

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 109436
MARVIN SCOTT, III,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 9, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-17-615337-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Callista Plemel, Assistant Prosecuting Attorney, *for appellee*.

Marvin Scott, III, *pro se*.

MARY J. BOYLE, P.J.:

{¶ 1} Defendant-appellant, Marvin Scott, III, appeals the trial court's denial of his motion for a final appealable order. He raises one assignment of error for our review:

The trial court erred when it denied to issue the appellant Scott a final appealable order pursuant to O.R.C. 2505.02(A), Crim.R. 32(C), and Article IV, Section 3(B)(2) of the Ohio Constitution.

{¶ 2} Finding no merit to his assignment of error, we affirm.

I. Factual Background and Procedural History

{¶ 3} In a previous appeal in this case, we described Scott's indictments, convictions, and sentencing as follows:

In May 2017, Scott was named in a six-count indictment in Cuyahoga C.P. No. CR-17-615337-A. The indictment charged him with felonious assault in violation of R.C. 2903.11(A)(2), with one- and three-year firearm specifications; improperly discharging into a habitation in violation of R.C. 2923.161(A)(1), with one- and three-year firearm specifications; domestic violence in violation of R.C. 2919.25(A); and three counts of endangering children in violation of R.C. 2919.22(A). The charges arose from an altercation between Scott and the victim, Porche Brooks, at their shared residence on February 24, 2017.

In June 2017, Scott was named in a three-count indictment in C.P. No. CR-17-617649-A. The indictment charged him with having weapons while under disability in violation of R.C. 2923.13(A)(3); discharge of a firearm on or near a prohibited premises in violation of R.C. 2923.162(A)(3); and tampering with evidence in violation of R.C. 2921.12(A)(1). The indictment arose from an altercation between Scott and Brooks on May 22, 2017.

The cases were consolidated and proceeded to a jury trial. * * *

At the conclusion of trial, Scott was found not guilty of tampering with evidence. However, the jury returned a verdict of guilty on all other charges. At sentencing, the trial court imposed a two-year term of imprisonment in Case No. CR-17-617649-A, to run consecutive to a 13-year term of imprisonment in Case No. CR-17-615337, for a total prison term of 15 years.

State v. Scott, 8th Dist. Cuyahoga Nos. 106451 and 106474, 2018-Ohio-3791, ¶ 3-5, 16.

{¶ 4} The October 2017 sentencing entry imposed three years of mandatory postrelease control “for the above felony(s)” and noted that Scott was advised of the consequences if he were to violate the terms of postrelease control.

{¶ 5} In November 2017, Scott appealed his convictions, and this court affirmed. *Id.* at ¶ 39.

{¶ 6} In January 2019, Scott filed a “Motion for Final Appealable Order Pursuant to O.R.C. 2505.02(A), Crim.R. 32(C) and Article IV, Section 3(B)(2) to the Ohio Constitution.” In the motion, Scott argued that the October 2017 sentencing entry was not a final appealable order because it did not include postrelease control separately on his convictions for felonious assault and improper discharging of a firearm at or into a habitation or school. The state filed no opposition to Scott’s motion.

{¶ 7} In December 2019, the trial court denied Scott’s motion for a final appealable order, finding that it properly notified Scott regarding postrelease control at his sentencing hearing and stating that it is “precluded from imposing more than one period of postrelease control in cases that involve multiple convictions.” The trial court’s judgment entry further states,

Moreover, even assuming for the sake of argument that the trial court had erroneously notified defendant of postrelease control at sentencing, the sentencing entry issued by the trial court on October 10, 2017, would still be a final appealable order. *State v. Worley*, 8th Dist. Cuyahoga App. No. 107179, 2018-Ohio-5359, ¶ 13 (a sentencing journal entry that fails to include postrelease control is still a final appealable order).

{¶ 8} It is from this judgment that Scott now appeals.

II. Law and Analysis

{¶ 9} Scott argues that the trial court erred in denying his motion for a final appealable order because the sentencing entry does not include a period of postrelease control for each conviction. Scott contends that his previous appeal is therefore “null” since it was based on a nonfinal order. He maintains that the trial court needs to conduct a new sentencing hearing to properly impose postrelease control and produce a final appealable order. Scott therefore maintains that he would then be entitled to a de novo direct appeal on his new sentencing judgment entry. After review, we disagree.

