[Cite as *State v. Townsend*, 2011-Ohio-5056.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-983 (C.P.C. No. 01CR-11-6811)
Kevin Dewayne Townsend,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 30, 2011

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Kevin Dewayne Townsend, pro se.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶1} Defendant-appellant, Kevin Dewayne Townsend ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas denying his motion for de novo sentencing hearing. For the reasons that follow, we affirm.

{¶2} In November 2001, appellant was indicted on charges of attempted murder with a firearm specification, felonious assault with a firearm specification, and having a weapon while under disability. Following a jury trial, appellant was found guilty of all charges and specifications. Appellant filed a direct appeal, and this court affirmed the conviction. *State v. Townsend*, 10th Dist. No. 02AP-510, 2003-Ohio-1327. On August 12,

2010, appellant filed a motion for de novo sentencing hearing, arguing that his original sentence was void. On September 15, 2010, the trial court denied appellant's motion.

{¶3} Appellant appeals from the trial court's judgment denying his motion, assigning the following error for this court's review:

> WHERE A SENTENCE IS VOID AS A MATTER OF LAY [sic] BECAUSE IT DOES NOT CONTAIN A STATUTORILY MANDATED TERM OF "PROPERLY IMPOSED" POST RELEASE CONTROL, A TRIAL COURT ABUSES IT'S [sic] DISCRETION WHEN DENYING A DEFENDANT'S "GOOD FAITH" MOTION FOR RE_SENTENCING [sic] PURSUANT TO THE PROVISIONS OF STATE V[.] BEASLEY, 471 N.E.2d 774, STATE V[.] BEZAK[,] 114 Ohio St.3d 74[,] and STATE V[.] SIMPKINS, 884 N.E.2d 568.

{¶4} Appellant argues that his original sentence is void and that he is entitled to a de novo sentencing hearing because the trial court did not properly impose the mandatory term of postrelease control required for a conviction of a first-degree felony offense. Specifically, appellant claims that the language used in the judgment entry was insufficient to satisfy the trial court's statutory obligation of imposing postrelease control.

{¶5} As an initial matter, we disagree with the state's contention that appellant's claim is barred by res judicata. In *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, the Supreme Court of Ohio declared that "[a] sentence that does not include the statutorily mandated term of postrelease control is void, is 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 paragraph one of the syllabus. Accordingly, if appellant is correct that the trial court did not properly impose postrelease control as part of his sentence, res judicata would not bar the present appeal.

{¶6} R.C. 2929.19(B)(3)(c) provides that, when a defendant is sentenced for a felony of the first degree, the trial court must notify the defendant that he will be supervised under R.C. 2967.28. R.C. 2929.19(B)(3)(e) further provides that the defendant must be notified that, if a period of postrelease control is imposed, certain sanctions may be imposed for violating that postrelease control. Under these provisions, " 'a trial court has a statutory duty to provide notice of postrelease control at the sentencing hearing.' " *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, ¶14, quoting *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, ¶23. When a defendant is subject to mandatory postrelease control, the trial court must "notify the offender of the mandatory nature of the term of postrelease control and the length of that mandatory term and incorporate that notification into its entry." *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, ¶69. "A sentence that does not include the statutorily mandated term of postrelease control is void." *Fischer*, at paragraph one of the syllabus.

{¶7} Appellant claims that the language used in the judgment entry imposing his sentence does not satisfy these requirements. In the judgment entry, the trial court stated: "After the imposition of sentence, the Court notified the Defendant, orally and in writing, of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)." (Judgment Entry at 2.) Appellant argues this language is insufficient because it does not state the length of the postrelease control term or explain the penalties for violating postrelease control. However, in a series of recent decisions, we have found that the language used in this judgment entry may be sufficient to fulfill the trial court's statutory obligations when combined with other oral and written notification of the imposition of postrelease control.

{¶8} In *State v. Mays*, 10th Dist. No. 10AP-113, 2010-Ohio-4609, we considered a challenge to a nunc pro tunc entry entered following a resentencing intended to clarify the postrelease control imposed on the defendant. The original sentencing entry stated: "After imposition of sentence the Court notified the defendant, orally and in writing, of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)." Id. at ¶3. Although the original sentencing entry indicated that the defendant had been orally notified of the applicable postrelease control period, the *Mays* decision did not discuss the content of the trial court's oral notification. We noted that the defendant signed a guilty plea form indicating he would be subject to a mandatory five-year period of postrelease control. Id. at ¶4. Further, as part of the original sentencing, the defendant also signed a "Prison Imposed" notice that recited the five-year postrelease control period and explained the potential sanctions for violating postrelease control. Id. at ¶6-7. In light of those factors, we found that postrelease control was properly included as part of the defendant's original sentence and ordered that the nunc pro tunc entry be vacated as unnecessary. Id. at ¶8-10.

