

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

STATE OF OHIO	:	
	:	Appellate Case No. 26248
Plaintiff-Appellee	:	
	:	Trial Court Case No. 11-CR-2557
v.	:	
	:	(Criminal Appeal from
VERNON LEE COX, JR.	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 13th day of March, 2015.

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5500, Chillicothe, Ohio 45601
Defendant-Appellant, *pro se*

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HALL, J.

{¶ 1} Vernon Lee Cox, Jr. appeals *pro se* from the trial court's denial of his "Motion

for Resentencing Based on void Judgment.”

{¶ 2} Cox advances three assignments of error. First, he contends the trial court “rendered a void judgment” by failing to make findings to support a maximum sentence. Second, he claims the trial court erred in imposing multiple post-release control sanctions. Third, he asserts that the trial court failed to sign its termination entry, “rendering the judgment a non-final appealable order.”¹

{¶ 3} Cox’s arguments concern a November 9, 2012 termination entry sentencing him to prison following his conviction on multiple counts of rape, sexual battery, and gross sexual imposition involving a child under the age of thirteen. After the merger of some counts, Cox received an aggregate thirty-year prison sentence. On direct appeal, this court overruled nine assignments of error addressing a variety of issues and affirmed. See *State v. Cox*, 2d Dist. Montgomery No. 25477, 2013-Ohio-4941.

{¶ 4} On May 19, 2014, Cox filed the pro se motion for resentencing at issue. Therein, he argued that the November 9, 2012 termination entry was void and that he was entitled to be resentenced. In support, he maintained that the trial court had erred in (1) failing to make findings to support more-than-minimum sentences, (2) failing to indicate whether certain counts would run consecutively or concurrently, (3) failing to sign the termination entry, and (4) imposing multiple post-release control sanctions. The trial court summarily overruled the motion on May 20, 2014. This appeal followed.

{¶ 5} In his first assignment of error, Cox contends the trial court erred in imposing statutory maximum sentences. Arguing that his offenses pre-dated *State v. Foster*, 109

¹ The State argues that Cox cannot prevail on appeal because he has failed to provide us with a sentencing transcript or a copy of his termination entry. We need not dwell on that issue because we find his assignments of error unpersuasive for other reasons set forth herein.

Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, Cox claims the trial court was obligated to make certain findings to impose anything more than a statutory-minimum sentence and that its failure to do so rendered the termination entry void. This argument lacks merit. In *Foster*, the Ohio Supreme Court held, among other things, that trial courts are not required to make findings before imposing more than a statutory-minimum sentence or a maximum sentence. Although Cox committed at least some of his offenses prior to *Foster*, he was sentenced after the decision in that case. It is well settled that *Foster's* "severance remedy," which eliminated the need for the findings at issue, applies to defendants who committed their offenses before *Foster* but were sentenced after *Foster*. See, e.g., *State v. Clayton*, 2d Dist. Montgomery No. 22937, 2009-Ohio-7040, ¶ 83-86. Therefore, the trial court was not obligated to make findings to support more-than-minimum or maximum sentences.² The first assignment of error is overruled.

{¶ 6} In his second assignment of error, Cox asserts that the trial court erred in imposing ten five-year post-release control obligations. Again, he claims this alleged error rendered the termination entry void. We disagree. Cox contends the trial court violated R.C. 2967.28(F)(4)(c), which provides that when an offender is subject to more than one period of post-release control, the period applicable to all sentences is the one that expires last, i.e., the longest one. The statute also provides that "[p]eriods of post-release control shall be served concurrently and shall not be imposed consecutively to each other."

² Following *Foster*, the General Assembly reenacted a requirement for trial courts to make findings before imposing *consecutive* sentences. See R.C. 2929.14(C)(4). That requirement took effect on September 30, 2011. Cox makes no argument, however, about consecutive-sentence findings. In fact, he admits that partially "consecutive sentences were justified" in his case. (Appellant's brief at 2). He complains only about the lack of findings for a more-than-minimum sentence on each count.

{¶ 7} Here the termination entry reflects that the trial court included a five-year term of post-release control for each of the ten counts on which it sentenced Cox. Under R.C. 2967.28(F)(4)(c), it was perhaps unnecessary for the trial court to impose ten separate five-year terms. See *State v. Sulek*, 2d Dist. Greene No. 09CA75, 2010-Ohio-3919, ¶ 23-25. There was no prejudice to Cox, however, in doing so because the trial court did not purport to run the five-year terms consecutively. See *State v. Ketterer*, 140 Ohio St.3d 400, 2014-Ohio-3973, 18 N.E.3d 1199, ¶ 17-21 (finding no reversible error where the trial court imposed multiple concurrent post-release control terms); *State v. Almosawi*, 2d Dist. Montgomery No. 24633, 2012-Ohio-3385, ¶ 25 (finding “no practical effect in the imposition of two identical terms of postrelease control, and no prejudice to [the appellant]”). The second assignment of error is overruled.

{¶ 8} In his third assignment of error, Cox contends the trial court violated Crim.R. 32(C) by failing to sign its termination entry. He claims the alleged omission resulted in the lack of a valid final judgment. We disagree. We have dealt with this argument several times before, including *State v. Owens*, 2d Dist. Montgomery No. 24817, 2012-Ohio-3288 at ¶ 6, where we recognized the long-standing practice of the Montgomery County Clerk of Courts where original ink signed judgment entries are maintained for the clerk’s file and additional unsigned copies are stamped and sent to the parties for their files. Although the copy of the termination entry accompanying Cox’s motion for resentencing bore a stamped signature, we have reviewed the record which contains the official termination entry bearing the judge’s handwritten signature, as does the online image of the entry on the clerk’s website. Therefore, a valid final judgment exists. The third assignment of error is overruled.

{¶ 9} The judgment of the Montgomery County Common Pleas Court is affirmed.

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FAIN, J., and DONOVAN, J., concur.

Copies mailed to:

Mathias H. Heck
Kirsten A. Brandt
Vernon Lee Cox, Jr.
Hon. Michael Tucker