

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

STATE OF OHIO,	:	APPEAL NO. C-240361
	:	TRIAL NO. B-2102022
Plaintiff-Appellee,	:	
vs.	:	
DAVID ALLEN PATRICK,	:	<i>JUDGMENT ENTRY</i>
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Bringing forth a single assignment of error in this appeal, defendant-appellant David Allen Patrick challenges the common pleas court’s judgment denying his motion to set aside the trial court’s sentencing entry, which ordered Patrick to serve an eight-year prison term for felonious assault. Patrick argues that his sentence is contrary to law because he was not sentenced in compliance with the Reagan Tokes Act. Because Patrick’s challenge is barred by res judicata, we affirm the common pleas court’s judgment.

In January 2022, Patrick entered a guilty plea to one count of felonious assault and was ordered to serve an eight-year prison term. In the entry, the trial court noted that the Reagan Tokes sentencing scheme was unconstitutional as applied to Patrick. In his direct appeal from that judgment of conviction, Patrick argued that his sentence was contrary to law because he had not been properly notified about postrelease

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control and because the trial court had erroneously imposed a community-control sanction (a no-contact order) in addition to a prison sentence. This court affirmed the judgment in part, reversed it in part, vacated the no-contact order, and remanded the cause for proper notification of postrelease control. *State v. Patrick*, 2022-Ohio-4171 (1st Dist.). At his resentencing hearing, held on January 19, 2023, at which Patrick was present, the trial court again imposed an eight-year prison term for felonious assault and provided the proper postrelease-control notifications. The sentencing entry was journalized the same day, noting that Patrick had been informed of his right to appeal. Patrick did not appeal.

Approximately one year later, Patrick moved to set aside his sentence, arguing it was void because it did not comply with the indefinite sentencing scheme embodied in Regan Tokes. The common pleas court denied his motion, and Patrick now appeals, arguing in a single assignment of error that the common pleas courts erred in doing so. We disagree.

Even presuming that a sentencing error occurred, that error does not render Patrick's judgment of conviction and sentence void and subject to collateral attack. Under the Ohio Supreme Court's current void-sentence jurisprudence, sentencing errors render a sentence voidable, not void, where the sentencing court has jurisdiction over both the case and the defendant. *State v. Henderson*, 2020-Ohio-4784, ¶ 1; *State v. Harper*, 2020-Ohio-2913, ¶ 4. Here, the sentencing court had jurisdiction over Patrick's felony case, *see Harper* at ¶ 25, and personal jurisdiction over Patrick. *See Henderson* at ¶ 36 (in criminal matters, a trial court acquires personal jurisdiction by lawfully issued process, followed by arrest and arraignment of the defendant and entry of a plea to the charge). Thus, any error in Patrick's sentence must be challenged on direct appeal, or the sentence will be subject to res judicata.

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Harper at ¶ 43; *State v. Emanuel*, 2021-Ohio-448, ¶ 9, 10 (1st Dist.). But Patrick did not raise this challenge to his sentence in his first appeal and did not file an appeal after being resentenced in January 2023. Thus, his challenge to his sentence is now barred by res judicata. See *State v. Blanton*, 2022-Ohio-3985, ¶ 12 (“The doctrine of res judicata bars someone from raising a claim that could have been raised and litigated in a prior proceeding.”).

Accordingly, we overrule Patrick’s single assignment of error and affirm the judgment of the common pleas court.

The court further orders that 1) a copy of this Judgment constitutes the mandate and 2) the mandate be sent to the trial court for execution under App.R. 27. We refrain from taxing costs and expenses against appellant because he is indigent.

KINSLEY, P.J., ZAYAS and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on 2/5/2025 per order of the court.

By: _____
Administrative Judge