{¶9} Shortly after *Mays*, we decided *State v. Chandler*, 10th Dist. No. 10AP-369, 2010-Ohio-6534. In that case, we once again decided that a resentencing hearing was unnecessary because postrelease control had been properly imposed as part of the defendant's original sentencing entry. Id. at ¶15. The sentencing entry stated: "[A]fter the imposition of sentence, the Court notified the Defendant, orally and in writing, of the applicable periods of post-release control." Id. at ¶8. Additionally, the defendant signed a guilty plea form indicating that he was subject to a mandatory five-year period of postrelease control and a "Prison Imposed" notice that detailed the length and mandatory

nature of his postrelease control term, as well as the sanctions for violating postrelease control. Id. at ¶3-4. We also found that, during the plea colloquy and sentencing hearing, the trial court referred to the mandatory five-year period of postrelease control. Id. at ¶6-7. Under those circumstances, we found that postrelease control was properly imposed under the original sentencing entry. Id. at ¶15. Following *Chandler*, we upheld the imposition of postrelease control in other similar cases. See, e.g., *State v. Cunningham*, 10th Dist. No. 10AP-452, 2011-Ohio-2045.

{¶10} Recently, this court applied the *Mays* and *Chandler* line of cases in *State v. Knowles*, 10th Dist. No. 10AP-119, 2011-Ohio-4477. In *Knowles*, the defendant sought to withdraw a guilty plea, arguing that his plea was not intelligently, knowingly, and voluntarily made because the trial court failed to make certain that he understood the maximum penalties involved and that he would be subject to a mandatory five-year period of postrelease control. Id. at ¶15. We affirmed the trial court's denial of the motion to withdraw the guilty plea, finding that the defendant received notification of the postrelease control period at the plea hearing. Id. at ¶19. The sentencing entry in *Knowles* stated: "After the imposition of sentence, the Court notified the Defendant, orally and in writing, of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)." Id. at ¶18. The defendant signed a plea form that stated he would be subject to a mandatory five-year period of postrelease control and indicated the potential sanctions for violating postrelease control; he also signed a "Prison Imposed" notice that referred to the five-year postrelease control period, without indicating whether it was mandatory or discretionary, and advised of the possible sanctions for violating postrelease control. Id. The transcript of the sentencing hearing revealed that the defendant was also orally

advised of the mandatory five-year postrelease control period and that additional time could be added to his sentence for violating postrelease control. Id. Ultimately, we found that "[i]n reviewing the transcripts of the plea proceedings and sentencing hearing, as well as the plea form, the sentencing entry and the post-release control notice, it is evident that the notice provided was sufficient and the trial court properly imposed post-release control." Id.

{¶11} Also recently, in *State v. Quintanilla*, 10th Dist. No. 10AP-703, 2011-Ohio-4593, we found that postrelease control was properly imposed in the original sentence and that resentencing was unnecessary. In that case, the sentencing entry 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)." Id. at ¶3. The defendant signed a guilty plea form stating that he would be subject to a mandatory five-year period of postrelease control if a prison sentence was imposed and that he could be subject to more restrictive sanctions if he violated postrelease control. Id. at ¶2. He also signed a "Prison Imposed" notice that referred to a mandatory five-year period of postrelease control and potential sanctions for violating postrelease control. Id. at ¶3. The trial court orally advised the defendant that he was subject to postrelease control but failed to notify him that the postrelease control period was a mandatory five years. Id. at ¶3. As in *Mays* and *Chandler*, we found that, in light of the record, the defendant was properly notified of postrelease control and that the court had properly imposed postrelease control. Id. at ¶19.

