

[Cite as *State v. Santiago*, 2012-Ohio-1763.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|----------------------|---|---------------------------|
| State of Ohio, | : | |
| | : | |
| Plaintiff-Appellee, | : | |
| | : | |
| v. | : | No. 11AP-841 |
| | : | (C.P.C. No. 01CR-04-2340) |
| Raul Santiago, | : | (REGULAR CALENDAR) |
| | : | |
| Defendant-Appellant. | : | |

D E C I S I O N

Rendered on April 19, 2012

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

Shaw & Miller, *Mark J. Miller*, and *Nicholas J. Testa*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Raul Santiago ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas denying his motion for a new sentencing hearing. For the following reasons, we affirm that judgment, but we strike the part of the trial court's sentencing entry that imposed post-release control.

I. BACKGROUND

{¶ 2} In 2002, appellant was convicted of aggravated murder with a firearm specification, and the trial court sentenced him to 23 years to life imprisonment. At the sentencing hearing, the court told him that he would be placed on post-release control if he were released from prison. The court also stated in the sentencing entry that it imposed post-release control. In 2010, appellant filed a motion for a new sentencing hearing and argued that he must be given a sentence without post-release control. The court denied the motion.

II. ASSIGNMENT OF ERROR

{¶ 3} Appellant filed a timely notice of appeal and now assigns the following as error:

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR A DE NOVO RESENTENCING HEARING.

III. DISCUSSION

{¶ 4} In his single assignment of error, appellant argues that the trial court erred by denying his motion for a new sentencing hearing. We disagree.

{¶ 5} Appellant requested the hearing on the basis that it was improper for the trial court to sentence him to post-release control. We agree with appellant that post-release control does not apply to his aggravated murder conviction. *See State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶ 36. Accordingly, the trial court lacked authority to impose post-release control on appellant. *See State v. Silguero*, 10th Dist. No. 11AP-274, 2011-Ohio-6293, ¶ 8. That part of appellant's sentence cannot stand, therefore, because it is void. *See State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, ¶ 26-28. We need not require a resentencing hearing for appellant, however, because he is simply entitled to have post-release control stricken from the sentencing entry. *See Silguero* at ¶ 12-16. In fact, we may modify the entry on appeal. *See Fischer* at ¶ 29.

{¶ 6} For these reasons, we conclude that the trial court did not err by denying appellant's motion for a new sentencing hearing. We overrule appellant's single assignment of error.

IV. CONCLUSION

{¶ 7} Having overruled appellant's single assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas denying his motion for a new sentencing hearing. However, we strike the part of the trial court's sentencing entry that imposed post-release control.

Judgment affirmed.

TYACK and DORRIAN, JJ., concur.
