

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio, :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. : No. 12AP-637  
 : (C.P.C. No. 09CR-11-7083)  
 Damon L. Walburg, : (REGULAR CALENDAR)  
 :  
 Defendant-Appellant. :

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D E C I S I O N

Rendered on March 26, 2013

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

*Damon L. Walburg*, pro se.

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APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Defendant-appellant, Damon L. Walburg, appeals from a judgment of the Franklin County Court of Common Pleas denying his "Motion to Vacate Judgment and Set Aside the Sentence and Conviction." We affirm that judgment.

**I. Factual and Procedural Background**

{¶ 2} In 2010, a jury found appellant guilty of kidnapping, felonious assault, and domestic violence. The trial court sentenced him accordingly. Appellant appealed his convictions to this court. *State v. Walburg*, 10th Dist. No. 10AP-1087, 2011-Ohio-4762. In that appeal, appellant argued that (1) sufficient evidence and the manifest weight of the evidence did not support his convictions, (2) the trial court erred in instructing the jury on the domestic violence charge and in denying his motion for a mistrial, and (3)

the trial court abused its discretion in excluding evidence of a witness's prior convictions. We disagreed and affirmed appellant's convictions. *Id.* at ¶ 67.

{¶ 3} After that decision, appellant filed the instant "Motion to Vacate Judgment and Set Aside the Sentence and Conviction." Appellant alleged that the verdict forms at his trial violated R.C. 2945.75 and *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256 and, as a result, his sentences were void. The trial court denied the motion on res judicata grounds because appellant did not raise the issue in his direct appeal to this court.

## II. The Appeal

{¶ 4} Appellant appeals and assigns the following error:

Whether the trial court abused its discretion by imposing the doctrine of res judicata.

### A. R.C. 2945.75 and Res Judicata

{¶ 5} Appellant claims the trial court erred by applying res judicata to reject his claims. We disagree.

{¶ 6} Appellant filed a direct appeal from his convictions and did not assert as error in that appeal a violation of R.C. 2945.75. This claim could have been presented in that appeal. *State v. Myers*, 10th Dist. No. 11AP-909, 2012-Ohio-2733, ¶ 6; *State v. Henson*, 6th Dist. No. E-11-068, 2012-Ohio-3730, ¶ 21. Because appellant did not raise the issue in that appeal, res judicata bars him from raising it now. *Myers*.

{¶ 7} We recognize that an exception to the application of res judicata applies to void judgments. *State v. Mitchell*, 187 Ohio App.3d 315, 2010-Ohio-1766, ¶ 22, fn. 1 (6th Dist.), citing *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, ¶ 30. However, appellant's argument would render neither his conviction nor his sentence void. *Myers* at ¶ 7; *Henson* at ¶ 17-18. Accordingly, the trial court did not err by applying res judicata to reject appellant's R.C. 2945.75 claim. We overrule appellant's assignment of error.

## III. Conclusion

{¶ 8} Having overruled appellant's assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

SADLER and DORRIAN, JJ., concur.

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