[Cite as *State v. Easley*, 2011-Ohio-2412.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-505 (C.P.C. No. 08CR-01-330)
Robert E. Easley,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	
State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-506 (C.P.C. No. 08CR-04-3067)
Robert E. Easley,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on May 19, 2011

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

Robert E. Easley, pro se.

APPEALS from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Defendant-appellant, Robert E. Easley ("appellant"), appeals from judgments entered by the Franklin County Court of Common Pleas denying his motion to correct a void sentence and request for resentencing and his motion to add the

sentencing transcripts to the motion to correct sentence. For the following reasons, we affirm.

{¶2} In May 2008, appellant was found guilty, pursuant to a jury trial, of two counts of robbery as felonies of the second degree, one count of robbery as a felony of the third degree, and one count of receiving stolen property, a fifth degree felony. On July 9, 2008, a sentencing hearing was held. At the hearing, the trial court imposed a sentence of eight years on each of the second degree robberies and a 12-month sentence on the receiving stolen property offense. All sentences were ordered to run consecutively to one another, for a total sentence of 17 years.

{¶3} The record does not reflect that the trial court orally advised appellant during the hearing that he would be subject to mandatory post-release control for a period of three years upon his release from prison. However, the record does reflect that appellant signed a notice titled "Prison Imposed" on the date of the sentencing hearing. That form reads as follows:

NOTICE
(Prison Imposed)

> The Court hereby notifies the Defendant as follows:
>
> Post-Release Control.
>
> After you are released from prison, you (will,~~may~~) have a period of post-release control for 3 years following your release from prison. If you violate post-release control sanctions imposed upon you, any one or more of the following may result:
> (1) The Parole Board may impose a more restrictive post-release control sanction upon you: and
> (2) The Parole Board may increase the duration of the post-release control subject to a specified maximum; and
> (3) The more restrictive sanction that the Parole Board may impose may consist of a prison term, provided that the prison

> term cannot exceed nine months and the maximum cumulative prison term so imposed for all violations during the period of post-release control cannot exceed one-half of the stated prison term originally imposed upon you; and
> (4) If the violation of the sanction is a felony, you may be prosecuted for the felony and, in addition to any sentence it imposes on you for the new felony, the Court may impose a prison term, subject to a specified maximum, for the violation.
>
> I hereby certify that the Court read to me, and gave me in writing, the notice set forth herein.

(R. 88; 41.)

{¶4} Appellant signed on the signature line following the language set forth above. Additionally, the attorney who represented appellant at the sentencing hearing also signed his name to a second signature line, which certified that the trial judge "read to the Defendant, and gave (him,her) in writing, the notice set forth within." (R. 88; 41.)

{¶5} A sentencing entry was filed on July 16, 2008. The sentencing entry essentially mirrors the sentence that was imposed during the sentencing hearing. Specifically, the sentencing entry reflects that the third-degree robbery conviction was merged with one of the second-degree robbery convictions for purposes of sentencing. The sentencing entry states the trial court imposed 8 years of incarceration on each of the second-degree robbery convictions, and 12 months of incarceration on the receiving stolen property conviction. The sentences were ordered to be served consecutively, for a total of 17 years. In addition, the sentencing entry states that "the Court notified the Defendant, orally and in writing, of the applicable period of **three (3) years mandatory** post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)." (Emphasis in the sic.) (R. 87 at 2; 37 at 2.) However, as previously indicated above, the record does not

reflect that oral notification of post-release control was provided to appellant during the hearing.

{¶6} Appellant filed a direct appeal, claiming the evidence was insufficient, his convictions were against the manifest weight of the evidence, and the trial court erred in failing to explain its rationale for imposing consecutive sentences. On June 23, 2009, this court affirmed those convictions. See *State v. Easley,* 10th Dist. No. 08AP-755, 2009-Ohio-2984. The Supreme Court of Ohio declined to hear appellant's appeal. See *State v. Easley*, 124 Ohio St.3d 1494, 2010-Ohio-670. On September 1, 2009, appellant filed an application for reopening, pursuant to App.R. 26(B). On December 8, 2009, we denied that application.

{¶7} On March 25, 2010, appellant filed a motion to correct a void sentence and a request for resentencing, arguing his sentences were void because the trial court failed to orally advise him at the sentencing hearing of the imposition of a mandatory three-year period of post-release control, in violation of R.C. 2929.14(F) and 2929.19(B)(3). On that same date, appellant also filed a motion to add the sentencing transcripts to his motion to correct his sentence. On April 30, 2010, the trial court denied appellant's motions, finding further review was barred by law and by res judicata, and also finding appellant had received proper notice of post-release control. Appellant now files this timely appeal and asserts three assignments of error for our review:

> ASSIGNMENT OF ERROR ONE
>
> THE TRIAL COURT ABUSED ITS DISCRETION AND DENIED APPELLANT HIS RIGHT TO DUE PROCESS OF LAW, EQUAL PROTECTION OF LAW AND A FAIR TRIAL THAT IS GUARANTEED BY THE UNITED STATES AND OHIO CONSTITUTION WHEN IT DENIED DEFENDANT[']S MOTION TO CORRECT A VOID SENTENCE AND

