

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-578 (C.P.C. No. 05CR-05-2912)
Rico L. Darks,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on January 24, 2013

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Rico L. Darks, pro se.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Defendant-appellant, Rico L. Darks, pro se, appeals from a judgment of the Franklin County Court of Common Pleas denying his motion for resentencing. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} In June 2005, appellant pleaded guilty to possession of cocaine in violation of R.C. 2925.11, a second-degree felony. The trial court sentenced appellant to a six-year prison term to be served consecutively to a prison term imposed for his attempted murder conviction in case No. 04CR-1481. On direct appeal, this court affirmed appellant's conviction. *See State v. Darks*, 10th Dist. No. 05AP-982, 2006-Ohio-3144.

{¶ 3} In February 2012, appellant, acting pro se, filed a motion for a de novo sentencing hearing in the trial court. Appellant argued that a new sentencing hearing was

required because the trial court's sentence failed to properly impose a period of post-release control. The trial court denied appellant's motion in a decision and entry filed on March 14, 2012. Appellant did not appeal the trial court's decision.

{¶ 4} On April 25, 2012, appellant filed a "Motion to Impose a Valid Sentence To O.R.C. §2929.13(F)(4), §2929.19 and §2925.11," asserting that the trial court failed to make certain findings, did not inform him of his right to allocution, and failed to state that the prison term was mandatory at the sentencing hearing or in the sentencing entry. The trial court denied appellant's motion in a decision and entry filed June 20, 2012.

II. DISCUSSION

{¶ 5} Appellant now appeals, presenting the following assignment of error for our consideration:

TRIAL COURT ERRED BY FAILING TO PROPERLY IMPOSE POST-RELEASE CONTROL; MISTATEMENT OF THE STATUTORILY MANDATED TERM IN CASE NO. (05-CR-2912); AS WELL AS FAILURE TO JOURNALIZE POST-RELEASE CONTROL SANCTIONS/MANDATE IN THE DEFENDANT'S JUDGMENT ENTRIE [sic] IN CASE NO (05-CR-2912) AND (04-CR-1481).

{¶ 6} Appellant's sole assignment of error consists entirely of challenges unrelated to the judgment identified in his notice of appeal. Although he appeals from the trial court's judgment entered on June 20, 2012, his brief presents the same post-release control arguments as those contained in his February 2012 motion for de novo sentencing, which the trial court denied on March 14, 2012. Because appellant's brief does not present any arguments relating to the trial court's June 2012 judgment, he has failed to satisfy his "burden of affirmatively demonstrating error by the trial court." *State v. Sullivan*, 10th Dist. No. 10AP-997, 2011-Ohio-6384, ¶ 87. To the extent appellant challenges the trial court's March 2010 judgment denying his post-release control-related sentencing motion, "[w]e have jurisdiction to review assignments of error stemming only from the judgment subject of the notice of appeal." *State v. Thompkins*, 10th Dist. No. 07AP-74, 2007-Ohio-4315, ¶ 7, citing App.R. 3(D). "[A]ssignments of error must relate to the judgment that is the subject of the notice of appeal." *Id.*; see also *State v. Smith*, 6th Dist. No. L-10-1150, 2011-Ohio-5945, ¶ 3 ("proposed assignments of error are not

properly before the court because the proposed errors do not relate to the judgment on appeal"); *State v. Nelson*, 8th Dist. No. 94580, 2011-Ohio-326, ¶ 10.

{¶ 7} Nevertheless, even if appellant's post-release control arguments were properly related to the underlying judgment, we find them to be barred by the doctrine of 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. *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus. Although res judicata does not preclude review of a "void" sentence, the doctrine "still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence." *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, paragraph three of the syllabus. Thus, to survive the res judicata bar, appellant was required to demonstrate that his sentence was "void." *State v. Reed*, 10th Dist. No. 11AP-792, 2012-Ohio-1612, ¶ 8.

{¶ 8} The imposition of post-release control consists of (1) notification of post-release control at the time of sentencing and (2) incorporation of post-release control in the sentencing entry. *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, ¶ 18-19. Notification at sentencing must, in cases where post-release control is mandatory, include a notification that the offender "will be supervised under [R.C. 2967.28] after the offender leaves prison" and a notification regarding the consequences of violating post-release control. R.C. 2929.19(B)(2)(c). *See also* R.C. 2929.19(B)(2)(e). The sentencing entry must include "a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division." R.C. 2929.14(D)(1).

