

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-10-069

Appellee

Trial Court No. 03 CR 406

v.

Dale Slocum

DECISION AND JUDGMENT

Appellant

Decided: May 20, 2011

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Gwen Howe-Gebers, Chief Assistant Prosecuting Attorney,
for appellee.

Dale Slocum, pro se.

* * * * *

YARBROUGH, J.

{¶ 1} Defendant-appellant, Dale Slocum, appeals a judgment of the Wood County Court of Common Pleas denying his motion to vacate court costs. He raises one assignment of error:

{¶ 2} "The trial court erred as a matter of law in denying relief from judgment where court costs were not imposed in open court, denying appellant due process of law."

{¶ 3} Finding that Slocum's motion is barred by the doctrine of res judicata, we affirm the judgment of the trial court.

{¶ 4} Slocum was convicted of kidnapping in 2004, and sentenced to ten years incarceration. The trial court ordered Slocum to pay the costs of his prosecution in its sentencing entry of June 22, 2004, but did not mention court costs during the sentencing hearing held on June 14, 2004. Slocum's conviction was affirmed by this court in *State v. Slocum*, 6th Dist. No. WD-04-054, 2005-Ohio-3869. Slocum did not raise the issue of court costs in that appeal.

{¶ 5} On September 3, 2010, Slocum filed a motion for relief from judgment, seeking either a nunc pro tunc entry removing court costs from the judgment or a resentencing proceeding allowing him to claim indigency and seek a waiver of the payment of court costs. The trial court denied the motion on September 21, 2010. Slocum now appeals the denial of that motion.

{¶ 6} In his sole assignment of error, Slocum argues that the trial court erred in imposing court costs in its sentencing entry when it did not address the issue verbally at the sentencing hearing. Relying on the Ohio Supreme Court's decision in *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, Slocum contends that the cause should be now be remanded for the limited purpose of allowing him to pursue his motion for a waiver of the payment of court costs. We disagree.

{¶ 7} In *Joseph*, the Supreme Court of Ohio held that a trial court may not impose court costs pursuant to former R.C. 2947.23 in its sentencing entry, when it did not impose those costs in open court at the sentencing hearing. The court explained:

{¶ 8} "While the failure of the [trial] court to orally notify Joseph that it was imposing court costs on him does not void Joseph's sentence, it was error: Crim.R. 43(A) states that a criminal defendant must be present at every stage of his trial, including sentencing. The state urges that any error is harmless. However, Joseph was harmed here. He was denied the opportunity to claim indigency and to seek a waiver of the payment of court costs before the trial court. He should have had that chance.

{¶ 9} "We therefore remand the cause to the trial court for the limited purpose of allowing Joseph to move the court for a waiver of the payment of court costs." *Id.* at ¶ 22-23.

{¶ 10} *Joseph* was decided in the context of a direct appeal from the sentencing judgment imposing court costs. Nothing in *Joseph* suggests that a trial court's failure to orally notify a defendant in open court before imposing court costs can be corrected after the appeal period expires. "It is established that, pursuant to res judicata, a defendant cannot raise an issue in a motion for postconviction relief if he or she could have raised the issue on direct appeal." *State v. Reynolds* (1997), 79 Ohio St.3d 158, 161. This court and others have generally held that the appropriate forum for challenging court costs is by way of direct appeal from the sentencing entry and that the defendant is barred under the doctrine of res judicata from raising the issue in a subsequent motion or proceeding. See

State ex rel. Galloway v. Lucas Cty. Court of Common Pleas, 6th Dist. No. L-10-1132, 2011-Ohio-1876; *State v. Lunsford*, 2d Dist. No. 24122, 2011-Ohio-964, ¶ 13; *Wuescher v. Whitney*, 5th Dist. No. 07CAD110064, 2008-Ohio-118, ¶ 4; *State v. Ybarra*, 3d Dist. No. 12-05-05, 2005-Ohio-4913, ¶ 7-8; *State ex rel. Biros v. Logan*, 11th Dist. No. 2003-T-0016, 2003-Ohio-5425, ¶ 10; *State v. Pasqualone* (2000), 140 Ohio App.3d 650, 657.

{¶ 11} In this case, Slocum could have raised the issue of court costs in his direct appeal to this court in 2004. Slocum has not shown that he was precluded from raising the issue at that time based on information contained in the original record. See *State v. Gonzales*, 6th Dist. No. WD-09-078, 2010-Ohio-4703, ¶ 23. Having failed to do so, Slocum is now barred from raising the issue in a motion for postconviction relief.

{¶ 12} Accordingly, appellant's sole assignment of error is not well-taken

{¶ 13} The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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