[Cite as *State v. Quintanilla*, 2011-Ohio-4593.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-703 (C.P.C. No. 02CR-09-5394)
Armando Quintanilla,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 13, 2011

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

Keith O'Korn, for appellant.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Defendant-appellant, Armando Quintanilla ("appellant"), appeals from a judgment entered by the Franklin County Court of Common Pleas on June 24, 2010, in which the court resentenced appellant via videoconference in order to properly impose post-release control in accordance with *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462. Appellant argues his resentencing violated various constitutional rights and statutory requirements. Because we find post-release control was properly imposed at

the original sentencing in February 2004, and thus the resentencing was unnecessary, we remand with instructions to vacate the June 24, 2010 resentencing entry.

{¶2} On September 13, 2002, appellant was indicted on five counts of rape and seven counts of gross sexual imposition involving two young girls, ages nine and ten. A jury trial commenced on December 10, 2003. Following the testimony of the first witness, appellant entered an Alford plea to two counts of gross sexual imposition, both felonies of the third degree. As part of the plea, appellant executed a two-page guilty plea form. The plea form was also signed by appellant's trial counsel, the prosecuting attorney, and the trial judge. It included a provision which stated appellant would be subject to a mandatory five-year period of post-release control if a prison term was imposed at sentencing. It also set forth the more restrictive sanctions which could be imposed if appellant violated post-release control, including re-imprisonment for up to one-half of the prison term originally imposed. Following the plea, a pre-sentence investigation report was ordered and sentencing was scheduled for February 6, 2004. The House Bill 180 sexual predator hearing was also scheduled for that same date.

{¶3} On February 6, 2004, the trial court sentenced appellant to four years on each count of gross sexual imposition and ordered those counts to run consecutively, for a total sentence of eight years. The trial court orally advised appellant that he was subject to post-release control, although the court did not orally advise appellant that it was a mandatory period of five years. At the sentencing hearing, appellant and his trial counsel also executed a "Prison Imposed" notice, which notified appellant of a mandatory five-year period of post-release control and the possibility of the imposition of more restrictive sanctions in the event that he violated post-release control, including

imprisonment for one-half of the stated prison term originally imposed. A judgment entry journalizing appellant's sentence was filed on February 13, 2004. Regarding the imposition of post-release control, the judgment entry states: "After the imposition of sentence, the Court notified the Defendant, orally and in writing, of the possibility of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)." (Judgment Entry; R. 143 at 2.)

{¶4} During the sentencing hearing, the trial court also inquired as to how appellant wished to proceed with the sexual predator hearing. Counsel for appellant indicated he would like to have a separate hearing. The trial court then set the hearing for a later date. On March 22, 2004, the parties appeared for that hearing. Counsel for the State and counsel for appellant agreed that if a hearing were held, appellant would be found to be a sexual predator. Appellant's trial counsel stated: "To that end, we are shortcutting the process and stipulating that he will be classified as a sexual predator under House Bill 180." (Tr. 75.) At the proceeding, the trial judge set forth factors to support a sexual predator finding. A separate judgment entry journalizing the court's sexual predator finding was filed on March 25, 2004.

{¶5} Appellant did not file a direct appeal from either the February 13, 2004 sentencing entry or the March 25, 2004 sexual predator entry. On September 22, 2006, appellant, through counsel, filed a motion with the trial court to amend his sentence, asking that his four-year sentences be ordered to run concurrently, rather than consecutively. The trial court denied the motion to amend on September 18, 2007.

{¶6} On June 24, 2010, approximately three weeks before appellant's eight-year sentence was due to expire, appellant appeared via videoconference for resentencing

pursuant to *Bloomer*. The resentencing judge was not the same judge who had originally sentenced appellant. At the resentencing hearing, the new judge explained to appellant that they were conducting a *Bloomer* hearing. Upon inquiry from the judge, appellant indicated he recalled being advised he would be subject to five years of post-release control upon his release from prison. The new judge advised that because there were errors in the way the sentencing entry was formatted, they needed to "go back through all the little nuances of what happened." (Resentencing Tr. 2.) The court re-imposed the original sentence of four years on each count and again ordered the sentences to be run consecutively.

{¶7} Additionally, while reviewing the original sentencing entry, the new trial judge indicated he did not see anything in the entry which reflected appellant's sexual offender classification. For reasons which are unclear from this record, the parties were unaware of the sexual predator finding, despite the March 25, 2004 entry. Counsel for appellant indicated he did not have any information on this issue which would clarify appellant's classification. Counsel for the State indicated that the first trial judge may have imposed a classification by separate hearing and separate entry, but the State did not have specific information to verify that. Without further information, and believing that he was required to establish a classification, the new trial judge found appellant to be a sexually oriented offender.

