

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 108320
	:	
v.	:	
	:	
EDWARD TAYLOR,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED AND REMANDED
RELEASED AND JOURNALIZED: October 24, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-07-502904-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Daniel T. Van, Assistant Prosecuting
Attorney, *for appellee*.

Edward Taylor, *pro se*.

PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Defendant-appellant Edward Taylor appeals from his 2019 resentencing that imposed postrelease control for his attempted murder conviction, following a remand by this court. Taylor assigns the following three errors for our review:

- I. A journal entry is not a final appealable order when its judgment entry is in violation of the one document rule as stated in *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163 and violates *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, where the sentencing entry fails to set forth the sentence as required by Crim. R. 32(C).
- II. Post-release control for a period of up to five years is erroneous pursuant to R.C. 2967.28(B)(1) which mandates a post release control period of five years, not “up to” five years.
- III. A trial court abuses its discretion in not granting a defendant’s motion in objection pursuant to R.C. 2929.191(C) as to whether the court should issue a correction to the judgment of conviction where defendant’s contractual plea agreement is void ab initio under state and federal law.

{¶ 2} Having reviewed the record and the controlling case law, we affirm the imposition of postrelease control for Taylor’s attempted murder conviction, but we remand the matter for nunc pro tunc correction of the sentence to reflect the imposition of a mandatory five-year term of postrelease control on the attempted murder conviction.

{¶ 3} In 2007, Taylor was indicted in a nine-count indictment in connection with attacks upon Peggy Wallace Bender (“Bender”) and Harry Mays (“Mays”). Taylor was charged with two counts of aggravated murder with capital murder specifications for the death of Bender, one count of attempted murder for the shooting of Mays, two counts of aggravated robbery, four counts of aggravated burglary, and numerous specifications. In 2009, Taylor pled guilty to one count of aggravated murder without capital murder specifications, and one count of attempted murder. The remaining charges were dismissed. The court sentenced

Taylor to an agreed life sentence with the possibility of parole after 30 years. *State v. Taylor*, 8th Dist. Cuyahoga No. 94569, 2010-Ohio-5607, ¶ 1 (“*Taylor I*”). On direct appeal, Taylor argued that his guilty plea was invalid and that the trial court erred by informing him that he would be subject to postrelease control for aggravated murder, an unclassified felony. *Id.* A panel of this court agreed that postrelease control is inapplicable to aggravated murder and issued a limited remand for the purpose of correcting the sentencing entry to indicate that Taylor will not be subject to postrelease control for aggravated murder. Nonetheless, this court determined that the error was not prejudicial and did not influence Taylor’s decision to plea, concluding that “[o]ffenders tend to object to the imposition of postrelease control; they do not seek it out.” *Id.* at ¶ 7.

{¶ 4} In September 2011, Taylor moved the trial court to “void his plea contract” on the grounds that the improper postrelease control term for the unclassified felony rendered the plea void. The trial court denied the motion, and this court affirmed. *State v. Taylor*, 8th Dist. Cuyahoga No. 97690, 2012-Ohio-2070 (“*Taylor II*”).

{¶ 5} During the remand ordered in *Taylor I*, the trial court issued a judgment entry that provided that the “sentencing entry of 5/26/09 is amended to delete reference to postrelease control.” Taylor challenged the new sentence issued on remand, arguing that postrelease control was not properly imposed and that there was no final appealable order. On appeal, this court clarified that:

Taylor was not subject to postrelease control for his aggravated murder conviction. However, Taylor's attempted murder conviction, a first-degree felony, carried a mandatory five-year period of postrelease control. R.C. 2967.28(B)(1).

State v. Taylor, 8th Dist. Cuyahoga No. 106598, 2018-Ohio-4861, ¶ 9 (“*Taylor III*”).

