

[Cite as *State v. Parker*, 2018-Ohio-3677.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106585

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CEDRIC PARKER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-11-554064-A

BEFORE: E.A. Gallagher, A.J., Blackmon, J., and Jones, J.

RELEASED AND JOURNALIZED: September 13, 2018

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APPELLANT

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{¶1} Defendant-appellant Cedric Parker, pro se, appeals from the trial court’s denial of his motion for resentencing. He contends that the trial court erred by failing to issue findings of fact and conclusions of law in denying his motion and that his sentences are void because the trial court (1) did not properly advise him regarding postrelease control prior to the acceptance of his guilty pleas and (2) imposed a single “lump sum sentence” when imposing postrelease control instead of imposing separate terms of postrelease control for each count. For the reasons that follow, we affirm the trial court’s judgment.

Factual and Procedural Background

{¶2} In March 2012, Parker pled guilty to two counts of aggravated robbery in violation of R.C. 2911.01(A)(1) (Counts 1 and 2) with three-year firearm specifications, one count of felonious assault of a peace officer in violation of R.C. 2903.11(A)(2) with three-year and seven-year firearm specifications (Count 6) and one count of kidnapping in violation of R.C. 2905.01(A)(2) with a three-year firearm specification (Count 8).

{¶3} At the sentencing hearing a month later, the trial court determined that Counts 1 and 2 merged for sentencing and that the three-year and seven-year firearm specifications associated with Count 6 merged. The state voluntarily dismissed the three-year firearm specification associated with Count 8. The trial court sentenced Parker to an aggregate prison term of 24 years: four years on the base offense in Count 1, to be served consecutively to the three-year sentence on the three-year firearm

specification in Count 1; six years on the base offense in Count 8, to be served concurrently with the sentence on the base offense in Count 1; and eight years on the base offense in Count 6, to be served consecutively to the sentences on the seven-year firearm specification in Count 6 and the three-year firearm specification in Count 1.

{¶4} With respect to the imposition of postrelease control, the trial court stated:

You'll have 5 years of Post-Release Control on each of the felony counts. And let me read that again. As I've imposed a prison term, upon the completion of that term the Defendant will be placed under a mandatory period of five years of Post-Release Control. If the Defendant fails meet the terms and conditions of any Post-Release Control supervision, then the Adult Parole Authority can modify and/or extend his supervision and make it more restrictive, incarcerate the Defendant for up to one-half the original sentence imposed by the Court, charge the Defendant with a new offense called "escape," another felony where he would face additional prison time.

And if he were to commit a new crime while under the Post-Release Control he could face the maximum penalties under the law for the new crime committed.

{¶5} Parker appealed his convictions and sentences. He argued that the trial court erred when it determined that it was statutorily required to run the sentence on the seven-year firearm specification in Count 6 consecutively to the sentence on the three-year firearm specification in Count 1. *State v. Parker*, 8th Dist. Cuyahoga No. 98272, 2013-Ohio-2898, ¶ 8 ("*Parker I*"). He also argued (1) that his plea should be vacated because the trial court erroneously advised him during the plea hearing that the sentences on the two firearm specifications were required to be run consecutively, (2) that the trial court erred in imposing multiple sentences on allied offenses, (3) that the trial court abused its discretion in failing to apply the purposes and principles of sentencing

pursuant to R.C. 2929.11 and (4) that the trial court failed to make certain of the statutory findings required for the imposition of consecutive sentences. *Id.* at ¶ 18-19, 24, 29.

{¶6} On appeal, this court found that the trial court had substantially complied with Crim.R. 11 in accepting Parker’s guilty pleas and that the offenses at issue were not allied offenses. *Id.* at ¶ 18, 21-23. This court further determined that the trial court had complied with R.C. 2929.11. *Id.* at ¶ 28. However, this court held that the trial court was not required to run the seven-year firearm specification in Count 6 consecutive to the three-year firearm specification in Count 1 and had failed to make one of the findings required for the imposition of consecutive sentences under R.C. 2929.14(C)(4), i.e., that consecutive sentences are “necessary to protect the public from future crime or to punish the offender.” *Id.* at ¶ 15-17, 34. Accordingly, this court reversed Parker’s sentence and remanded the case to the trial court to conduct a resentencing (1) “with consideration that it is not mandatory that the seven-year firearm specification run consecutive to the three-year firearm specification” and (2) “with consideration of the required findings under R.C. 2929.14(C)(4) if the court intends to impose consecutive sentences.” *Id.* at ¶ 35.