{¶8} Following the resentencing hearing on June 24, 2010, the trial court journalized a judgment entry which included the language from the original judgment entry and also added information from the resentencing hearing. As to post-release control, the judgment entry stated: "The Court advised the defendant that he will be

subject to five years of mandatory post-release control after his release from prison. The Court also notified defendant that, should he violate a condition of post-release control, 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 him." (Judgment Entry; R. 170 at 2.) However, the new judgment entry did not contain any information regarding appellant's sexual offender classification.

{¶9} Appellant filed a timely appeal from the June 24, 2010 judgment entry. He now asserts three assignments of error for our review:

> ASSIGNMENT OF ERROR # 1
>
> THE TRIAL COURT'S IMPOSITION OF POST-RELEASE CONTROL VIA VIDEOCONFERENCE VIOLATED THE DEFENDANT'S RIGHT TO BE PHYSICALLY PRESENT FOR SENTENCING GUARANTEED BY CONSTITUTIONAL DUE PROCESS RIGHTS, CRIM.R. 43(A), R.C. § 2929.19, AND R.C. § 2929.191.
>
> ASSIGNMENT OF ERROR # 2
>
> THE TRIAL COURT VIOLATED THE DEFENDANT'S STATUTORY RIGHTS, DUE PROCESS RIGHTS, AND RIGHT TO COUNSEL, WHEN IT FAILED TO PROVIDE NOTICE TO THE DEFENDANT OF HIS SENTENCING DATE AND FORCED THE DEFENDANT TO BE SENTENCED WITHOUT ANY OPPORTUNITY TO PREPARE OR TO OBTAIN COUNSEL OF HIS CHOICE.
>
> ASSIGNMENT OF ERROR # 3
>
> THE TRIAL COURT'S FINDINGS OF THE APPELLANT'S SEX OFFENDER CLASSIFICATION WERE CONTRARY TO LAW AND SHOULD BE REVERSED FOR VIOLATING THE FORMER CHAPTER 2950.

{¶10} In his first assignment of error, appellant argues he was deprived of the right to be physically present at the resentencing hearing, as guaranteed by the

constitution, the Ohio Rules of Criminal Procedure, and various statutes, when he was re-sentenced via videoconference. In his second assignment of error, appellant contends his sentencing was an "ambush" because he was deprived of notice of the resentencing and denied the opportunity to prepare for the sentencing and/or to obtain counsel of his choice, which in turn, violated his statutory and constitutional rights. Finally, in his third assignment of error, appellant argues his sexual offender classification is invalid because the trial court held the sexual predator hearing after the original sentencing hearing, failed to state appellant's sexual offender classification in either the 2004 sentencing entry or the current 2010 sentencing entry, failed to set forth the requisite findings to properly classify appellant as a sexual predator, and improperly allowed appellant's counsel to stipulate to appellant's sexual predator status. Alternatively, appellant argues if there is a valid and enforceable sex offender classification, appellant should be found to be a sexually oriented offender, rather than a sexual predator.

{¶11} In reviewing appellant's appeal, we find we need not analyze the merits of appellant's arguments because we believe post-release control was properly imposed at the February 6, 2004 sentencing hearing and in the resulting judgment entry, based upon our previous decisions in *State v. Mays*, 10th Dist. No. 10AP-113, 2010-Ohio-4609[1] and *State v. Chandler*, 10th Dist. No. 10AP-369, 2010-Ohio-6534.

{¶12} In *Mays*, the defendant appealed from a nunc pro tunc entry filed after he was resentenced via a videoconference conducted while he was still incarcerated at an institution operated by the Ohio Department of Rehabilitation and Correction. The

[1] The defendant in *Mays* filed a discretionary appeal in the Supreme Court of Ohio. On February 2, 2011, the Supreme Court of Ohio declined jurisdiction to accept the appeal and dismissed the appeal. See *State v. Mays*, 127 Ohio St.3d 1535, 2011-Ohio-376.

resentencing hearing clarified the application of post-release control and stated the length of the post-release control term. Mays challenged the use of the videoconference to resentence him and argued he had a right to be physically present at the resentencing. While declining to address the propriety of the process used, we determined that the resentencing hearing had in fact been unnecessary, because post-release control had been properly imposed through the original proceeding and the original entry.