{¶ 6} The *Taylor III* court then issued the following limited remand:

[T]he new sentencing hearing to which Taylor is entitled to is limited to the issue of postrelease control on his attempted murder conviction. [*State v.*] *Fischer*, [128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332,] ¶ 29. Res judicata still applies to the other aspects of the merits of the conviction, including the determination of guilt and the lawful elements of the ensuing sentence. *Id.* at ¶ 40. * * *

Case reversed remanded for a sentencing hearing limited to the issue of postrelease control.

Id. at ¶ 13, 15.

{¶ 7} During the 2019 hearing on the second remand, the trial court correctly advised Taylor that although his aggravated murder conviction did not carry a term of postrelease control, he was subject to a mandatory five-year period of postrelease control on the attempted murder conviction. However, the court's February 28, 2019 sentencing journal entry stated that “[p]ostrelease control is part of this prison sentence for *up to 5 years mandatory*[.]” (Emphasis added.) Taylor appeals from the 2019 sentence issued on the second remand.

I. Crim.R. 32(C)

{¶ 8} In the first assigned error, Taylor argues that the trial court's February 28, 2019 sentencing journal entry is not a final appealable order because

it contravenes Crim.R. 32(C) and the “one document rule.” Taylor notes that separate journal entries set forth the convictions for each offense to which he pled.

{¶ 9} This court remanded the matter for nunc pro tunc correction pursuant to Crim.R. 32(C), *Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, at ¶ 19, and *Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142 at ¶ 20. *See also State ex rel. Snead v. Ferenc*, 138 Ohio St.3d 136, 2014-Ohio-43, 4 N.E.3d 1013, ¶ 10, and *State ex rel. DeWine v. Burge*, 128 Ohio St.3d 236, 2011-Ohio-235, 943 N.E.2d 535, ¶ 17. On September 5, 2019, the nunc pro tunc entry was issued, setting forth on a single document “the fact of the conviction[s], the sentence[s], the judge’s signature, and the entry on the journal by the clerk” together on a single document. The new entry fully complies with Crim.R. 32(C), *Baker*, and *Lester*.

{¶ 10} Accordingly, this assigned error is now moot. App.R. 12(A).

II. R.C. 2967.28(B)(1)

{¶ 11} In the second assigned error, Taylor argues that the trial court erred in imposing postrelease control “up to” five years on his conviction for attempted murder.

{¶ 12} The offense of attempted murder carries a mandatory five-year term of postrelease control. *See R.C. 2967.28(B)(1)* (a period of postrelease control for a felony of the first degree shall be five years). Here, the journal entry for the resentencing on remand incorrectly states that “post release control is part of this prison sentence for up to 5 years mandatory[.]” However, the state advises this

court, and the transcript reflects that correct information was provided to Taylor during the February 28, 2019 hearing on remand. The trial court stated:

[F]or your attempted murder conviction, which is a first degree felony, there's a mandatory five-year period of post-release control pursuant to Revised Code 2967.28(B)(1).

{¶ 13} Accordingly, the sentencing entry may be corrected by a nunc pro tunc entry pursuant to R.C. 2929.191(C) without a new sentencing hearing. *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 15.

III. Validity of the Plea

{¶ 14} In the third assigned error, Taylor argues that the imposition of postrelease control for the attempted murder conviction cannot be corrected pursuant to the procedure outlined in R.C. 2929.191(C) and renders his guilty plea void ab initio.

{¶ 15} This court has previously considered and rejected Taylor's argument that the improper notification of postrelease control voids his entire plea agreement. *See Taylor I*, 2010-Ohio-5607, and *Taylor II*, 2012-Ohio-2070. Therefore, this claim is barred by res judicata. *State v. Szefcyk*, 77 Ohio St.3d 93, 671 N.E.2d 233 (1996), syllabus.

{¶ 16} Accordingly, this assigned error is without merit.

{¶ 17} The sentence is affirmed and the matter is remanded for nunc pro tunc correction of the sentence to reflect the imposition of a mandatory five-year term of postrelease control on the attempted murder conviction.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court 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.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

**KATHLEEN ANN KEOUGH, J., and
MICHELLE J. SHEEHAN, J., CONCUR**