer in violation of R.C. 2921.331, and one count of assault on a peace officer in violation of R.C. 2903.13. A jury trial commenced on June 3, 2010. The jury found him guilty as charged. By amended sentencing entry filed July 7, 2010, the trial court sentenced him to an aggregate term of seven years in prison.

{¶2} Appellant filed an appeal and this court affirmed his convictions and sentence. *State v. Snelling*, 5th Dist. Richland No. 10CA94, 2011-Ohio-3222.

{¶3} On November 21, 2012, appellant filed a motion to vacate payment of court costs, fine and/or restitution. By judgment entry filed January 3, 2013, the trial court denied the motion, finding fines or restitution were not imposed, and it did not have the authority to suspend the imposition of court costs.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "ABUSE OF DISCRETION"

II

{¶6} "VIOLATION OF DUE PROCESS OF LAW."

III

{¶7} "VIOLATION OF APPELLANT'S RIGHT OF EQUAL PROTECTION UNDER THE LAW."

I, II, III

{¶8} Appellant claims the trial court erred in denying his motion to vacate payment of court costs, fine and/or restitution. We disagree.

{¶9} In *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, ¶ 23, the Supreme Court of Ohio held the following:

Costs are assessed at sentencing and must be included in the sentencing entry. R.C. 2947.23. Therefore, an indigent defendant must move a trial court to waive payment of costs at the time of sentencing. If the defendant makes such a motion, then the issue is preserved for appeal and will be reviewed under an abuse-of-discretion standard. Otherwise, the issue is waived and costs are res judicata.

{¶10} In the case sub judice, appellant did not move the trial court to waive the imposition of court costs at the time of sentencing, nor did appellant raise the issue in his direct appeal. *State v. Snelling*, 5th Dist. Richland No. 10CA94, 2011-Ohio-3222. Therefore, we find the issue herein to be res judicata as defined in *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus:

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 trial, which resulted in that judgment of conviction, or on an appeal from that judgment.

{¶11} Assignments of Error I, II, and III are denied.

{¶12} The judgment of the Court of Common Pleas of Richland County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Baldwin, J. concur.

Hon. Sheila G. Farmer

Hon. William B. Hoffman

Hon. Craig R. Baldwin

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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
REGINALD SNELLING	:	
	:	
Defendant-Appellant	:	CASE NO. 13CA3

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Richland County, Ohio is affirmed. Costs to appellant.

Hon. Sheila G. Farmer

Hon. William B. Hoffman

Hon. Craig R. Baldwin