> REQUEST FOR RE-SENTENCING WHEN THE ERROR IS CLEAR THROUGH THE RECORD
>
> ASSIGNMENT OF ERROR TWO
>
> THE TRIAL COURT ABUSED ITS DISCRETION AND DENIED APPELLANT HIS RIGHT TO DUE PROCESS OF LAW, EQUAL PROTECTION OF LAW AND A FAIR TRIAL THAT IS GUARANTEED BY THE [UNITED STATES] AND OHIO CONSTITUTION WHEN IT DENIED APPELLANT[']S MOTION TO ADD TRANSCRIPTS TO THE APPELLANT[']S MOTION TO CORRECT A VOID SENTENCE MOTION WHEN THE ERROR IS CLEAR THROUGH THE RECORD
>
> ASSIGNMENT OF ERROR THREE
>
> THE JUDGMENT ENTRY ERRONEOUSLY STATES THAT THE APPELLANT WAS ADVISED REGARDING POST RELEASE CONTROL

{¶8} Because appellant's assignments of error are intertwined, we shall address them together. In his first and third assignments of error, appellant submits the trial court erred in denying his motion to correct his void sentence. Appellant asserts his sentence is void because the trial court failed to orally advise him of post-release control and the judgment entry erroneously states that he was orally advised of post-release control. Correspondingly, in his second assignment of error, appellant contends the trial court erred in denying his request to add the sentencing transcript to his motion to correct his sentence, claiming the transcript would prove that the trial court failed to orally advise him of post-release control at the hearing and that the judgment entry reflecting such oral advisement was erroneous. As a result, appellant claims he was prejudiced.

{¶9} The State of Ohio, on the other hand, contends appellant's motion to correct his sentence was properly denied, arguing: (1) the motion is barred by res judicata; (2) this court's previous review of appellant's convictions on direct appeal held that the

application of post-release control was proper, and that determination is now the law of the case; (3) appellant in fact received notice of post-release control at the sentencing hearing via the written prison imposed notice, which is sufficient to satisfy R.C. 2929.19(B)(3)(c) and (e); (4) omission of the statutory notification under R.C. 2929.19(B)(3)(c) and (e) makes no difference because failure to provide said notification "does not negate, limit, or otherwise affect" the imposition of post-release control when the offender is sentenced on or after July 11, 2006 and resentencing is not required; and (5) any lack of oral notification of post-release control at sentencing does not make the judgment's imposition of post-release control void; rather, it would simply be a non-jurisdictional sentencing error.

{¶10} Additionally, the State of Ohio submits the denial of appellant's motion to add the sentencing transcripts is not prejudicial, as the State of Ohio has conceded that notice was not orally given at the sentencing hearing, and neither the State of Ohio nor the trial court based its reasoning upon the idea that oral notification was given.

{¶11} The General Assembly has imposed a duty upon trial courts to notify an offender at the sentencing hearing of the imposition of post-release control and of the authority of the parole board to impose a prison term for a violation. The General Assembly also requires that a court include any post-release control sanctions in its sentencing entry. See R.C. 2929.14(F) and 2929.19(B)(3) and (B)(4). See also *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, ¶22.

{¶12} Appellant asserts that in order to comply with the statutory mandates regarding post-release control, the trial court must orally advise appellant of the imposition of post-release control and of the consequences for violating post-release

control. However, a closer reading of R.C. 2929.19, which governs sentencing hearings, reveals that it requires notification at the sentencing hearing, not specifically *oral* notification at the sentencing hearing. R.C. 2929.19 provides, in relevant, part as follows:

> (A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to section 2953.07 or 2953.08 of the Revised Code. * * *
>
> (B) (1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to section 2951.03 of the Revised Code or Criminal Rule 32.2, and any victim impact statement made pursuant to section 2947.051 [2947.05.1] of the Revised Code.
>
> * * *
>
> (3) Subject to division (B)(4) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:
>
> * * *
>
> (c) Notify the offender that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person. * * *
>
> * * *
>
> (e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code, the 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. * * *

{¶13} Additionally, R.C. 2929.14, which sets forth basic prison terms, reads, in relevant, part as follows:

> (F) (1) If a court imposes a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence 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. * * *

{¶14} In the instant case, although appellant was not orally notified by the trial court of the imposition of post-release control, it is clear from the record that appellant was notified at the sentencing hearing that he would be subject to post-release control upon his release and of the consequences of violating post-release control through the use of the written "Prison Imposed" notice. Appellant signed the notice, as did his trial counsel, and the notice was dated the same day as the sentencing hearing. Thus, we find the trial court properly notified appellant regarding post-release control.