{¶ 10} In *State v. Harper*, Slip Opinion No. 2020-Ohio-2913, the Ohio Supreme Court recently held that a trial court’s error in imposing postrelease control may only be challenged on direct appeal:

When a case is within a court’s subject-matter jurisdiction and the accused is properly before the court, any error in the exercise of that jurisdiction in imposing postrelease control renders the court’s judgment voidable, permitting the sentence to be set aside if the error has been successfully challenged on direct appeal.

Harper at ¶ 4.

{¶ 11} Before *Harper*, a trial court’s failure to properly impose postrelease control in a sentence rendered that portion of the defendant’s sentence void and subject to attack at any time. See *State v. Williams*, 148 Ohio St.3d 403, 2016-Ohio-7658, 71 N.E.3d 234, ¶ 22; *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 25. In *Fischer*, the Ohio Supreme Court explained that the legislative branch has the power to define criminal offenses and punishments, that courts can

sentence only as authorized by statute, and that the failure to impose mandatory postrelease control “is an act that lacks both statutory and constitutional authority.” *Fischer* at ¶ 22.

{¶ 12} In *Harper*, the Ohio Supreme Court realigned its void-sentence jurisprudence with the traditional understanding of what constitutes a void judgment. *Harper* at ¶ 4. In doing so, it overruled years of its precedent that a trial court’s error in imposing postrelease control renders that portion of the defendant’s sentence void. *Id.* at ¶ 5. In *Harper*, the Ohio Supreme Court determined that because the trial court had subject-matter jurisdiction over the case and personal jurisdiction over Harper, any error the trial court made in imposing postrelease control rendered the Harper’s judgment “voidable, not void, and [] not subject to collateral attack.” *Id.* at ¶ 5. Since Harper could have raised his argument on direct appeal but did not do so, his argument was barred by res judicata. *Id.* at ¶ 41.

{¶ 13} Here, the trial court had subject-matter jurisdiction over Scott’s case and had personal jurisdiction over him. R.C. 2931.03; *Smith v. Sheldon*, 157 Ohio St.3d 1, 2019-Ohio-1677, 131 N.E.3d 1, ¶ 8 (“a common pleas court has subject-matter jurisdiction over felony cases”). Scott could have, but did not, raise any issue regarding the postrelease control and his sentencing entry in his direct appeal. His argument is therefore now barred by res judicata.

{¶ 14} Even if res judicata did not preclude Scott’s argument, the trial court did not err in imposing postrelease control. Trial courts are not required to impose separate terms of postrelease control for individual offenses. *State v. Thompson*,

8th Dist. Cuyahoga Nos. 108520 and 108530, 2020-Ohio-671, ¶ 29; *State v. Parker*, 8th Dist. Cuyahoga No. 106585, 2018-Ohio-3677, ¶ 20. In fact, 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.” *Parker* at ¶ 20, quoting *State v. Davis*, 8th Dist. Cuyahoga No. 104574, 2018-Ohio-3677, ¶ 70; *see also* R.C. 2967.28(F)(4)(c) (“If an offender is subject to more than one period of postrelease control, the period of postrelease control for all of the sentences shall be the period of postrelease control that expires last, as determined by the parole board or court. Periods of postrelease control shall be served concurrently and shall not be imposed consecutively to each other.”).

{¶ 15} Here, the record reflects that the trial court properly notified Scott that he was subject to a mandatory three-year period of postrelease control, and that notification was included in the trial court’s sentencing entry. In addition, the trial court properly advised Scott of the consequences of violating a condition of his postrelease control, and that information was also included in the sentencing entry. The trial court was not required to pronounce at the sentencing hearing, nor in the sentencing entry, the applicable postrelease control sanction for each individual offense. *See Thompson* at ¶ 30.

{¶ 16} Accordingly, the trial court did not err in denying Scott’s motion for a final appealable order.

{¶ 17} Judgment affirmed.

It is ordered that appellee recover from 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.

MARY J. BOYLE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
RAYMOND C. HEADEN, J., CONCUR