{¶7} On remand, the trial court stated in its sentencing journal entry: “All sentences remain as previously stated. The 7 year specification to run consecutive to all other sentences and specifications.”¹ The trial court also made the additional finding

¹ Parker did not file a transcript of the resentencing hearing with this court. Accordingly, to the extent it is relevant to his appeal, we presume regularity at the resentencing hearing. *See, e.g.,*

necessary for the imposition of consecutive sentences that it had failed to make at the original sentencing hearing, i.e., that consecutive sentences were necessary to protect the public and punish the offender, and incorporated that finding into its sentencing journal entry “along with the previous findings.” With respect to the imposition of postrelease control, the trial court stated:

Post release control is part of this prison sentence for 5 years mandatory for the above felony(s) under R.C. 2967.28. Defendant advised that if/when post release control supervision is imposed following his/her release from prison and if he/she violates that supervision or condition of post release control, under R.C. 2967.131(B), parole board may impose a prison term as part of the sentence of up to one-half of the stated prison term originally imposed upon the offender.

Parker did not appeal from this sentencing journal entry.

{¶8} On July 25, 2017, Parker filed, pro se, a motion to arrest judgment, arguing that the trial court lacked subject matter jurisdiction because his case was initiated by a grand jury indictment rather than a complaint. The trial court denied the motion.

{¶9} On October 23, 2017, Parker filed, pro se, a “motion for resentencing based on a void judgment.” Parker argued that the trial court’s “lump sum sentence for Post-Release Control” was void and that he should be resentenced because the trial court

State v. Pace, 8th Dist. Cuyahoga No. 105491, 2018-Ohio-275, ¶ 9; *State v. Poole*, 8th Dist. Cuyahoga No. 105765, 2017-Ohio-8323, ¶ 15.

“failed to specify [to] which count or count(s)” the period of postrelease control it imposed. The state opposed the motion. On November 17, 2017, the trial court denied Parker’s motion.

{¶10} Parker appealed, raising the following three assignments of error for review:

First Assignment of Error: The trial court erred as a matter of law, and abuse[d] it’s [sic] discretion, when the court failed to give facts [sic] finding and conclusion in it’s [sic] decision filed on November 7, 2017 denying appellant’s motion for re-sentencing based on a void judgment.

Second Assignment of Error: The trial court erred as a matter of law, and abused it’s [sic] discretion, when the trial court rendered a void judgment in-part, when the court fails [sic] during the plea colloquy to advise the defendant-appellant that the sentence will include a mandatory term of post-release control for five years, instead of “you may be subject to community control for a period up to five years[”] in violation of R.C. 2929.19(B)(3)(c) through (e) and R.C. 2967.28.

Third Assignment of Error: The trial court erred as a matter of law, and abused it’s [sic] discretion, when the trial court failed to separately dispose of each community control terms [sic] for each separate count for post-release control, instead of “post-release control is part of this prison sentence for 5 years mandatory for the above felony(s) under R.C. 2967.28.”

Law and Analysis

Failure to Make Findings of Facts and Conclusions of Law

{¶11} In his first assignment of error, Parker argues that the trial court erred by failing to make “facts findings and[/]or conclusions” in its November 7, 2017 journal entry when denying his motion for resentencing. Parker does not explain why he contends the trial court was required to make such findings and conclusions in denying his motion, there is nothing in the record that suggests that Parker requested that the trial court make any such findings or conclusions in ruling on his motion and Parker does not point to any authority requiring the trial court to include such findings or conclusions in its journal entry. Accordingly, we disregard this assignment of error. See App.R. 12(A)(2), 16(A)(7).

Postrelease Control

{¶12} In his second and third assignments of error, Parker challenges the trial court’s advisements regarding postrelease control. If a trial court fails to impose the statutorily mandated term of postrelease control as part of a defendant’s sentence, that part of the sentence is void and must be set aside. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 26. “[V]oid sentences are not precluded from appellate review by principles of res judicata and may be reviewed at any time, on direct appeal or by collateral attack.” *Id.* at ¶ 40. Res judicata, however, “still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence.” *Id.*; see also *State v. McGee*, 8th Dist. Cuyahoga No. 104566, 2017-Ohio-1363, ¶ 4, quoting *Fischer* at ¶ 31 (“A motion to correct a void sentence is limited to the narrow function of correcting only an illegal

sentence. * * * A motion to correct a void sentence ‘does not permit reexamination of all perceived errors at trial or in other proceedings prior to sentencing.’”).

Advisement Regarding Postrelease Control at Plea Hearing

{¶13} In his second assignment of error, Parker contends that the postrelease control portion of his sentence is void because the trial court failed to advise him during the colloquy at his change-of-plea hearing that postrelease control would be part of his sentence for a mandatory term of five years and that the trial court could not accept his guilty pleas “for failure to comply with [these] statutory requirements mandated by law.”