{¶15} This determination is consistent with our prior analysis of cases involving somewhat similar circumstances. We have previously found that "R.C. 2929.19(B)(3)(c) and (e) required a trial court to 'notify' an offender who is convicted of a second degree felony that post-release control and sanctions for violating post-release control will be imposed." *State v. Amburgy*, 10th Dist. No. 04AP-1332, 2006-Ohio-135, ¶13, citing *State v. Duncan* (Apr. 2, 1998), 10th Dist. No. 97APA08-1044.

{¶16} In *Duncan*, we rejected the defendant's contention that personal notification of post-release control by the trial judge was necessary at the hearing. Instead, we determined the trial court had sufficiently notified the defendant about post-release control at the hearing where there was a brief oral exchange at the plea hearing during which post-release control was mentioned, the defendant signed a plea form containing an explanation of post-release control, and the defendant also signed a notice form that explained post-release control.

{¶17} In *Amburgy*, there was no oral reference to post-release control during the plea hearing. However, Amburgy signed a guilty plea form that explained post-release control and then also signed a post-release control notice on the same day as the sentencing hearing. We determined that was sufficient to notify the defendant about post-release control and the applicable sanctions for violating post-release control. That notice was virtually identical to the "Prison Imposed" notice used in the case subjudice. While the appellant here was found guilty as a result of a jury trial, and thus did not sign a guilty plea form like the defendants in *Amburgy* and *Duncan*, we find the "Prison Imposed" notice is sufficient to satisfy the requirement that he be "notified" at the hearing of the imposition of post-release control and of the sanctions for violating post-release control.

{¶18} Furthermore, we have previously relied upon the use of the "Prison Imposed" notice in other cases involving post-release control notification in a slightly different context in order to satisfy the requirements of statutorily mandated notification. See *State v. Chandler*, 10th Dist. No. 10AP-369, 2010-Ohio-6534 (where the original sentencing entry stated that the defendant was informed of the applicable period of post-release control but did not specify that the applicable period was five years, but the

defendant signed a plea form indicating he would be subject to five years of post-release control if prison was imposed, the record contained a "Prison Imposed" notice setting forth a five-year period of post-release control, and the guilty plea hearing transcript revealed the trial court orally advised the defendant he would be subject to a five-year period of post-release control, post-release control was properly imposed in the original sentencing entry). See also *State v. Mays*, 10th Dist. No. 10AP-113, 2010-Ohio-4609; and *State v. Cunningham*, 10th Dist. No. 10AP-452, 2011-Ohio-2045.

{¶19} Appellant has argued that his case should be governed by our decision in *State v. Mickens*, 10th Dist. No. 08AP-743, 2009-Ohio-2554, in which we determined the defendant's sentence was void because he was not given the statutorily mandated notification regarding post-release control at his resentencing hearing. As a result, we remanded the matter and instructed the trial court to provide notification of post-release control, both orally and in writing. However, we find *Mickens* to be factually distinguishable from the case at bar.

{¶20} During the July 30, 2008 de novo resentencing hearing, Mickens was not provided with the "Prison Imposed" notice that was used at the sentencing hearing in the instant case. Thus, in *Mickens*, the defendant received absolutely no notification (oral or written) at the sentencing hearing regarding post-release control. It is this difference that makes the case subjudice distinguishable from *Mickens*. Had the trial court simply failed to orally advise Mickens of post-release control but notified him at the hearing using the "Prison Imposed" notice, which is the very factual circumstance in which appellant now finds himself, Mickens' sentence would not have been void since he would have received notice at the hearing, and it would have been unnecessary for the trial court to correct his

sentence. Therefore, we reject appellant's argument that *Mickens* is controlling authority here.

{¶21} Next, we address the issue of appellant's request to add the sentencing transcript to his motion to correct his sentence, which he raised in his second assignment of error.

{¶22} We find the trial court's denial of this motion was not an abuse of discretion. An abuse of discretion requires a showing that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217. Here, appellant was not prejudiced by the trial court's denial, as the State of Ohio conceded that oral notification at the hearing had not taken place, thereby making the addition of the transcript (in order to show that oral notification had not occurred) unnecessary, as the trial court did not need to consider it in order to know that appellant's assertion was factually correct. Furthermore, we note that the sentencing transcript was already available for review by the trial court (and by the appellate court), due to the fact that it had previously been provided upon appellant's direct appeal.

{¶23} Finally, we address appellant's complaint that the sentencing entry incorrectly reflects that both written and oral notification were given. While it is evident that the record fails to demonstrate that such oral notification occurred, this fact does not make appellant's sentence void or require a resentencing. We have established, supra, that a lack of "oral" notification does not demonstrate a failure to comply with statutory requirements, which would in turn render the sentence void, so long as there was notification of post-release control at the sentencing hearing and in the sentencing entry. Any error here does not rise to the level of rendering appellant's sentence void.

{¶24} In conclusion, we find appellant was properly notified of post-release control pursuant to the statutory requirements and, as a result, we find appellant's convictions are not void, and the trial court properly denied appellant's motions. Accordingly, we overrule appellant's first, second, and third assignments of error. The judgments of the Franklin County Court of Common Pleas are affirmed.

Judgments affirmed.

KLATT and SADLER, JJ., concur.

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