[Cite as *State v. Stewart*, 2015-Ohio-1108.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
	:	
-vs-	:	
	:	
DUANE STEWART	:	Case No. 14 CAA 08 0051
	:	
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Delaware County Court of Common Pleas, Case No. 07 CR I 08 0474
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	March 23, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
DOUGLAS N. DUMOLT Delaware County Prosecutor's Office 140 N. Sandusky Street, 3rd Floor Delaware, OH 43015	ANTHONY M. HEALD 125 North Sandusky Street Delaware, OH 43015
	DUANE STEWART c/o 2386 Wood Ave Columbus, OH 43221

Baldwin, J.

{¶1} Defendant-appellant Duane Stewart appeals from the July 28, 2014 Judgment Entry of the Delaware County Court of Common Pleas denying his Praecipe and Motion to Vacate Post Release Control. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On August 24, 2007, the Delaware County Grand Jury indicted appellant on one count of gross sexual imposition in violation of R.C. 2907.05(A)(5), a felony of the fourth degree, five counts of gross sexual imposition in violation of R.C. 2907.05(A)(4), felonies of the third degree, and three counts of rape in violation of R.C. 2907.02(A)(1)(b), felonies of the first degree. At his arraignment on September 18, 2007, appellant entered a plea of not guilty to the charges.

{¶3} Thereafter, on February 5, 2008, appellant withdrew his former not guilty pleas and pleaded guilty, pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.E.2d 162 (1970), to the lesser included offense of attempted gross sexual imposition in violation of R.C. 2923.02(A), a felony of the fifth degree, the offense of gross imposition in violation of R.C. 2907.05(A)(4), a felony of the third degree, and the lesser included offense of attempted gross sexual imposition in violation of R.C. 2923.02(A), a felony of the fourth degree. The remaining counts were dismissed. As memorialized in a Judgment Entry filed on May 5, 2008, appellant was sentenced to six years and three months in prison and was informed of his registration requirements under the Adam Walsh Act. The trial court's May 5, 2008 Judgment Entry also stated, in relevant part, that appellant was advised as follows: "That as a part of this Sentence, post –release control will be imposed for Five (5) years. No reduction."

{¶4} A Nunc Pro Tunc Judgment Entry was filed on December 17, 2009 to amend the trial court's May 5, 2008 Judgment Entry to comply with *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. The Nunc Pro Tunc Judgment Entry also stated, in relevant part, that appellant was advised as follows: "That as a part of this Sentence, post –release control will be imposed for Five (5) years. No reduction."

{¶5} Thereafter, on February 5, 2014, appellant filed a Motion to Vacate Registration, arguing that he had been improperly classified under the Adam Walsh Act based on *State v. Williams*, 129 Ohio St. 3d 344, 2011-Ohio-3374, 952 N.E.2d 1108. Appellant asked to be resentenced under the proper statutory scheme at the time of his offenses. Appellant was conveyed to court and was resentenced on April 18, 2014 and informed of his registration requirements under Megan's law. A Judgment Entry on Re-Sentence was filed on April 22, 2014 that contained the same language stating that there was "no reduction" in post-release control.

{¶6} Subsequently, on May 27, 2014, appellant filed a "Praecipe", arguing that the Judgment Entry filed on April 22, 2014 contained defective language. Appellant specifically argued that as a sexually oriented offender, he was not subject to community notification and asked that this language be removed from the Judgment Entry.

{¶7} On June 9, 2014, appellant filed a Motion to Vacate Post Release Control, arguing that the trial court had failed to comply with R.C. 2929.19 in imposing the same. Appellant argued that the May 5, 2008 and April 18, 2014 Judgment Entries failed to state that post-release control was "mandatory" for a period of five years and did not

comply with R.C. 2967.28(B)(1) and 2929.19(B)(3)(c). Appellee filed a memoranda contra to appellant's motion on July 10, 2014.

{¶8} Pursuant to a Judgment Entry filed on July 28, 2014, the trial court denied appellant's Praecipe and Motion to Vacate Post Release Control without a hearing.

{¶9} Appellant now raises the following assignments of error on appeal:

{¶10} THE COURT DID NOT HAVE AUTHORITY TO MODIFY ITS PRIOR ORDER TO CHANGE THE POST RELEASE CONTROL PROVISIONS OF DEFENDANT/APPELLANT'S SENTENCE.

{¶11} THE TRIAL COURT DID NOT HAVE AUTHORITY TO REQUIRE THAT THE DEFENDANT/APPELLANT COULD BE SUBJECTED TO COMMUNITY NOTIFICATION AT THE TIME OF SENTENCING.

I

{¶12} Appellant, in his first assignment of error, argues that the trial court erred in denying his Motion to Vacate Post Release Control. Appellant specifically contends that he was not advised that post release control was mandatory.

{¶13} "A sentence that does not include the statutorily mandated term of post release 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." *State v. Fischer,* 128 Ohio St.3d 92, 2010–Ohio–6238, 942 N.E.2d 332, paragraph one of the syllabus.

{¶14} We note that we do not have the transcripts of either the April 30, 2008 sentencing hearing or the April 18, 2014 resentencing hearing to determine whether or not appellant was properly advised of the mandatory nature of his post release control.

When an appellant does not provide a complete record to facilitate our review, we must presume regularity in the trial court's proceedings and affirm. *Knapp v. Edwards Laboratories,* 61 Ohio St.2d 197, 400 N.E.2d 384 (1980). Moreover, in the case sub judice, the trial court advised appellant in both Judgment Entries that "as a part of this Sentence, post –release control will be imposed for Five (5) years. No reduction." This language properly informed defendant that he will be on post release control for a period of five years, i.e., it was mandatory. See *State v. Twitty,* 8th Dist. No. 98143, 2012 -Ohio- 5290.

{¶15} Appellant's first assignment of error is, therefore, overruled.

II

{¶16} Appellant, in his second assignment of error, argues that the trial court erred in denying his "Praecipe." We disagree.

{¶17} The trial court, in its April 22, 2014 Judgment Entry on Resentencing, stated that appellant was a sexually oriented offender and "has a duty to register as a Sexual Oriented Offender who shall be subject to community notification." While appellant now argues that he was not subject to community notification, we note that appellant did not appeal from the trial court's April 22, 2014 Judgment Entry. The doctrine of res judicata bars appellant's argument. The doctrine of res judicata bars a party from raising issues that the party previously raised or previously could have raised. See, e.g., *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus. Appellant could have raised his claim that the court improperly subjected him to community notification in a direct appeal to this court. See *State v. Hobbs*, 4th Dist. Scioto No. No. 05CA3011, 2006 -Ohio- 3121 (holding that the appellant

could have raised his claim that the court improperly ordered him to register as a sex offender in a direct appeal to the court).

{¶18} Appellant's second assignment of error is, therefore, overruled.

{¶19} Accordingly, the judgment of the Delaware County Court of Common Pleas is affirmed.

By: Baldwin, J.

Gwin, P.J. and

Delaney, J. concur.