{¶13} In considering the entire record, we found post-release control had been properly imposed in *Mays* the first time because: (1) the original sentencing entry, like the sentencing entry at issue here, stated that the defendant had been notified of the applicable periods of post-release control; (2) the defendant had signed a "Prison Imposed" notice which stated that he was subject to a five-year period of post-release control, just like the appellant in the case sub judice; and (3) the defendant, like appellant, had also signed a plea form which stated he understood that he would be subject to a mandatory five-year period of post-release control if a prison term was imposed. Based upon those circumstances, we held the subsequent hearing was unnecessary and had no legal effect. Thus, we remanded the matter for the sole purpose of vacating the nunc pro tunc entry. We further determined the original judgment and sentence were still in place.

{¶14} We reached a similar determination in *Chandler*. In that case, the defendant likewise appealed from a resentencing via videoconference that occurred because the original sentencing entry merely stated he had been informed of the applicable period of post-release control, but did not specify the applicable period of supervision was five years. Applying *Mays*, we found that post-release control had been properly imposed in the original sentencing entry and the resentencing hearing was

unnecessary because: (1) the entry of guilty plea form contained a provision stating he would be subject to five years of mandatory post-release control if prison was imposed; (2) he was advised at the plea hearing that there would be a period of post-release control for five years; and (3) the record contained a notice signed by the defendant stating he was subject to a five-year period of post-release control. Accordingly, we concluded it was unnecessary to hold the resentencing hearing, and consequently, the new judgment entry had no legal effect.

{¶15} We have continued to rely upon the rationale set forth in *Mays* and *Chandler*, and we have consistently found similar notifications to be sufficient and to constitute the proper imposition of post-release control on several occasions. See *State v. Cunningham*, 10th Dist. No. 10AP-452, 2011-Ohio-2045; *State v. Easley*, 10th Dist. No. 10AP-505, 2011-Ohio-2412; and *State v. Addison*, 10th Dist. No. 10AP-554, 2011-Ohio-2113. We do so here as well. In reviewing the transcripts of the plea proceedings and the original sentencing hearing, along with the plea form, the original sentencing entry and the post-release control notice, it is apparent that the notice provided was sufficient to advise appellant of post-release control, and we find the trial court properly imposed post-release control at the time of the original sentencing.

{¶16} Like in *Mays* and *Chandler*, appellant's plea form stated he would be subject to five years of mandatory post-release control and also advised that a violation of post-release control could result in more restrictive sanctions, including a longer period of supervision and/or re-imprisonment for one-half of the prison term originally imposed. (Entry of Guilty Plea; R. 136.) During the plea hearing, appellant acknowledged reviewing

the plea form and discussing it with counsel, and he further indicated he understood the document. (Tr. 52.)

{¶17} Additionally, appellant was orally advised at the sentencing hearing that he was subject to post-release control, although the trial court did not orally specify that it was a mandatory five-year term. (Tr. 71.) The sentencing entry itself stated: "After the imposition of sentence, the Court notified the Defendant, orally and in writing, of the possibility of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)." (Judgment Entry; R. 143 at 2.)

{¶18} Finally, the "Prison Imposed" notice signed at the sentencing hearing explained post-release control and reflected imposition of a mandatory five-year period of post-release control. The notice also advised that violations of post-release control may result in more restrictive sanctions, including a prison term of one-half of the prison term originally imposed. (R. 144.)

{¶19} Therefore, we find appellant was properly notified of post-release control and the trial court complied with the requirements governing the proper imposition of post-release control at the time of the original sentencing hearing and in its February 13, 2004 sentencing entry. As such, we find the trial court's original sentence was not void, the resentencing proceeding was unnecessary, and we remand with instructions to vacate appellant's June 24, 2010 resentencing entry, which leaves in effect appellant's original judgment, including the sentence.

{¶20} Notably, this does not conclusively decide the merits of appellant's challenges to his sexual offender classification, as neither the resentencing entry nor the original sentencing entry contain a reference to appellant's classification, which was first

determined at a separate hearing and journalized in a separate judgment entry. Nevertheless, that issue is not before us, as appellant has not appealed from that March 25, 2004 sexual predator judgment entry.

{¶21} Accordingly, appellant's three assignments of error are overruled and this matter is remanded with instructions to vacate the June 24, 2010 resentencing entry.

Resentencing entry vacated;
cause remanded with instructions.

KLATT and FRENCH, JJ., concur.

_____