IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-160697 TRIAL NO. B-0301378
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
ANDRE WASHINGTON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

On September 4, 2003, defendant-appellant Andre Washington was convicted of two counts of aggravated robbery with specifications and one count of possession of cocaine. He was sentenced to eight years in prison for each aggravated-robbery count, three years in total for the merged specifications, and one year for possession of cocaine. The trial court ordered all of the terms to be served consecutively, for a total of 20 years in prison. On appeal, this court affirmed his convictions and sentences. *State v. Washington*, 1st Dist. Hamilton No. C-030713 (Nov. 3, 2004).

Over 12 years later, Washington filed a pro se motion to vacate his void sentence, claiming that he had not been informed of the length of his postrelease control obligations upon release or the consequences of being placed on postrelease control. The trial court appointed counsel to represent Washington and conducted a hearing. Counsel attempted to relitigate Washington's sentence, including arguing that the two aggravated-robbery convictions were allied offenses of similar import subject to merger. The trial court limited the proceedings to properly informing Washington of postrelease control, did so, and reimposed Washington's original sentence without further discussion.

In his first assignment of error, Washington argues that the trial court erred when it failed to conduct a de novo sentencing hearing. The Ohio Supreme Court had previously held that, when a sentencing court fails to properly impose postrelease control, the entire sentence is void and the defendant is entitled to be sentenced de novo. *See State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶ 6. But that holding was significantly limited three years later, when the court concluded that "the new sentencing hearing to which an offender is entitled to under *Bezak* is limited to the proper imposition of postrelease control." *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 29. The court went on to clarify that "the doctrine of res judicata still applies to other aspects of the merits of the conviction, including the determination of guilt and the lawful elements of the ensuing sentence." *Id.* at ¶ 40. The court further noted that "[t]he scope of an appeal from a resentencing hearing in which a mandatory term of postrelease control is imposed is limited to issues arising at the sentencing hearing." *Id.*

In this case, the trial court properly limited the scope of the hearing to the imposition of postrelease control. Washington was not entitled to a de novo sentencing hearing. And while the trial court may have technically erred when it "reimposed" his original sentence rather than leaving the original sentence in place, any error in that regard was harmless. *See* Crim.R. 52(A). We overrule his first assignment of error.

In his second assignment of error, Washington argues that the trial court erred when it failed to determine that his two aggravated-robbery convictions were allied offenses of similar import. But, unlike the failure to properly impose postrelease control, the failure of a trial court to merge allied offenses of similar import renders a sentence voidable, not void. *See State v. Grant*, 1st Dist. Hamilton No. C-120695, 2013-Ohio-3421, ¶ 18-19. A sentence that is not void, but merely voidable, may only be successfully challenged on direct appeal. *State v. Payne*, 114

Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 28. Therefore, the trial court lacked jurisdiction to consider Washington's allied-offenses arguments. *See State v. Lee*, 1st Dist. Hamilton No. C-120307, 2013-Ohio-1811, ¶ 7. We overrule Washington's second assignment of error.

Having considered and overruled both assignments of error, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and **DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on August 9, 2017

per order of the court _____.

Presiding Judge