{¶14} “‘Res judicata prevents repeated attacks on a final judgment and applies to all issues that were or might have been litigated.’” *State v. Moore*, 8th Dist. Cuyahoga Nos. 100483 and 100484, 2014-Ohio-5682, ¶ 28, quoting *State v. Sneed*, 8th Dist. Cuyahoga No. 84964, 2005-Ohio-1865, ¶ 16. In Parker’s direct appeal of his convictions, he challenged the validity of his guilty pleas. *Parker I* at ¶ 18. This court found that the trial court had substantially complied with Crim.R. 11 in accepting Parker’s guilty pleas and that his guilty pleas were valid. *Id.* Thus, res judicata precludes our consideration of the merits of Parker’s second assignment of error.

{¶15} Even if, however, consideration of Parker’s second assignment of error was not barred by res judicata, we would find no error. In this case, the transcript from the change-of-plea hearing reflects that, prior to accepting his guilty pleas, the trial court advised Parker that “[i]f the Court imposes a prison term, upon the completion of that

term the State of Ohio will supervise you under a mandatory period of five years under post release control.”

{¶16} The trial court further explained the consequences of violating postrelease control as follows:

Now, if you fail to meet the terms and conditions of the post release control supervision imposed upon you on any of these counts, then the Adult Parole Authority can modify and/or extend your supervision and make it more restrictive, incarcerate you for up to one-half of the original sentence imposed by the Court, charge you with a new offense called escape, where you will face additional prison time. And if you were to commit a new crime while under the post release control you could face the maximum penalties under the law for the new crime committed.

Parker indicated that he understood the advisements he had been given regarding postrelease control. Accordingly, we overrule Parker’s second assignment of error.

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Postrelease Control Notification at Sentencing

{¶17} In his third assignment of error, Parker argues that his sentence is void because the trial court imposed a single, “lump sum sentence” for postrelease control instead of imposing a period of postrelease control separately for each count. He requests that he be resentenced “in compliance with the statut[es] mandated by law” to “impose Post-Release Control upon the remaining counts of his sentence.”

{¶18} Citing *State v. Williams*, 3d Dist. Hancock No. 5-10-02, 2011-Ohio-995, and *State v. Mack*, 1st Dist. Hamilton No. C-140054, 2015-Ohio-1430, Parker argues that “a trial court may not impose one lump sum community control sentence instead of imposing a specific community control sentence for post-release control for each count” and that the trial court’s failure to specify a period of postrelease control for each count violates Crim.R. 32(C).

{¶19} Parker confuses postrelease control and community control, using the two concepts interchangeably. However, postrelease control and community control are different. Postrelease control is a period of supervision of an offender by the Adult Parole Authority after release from prison that includes one or more postrelease control sanctions imposed by the parole board pursuant to R.C. 2967.28. Community control is a period of supervision by the county probation department imposed by the court in lieu of a prison sentence that may include a variety of residential and/or nonresidential sanctions. In this case, it is postrelease control — not community control — that is at issue.

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{¶20} This court has previously rejected the argument that a trial court is required to impose separate terms of postrelease control for each individual offense. See *State v. Davis*, 8th Dist. Cuyahoga No. 104574, 2018-Ohio-1147, ¶ 69-70; *State v. Makin*, 8th Dist. Cuyahoga No. 104010, 2017-Ohio-8569, ¶ 6-8; *State v. Byrd*, 8th Dist. Cuyahoga No. 98037, 2012-Ohio-5728, ¶ 3-33; *State v. Orr*, 8th Dist. Cuyahoga No. 96377, 2011-Ohio-6269, ¶ 46-50; *State v. Morris*, 8th Dist. Cuyahoga No. 97215, 2012-Ohio-2498, ¶ 16-18; see also *State v. Reed*, 2012-Ohio-5983, 983 N.E.2d 394, ¶ 12 (6th Dist.) (“[T]he sentencing court only has the duty in multiple offense cases to notify the defendant of and impose the longest term of post-release control applicable under R.C. 2967.28(B). * * * [T]he trial court need not announce at the sentencing hearing nor include in the sentencing judgment the applicable post-release control sanction for each individual offense * * *.”). As this court has explained, R.C. 2967.28(F)(4)(c) “precludes the court or parole board from imposing more than one period of postrelease control in cases that involve multiple convictions.” See *Davis* at ¶ 70; see also R.C. 2967.28(F)(4)(c), (“If an offender is subject to more than one period 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.”).

{¶21} The record reflects that the trial court properly notified Parker that he was subject to a mandatory five-year period of postrelease control. Parker’s sentence was

not void and the trial court did not err in denying his motion for resentencing. Parker's third assignment of error is overruled.

{¶22} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

PATRICIA ANN BLACKMON, J., and
LARRY A. JONES, SR., J., CONCUR