{¶12} Although the present appeal presents a closer case than the decisions discussed above, we find that, in light of the facts and circumstances presented here,

postrelease control was properly imposed as part of appellant's sentence. Similar to *Mays*, *Chandler*, *Knowles*, and *Quintanilla*, the judgment entry in this case stated: "After the imposition of sentence, the Court notified the Defendant, orally and in writing, of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)." (Judgment Entry at 2.) There was no guilty plea form in this case, as appellant was convicted at a jury trial, but appellant was provided with and signed a copy of the standard "Prison Imposed" notice form. Although the portions of the form indicating the length of the postrelease control period and whether it was mandatory or discretionary were not filled out, there was a note at the bottom of the form indicating that all first-degree felony convictions were subject to a mandatory five years of postrelease control. The bill of indictment filed against appellant indicated that the attempted murder charge was a first-degree felony. The jury verdict, read in open court with appellant present, indicated that he was found guilty of attempted murder as charged in the indictment—i.e., a first-degree felony. Further, prior to issuing the sentence, the trial court orally confirmed that the attempted murder conviction was a first-degree felony. This information, of which appellant was aware before he signed the "Prison Imposed" notice form, when combined with explanatory note on the same form, notified appellant of the length and mandatory nature of his postrelease control term. The "Prison Imposed" notice form also advised appellant of the potential sanctions for violating postrelease control. Moreover, at the sentencing hearing, the trial court advised appellant as follows:

> Mr. Townsend, once you're released from prison, you're going to be subject to five years of supervision by the Adult Parole Authority of Ohio. If you commit an offense while under that five-year supervision, they can send you back to prison on this case for more time than this Court has given you but in

> any event no greater amount of extra time than half of that which this Court has given you.

(Tr. 350-51.) The trial court's oral notification, along with the "Prison Imposed" notice, and his prior knowledge of the bill of indictment and jury verdict, were sufficient to "notify the offender of the mandatory nature of the term of postrelease control and the length of that mandatory term," and the trial court incorporated the notification into the judgment entry. *Bloomer* at ¶69.

{¶13} The proper imposition of postrelease control in this case is further demonstrated by comparison to a recent decision in which we held that the trial court had not properly imposed postrelease control, *State v. Williams*, 10th Dist. No. 10AP-674, 2011-Ohio-4653. As in this case and those discussed above, the original sentencing entry in *Williams* stated: "[A]fter the imposition of sentence, the Court notified the Defendant, orally and in writing, of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)." Id. at ¶2. During the sentencing hearing, the trial court orally advised the defendant that there would be a mandatory period of postrelease control but did not advise him of the length of that period or of the potential sanctions for violating postrelease control. Id. Moreover, there was no record that the defendant received the standard "Prison Imposed" notice advising him of the imposition of postrelease control and the sanctions for violating postrelease control. Id. Subsequently, the trial court held a resentencing hearing but again did not orally advise the defendant about postrelease control, and there was no record that the defendant signed the "Prison Imposed" notice form at the resentencing hearing. Id. at ¶4. After reviewing the record, we held that postrelease control was not properly imposed at the original sentencing or

the resentencing. Id. at ¶19. We remanded the case for resentencing, which under the precedent in *Fischer*, was limited to the issue of proper imposition of postrelease control. Id. at ¶21.

{¶14} In this case, unlike *Williams*, the trial court orally notified appellant of both the length of his postrelease control term and the possibility of sanctions for violating postrelease control. Additionally, the court provided appellant with a copy of the "Prison Imposed" notice. Although the notice was not completely filled out, the information contained within it, when combined with the appellant's prior knowledge of the bill of indictment and the oral reading of the jury verdict, as well as the trial court's oral notification of the mandatory nature and term of postrelease control at the sentencing hearing, was sufficient to further notify appellant of his postrelease control term and the potential sanctions for violating postrelease control. Because postrelease control was properly imposed as part of appellant's original sentence, the trial court did not abuse its discretion by denying his motion for a de novo sentencing hearing.

{¶15} Finally, it appears that appellant seeks to raise an additional claim in his reply brief, arguing that his sentence is void because the trial court failed to merge his convictions for attempted murder and felonious assault. We reject this argument for two reasons. First, we generally will not address arguments raised for the first time in a reply brief. *Gumins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-941, 2011-Ohio-3314, ¶24. Second, even if this argument was properly before us, "any alleged error in the trial court's merger determination [is] waived if not raised on direct appeal." *State v. Couturier* (Sept. 13, 2001), 10th Dist. No. 00AP-1293. See also *State v. Poole*, 8th Dist. No. 94759, 2011-Ohio-716, ¶13 ("Although we are aware that the issue of merger clearly

affects a defendant's sentencing disposition, the question of whether the verdicts on all counts can be used to support separate convictions for all offenses charged is decided by the trial court prior to its determination of a defendant's sentence. Thus, we now consider the issue settled and hold that the time to challenge a conviction based on allied offenses is through a direct appeal—not at a resentencing hearing.") (internal citation omitted). Appellant previously filed a direct appeal in this case and did not raise the issue of merger in that appeal; therefore, he is precluded from asserting it in the present appeal.

{¶16} For the foregoing reasons, appellant's assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.

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