{¶ 9} At the sentencing hearing, the trial court orally notified appellant that he was subject to a mandatory five-year period of post-release control and of the consequences of violating post-release control. The trial court also provided this notification in a form entitled "Notice (Prison Imposed)," which appellant signed the same day. Additionally, the sentencing entry states the following regarding post-release

control: "After the imposition of sentence, the Court notified the Defendant, orally and in writing, of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)."

{¶ 10} Appellant first disputes the trial court's notification regarding post-release control at the sentencing hearing. He claims that the trial court misstated that he was subject to a mandatory five-year term of post-release control because the offense of cocaine possession to which he pleaded guilty was a second-degree felony, carrying only a mandatory three-year post-release control term.

{¶ 11} While we agree that appellant's second-degree felony was subject to a mandatory three-year term, rather than a mandatory five-year term, *see* R.C. 2967.28(B)(2), this does not render the trial court's statement incorrect. Appellant was also being sentenced for the offense of attempted murder in case No. 04CR-481, a first-degree felony carrying a mandatory five-year post-release control term. *See* R.C. 2967.28(B)(1). In cases where, as here, an offender is subject to multiple periods of post-release control, "the period of post-release control for all of the sentences shall be the period of post-release control that expires last, as determined by the parole board or court. Periods of post-release control shall be served concurrently and shall not be imposed consecutively to each other." R.C. 2967.28(F)(4)(c). Thus, in multiple-offense cases, the sentencing court need only notify the defendant of the longest applicable period of post-release control. *State v. Reed*, 6th Dist. No. E-11-049, 2012-Ohio-5983, ¶ 12; *State v. Buckner*, 1st Dist. No. C-100666, 2011-Ohio-4358, ¶ 18; *State v. Ballou*, 8th Dist. No. 95733, 2011-Ohio-2925, ¶ 16, citing *Durain v. Sheldon*, 122 Ohio St.3d 582, 2009-Ohio-4082, ¶ 1. "[T]he trial court need not announce at the sentencing hearing nor include in the sentencing judgment the applicable postrelease control sanction for each individual offense irrespective of whether the terms of control are identical or different." *Reed* at ¶ 12. Accordingly, because the trial court correctly notified appellant about the longest applicable period of post-release control, we find appellant's argument to be without merit.

{¶ 12} Appellant also contends that the post-release control portion of his sentence is void because post-release control was not properly incorporated into the sentencing entry. We disagree. This court has concluded, in rejecting similar arguments, that post-

release control may be properly imposed when such "applicable periods" language in the trial court's sentencing entry is combined with other written or oral notification of the imposition of post-release control. *State v. Myers*, 10th Dist. No. 11AP-909, 2012-Ohio-2733, ¶ 11; *State v. Townsend*, 10th Dist. No. 10AP-983, 2011-Ohio-5056, ¶ 7-14 (analyzing cases from this court that have considered notifications with sentencing entries that contain "applicable periods" language); *State v. Holloman*, 10th Dist. No. 11AP-454, 2011-Ohio-6138, ¶ 11. We have also recognized that, "where a sentencing entry incorporates post-release control as part of the sentence, claims that such language was 'inartfully phrased' are non-jurisdictional and concern, at most, voidable error that should be raised on direct appeal." *Surella v. Ohio Adult Parole Auth.*, 10th Dist. No. 11AP-499, 2011-Ohio-6833, ¶ 23.

{¶ 13} Appellant also argues that the sentencing entry was deficient because it does not recite the consequences of violating post-release control as stated by the trial court at the sentencing hearing. However, the entry specifically states that appellant was notified of post-release control, pursuant to R.C. 2929.19(B)(3)(e), which sets forth the consequences of violating post-release control. Regardless, appellant cites no authority—and we find none—for the proposition that post-release control is void where the sentencing entry does not contain a verbatim recitation notifying appellant of the consequences of violating post-release control. *See State v. Dedonno*, 8th Dist. No. 94732, 2010-Ohio-6361, ¶ 12 ("no court has held the failure to state in the journal entry the consequences of violating postrelease control results in a void sentence"). Therefore, even if appellant's arguments were properly before this court, they fail to demonstrate that his sentence was "void" and thus cannot survive the res judicata bar.

{¶ 14} Accordingly, appellant's sole assignment of error is overruled.

III. CONCLUSION

Having overruled appellant's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and DORRIAN, JJ., concur.
