

Delaney, J.

{¶1} Plaintiff-Appellant, State of Ohio appeals the February 11, 2014 judgment entry of the Richland County Court of Common Pleas.

FACTS AND PROCEDURAL HISTORY

{¶2} Defendant-Appellee Martin Rawls, Jr. was indicted by the Richland County Grand Jury on one count of Possession of Cocaine in an amount exceeding twenty grams but less than twenty-seven grams, a felony of the second degree; one count of Possession of Heroin in an amount exceeding five grams but less than ten grams, a felony of the third degree; one count of Weapons Under Disability, a felony of the third degree; and one count of Unlawful Possession of a Dangerous Ordinance, a felony of the fifth degree. On January 3, 2014, Rawls was represented by counsel and he entered a plea of guilty to the indictment, minus the repetitive forfeiture specifications in count two.

{¶3} By sentencing entry filed on January 6, 2014, the trial court sentenced Rawls to four years of prison on count one and imposed a mandatory fine of \$7,500.00. Rawls was further sentenced to 36 months of prison with time suspended and three years mandatory post release control.

{¶4} Rawls did not appeal his sentence.

{¶5} On January 24, 2014, Rawls through counsel filed a motion for an order suspending the imposition of the mandatory drug fine because Rawls did not have the ability to pay the fine. Rawls simultaneously filed an affidavit of indigency.

{¶6} On January 30, 2014, Rawls filed a pro se motion to withdraw guilty plea.

{¶7} On February 11, 2014, the trial court granted Rawls's motion for order suspending the mandatory fine. The trial court found it was prohibited by the Ohio Revised Code from imposing the mandatory fine based on Rawls's affidavit of indigency.

{¶8} It is from this decision the State now appeals.

ASSIGNMENT OF ERROR

{¶9} The State raises one Assignment of Error:

{¶10} "I. THE TRIAL COURT ERRED WHEN IT VACATED THE MANDATORY FINES IN THIS CASE AS THE TRIAL COURT DID NOT HAVE THE AUTHORITY TO RECONSIDER ITS OWN VALID JUDGMENT."

ANALYSIS

{¶11} The State argues in its sole Assignment of Error the trial court erred in vacating the mandatory fine. We agree.

{¶12} Rawls pleaded guilty to one count of Possession of Cocaine in an amount exceeding twenty grams but less than twenty-seven grams in violation of R.C. 2925.11(A) & (C)(4)(d), a felony of the second degree. Pursuant to R.C. 2925.11(E)(1)(a), a trial court sentencing an offender who pleads guilty to a first or second degree felony under R.C. 2925.11 shall impose a mandatory fine pursuant to R.C. 2929.18(B)(1). R.C. 2929.18(B)(1) states that "[f]or a first, second, or third degree felony violation of any provision of Chapter 2925 * * * of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section." The maximum fine for a felony of the

second degree is \$15,000.00. R.C. 2929.18(A)(3). The trial court imposed a mandatory fine of \$7,500.00.

{¶13} R.C. 2929.18(B)(1) states that a sentencing court shall impose a mandatory fine upon an offender unless (1) the offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine, and (2) the court determines that the offender is in fact an indigent person and is unable to pay the mandatory fine. *State v. Gipson*, 80 Ohio St.3d 626, 631, 687 N.E.2d 750 (1998).

{¶14} In the present case, Rawls did not file his affidavit of indigency prior to sentencing. The record does not show the trial court determined Rawls was an indigent person and was unable to pay the mandatory fine based on an affidavit of indigency filed prior to sentencing.

{¶15} In *State v. Slagle*, 5th Dist. Richland No. 12CA62, 2013-Ohio-230, this Court held that it was error for a trial court to vacate a mandatory fine based on an affidavit of indigency filed after sentencing.

{¶16} We determined the issue of the mandatory fine was res judicata. The appellant in *Slagle*, as in the present case, did not appeal his sentence that imposed the mandatory fine. We relied upon *State v. Perry*, 10 Ohio St.2d 175, 176, 226 N.E.2d 104 (1967) to find the appellant's claim was barred by res judicata:

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

{¶17} We further held in *Slagle* the trial court was without jurisdiction to vacate its own valid final judgment. *Slagle* at ¶ 9. The exceptions to that rule are to (1) correct a void sentence or (2) to correct a clerical error. *Id.* at ¶ 9. At the time of sentencing, the trial court's imposition of the mandatory fine was valid because Rawls failed to file an affidavit of indigency prior to sentencing pursuant to R.C. 2929.18(B)(1).

{¶18} Rawls argues R.C. 2929.18(E) permits the trial court to review the imposition of the mandatory fine at any time, even if the defendant did not file an affidavit of indigency prior to sentencing. R.C. 2929.18(E) reads: "A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it."

{¶19} R.C. 2929.18(E) makes a hearing discretionary when initially imposing a fine. *State v. Johnston*, 5th Dist. Ashland No. 99C0A01333, 2000 WL 1055893, *2 (July 26, 2000). Under R.C. 2929.18(E), a trial court may conduct a hearing to determine whether an offender is able to pay the sanction or is likely, in the future, to be able to pay it. The language contained in the statute, as it relates to a hearing, makes the holding of such a hearing discretionary with the trial court. *Id.*

{¶20} We decline to extend R.C. 2929.18(E) pursuant to Rawls's interpretation of the statute. The Ohio Supreme Court held in *Gipson* that the required filing of an affidavit of indigency prior to sentencing for purposes of avoiding a mandatory fine is, in effect, a jurisdictional issue. *Gipson*, 80 Ohio St.3d 626, 633.

{¶21} Rawls's sole Assignment of Error is overruled.

CONCLUSION

{¶22} The February 11, 2014 judgment of the Richland County Court of Common Pleas is reversed and vacated.

By: Delaney, J.,

Gwin, P.J. and

Baldwin, J., concur.