[Cite as *State v. Jenkins*, 2011-Ohio-634.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 24117
Plaintiff-Appellee	:	
	:	Trial Court Case No. 00-CR-2052
v.	:	
	:	(Criminal Appeal from
WILLIE D. JENKINS	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 11th day of February, 2011.

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FAIN, J.

{¶ 1} Defendant-appellant Willie D. Jenkins, Jr., appeals from an amended termination entry filed in the trial court on June 23, 2010, wherein the trial court re-imposed the same sentence originally imposed, but corrected the failure to have imposed required terms of post-release control in the original sentencing entry. The trial court also re-classified Jenkins as a sexual predator.

{¶ 2} Appellate counsel has filed a brief under the authority of *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, indicating that he has not been able to find any potential assignments of error having arguable merit. By entry filed herein on November 15, 2010, we accorded Jenkins sixty days within which to file his own, pro se brief. He has not done so.

{¶ 3} We have performed our independent duty, under *Anders v. California*, supra, to review the record. Due to the procedural posture of this case, the record is sparse, but it appears that when Jenkins was originally sentenced on one count of Rape and one count of Felonious Assault, on October 17, 2000, the trial court failed to provide terms of post-release control.

{¶ 4} Two weeks before Jenkins was due to be released from incarceration, the trial court had a hearing, with Jenkins and his counsel present, to correct the erroneous lack of any provision for post-release control. The trial court re-imposed the original sentence of ten years for Rape, and eight years for Felonious Assault, to be served concurrently; credited Jenkins with time served; found Jenkins to be a sexual predator; and informed Jenkins that he was going to be subject to a five-year period of post-release control on the Rape conviction, and to a three-year period of post-release control on the Felonious Assault conviction, as required by R.C. 2907.02(A)(2) and 2907.02(A)(1), respectively.

{¶ 5} There is no indication in the record concerning what caused the trial court to bring Jenkins back for re-sentencing.

{¶ 6} When *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, was decided, holding that a sentence that omits a statutorily mandated term of

post-release control is void, many courts were of the opinion that because a sentence omitting post-release control is wholly void, it would be necessary to conduct a sentencing hearing, de novo, to correct the error. That is what the trial court did in this case.

{¶ 7} In *State v. Fischer*, ____ Ohio St.3d ____, 2010-Ohio-6238, the Supreme Court of Ohio has held that a sentence with an erroneous or omitted provision for post-release control is only partly void, so that it is unnecessary to re-sentence a criminal defendant de novo to correct the error. As we understand *State v. Fischer*, the trial court need only, and may only (because of the doctrine of res judicata), correct the erroneous or omitted provision for post-release control.

{¶ 8} We conclude, therefore, that the trial court in this case erred by re-considering Jenkins's entire sentence, and by re-classifying him as a sexual predator. It should have limited its consideration to the issue of post-release control. Of course, this error is necessarily harmless, since the trial court imposed exactly the same sentence (except for the properly corrected provision for post-release control), and assigned Jenkins exactly the same sexual offender classification, that it originally imposed and assigned. Therefore, this error could not be the basis for reversing the order from which Jenkins appeals.

{¶ 9} We have examined the entire record, as required by *Anders v. California*, supra, and we agree with Jenkins's appellate counsel that there are not potential assignments of error having arguable merit. This appeal is therefore wholly frivolous. The order from which this appeal is taken is Affirmed.

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GRADY, P.J., and FROELICH, J., concur.

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