

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

BRANDON C. PATTERSON

Defendant-Appellant

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JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 2014CA00220

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. 2009CR0136

JUDGMENT:

Affirmed and Remanded

DATE OF JUDGMENT:

May 4, 2015

APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO, Prosecutor
By: RENEE M. WATSON
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For Defendant-Appellant

BRANDON C. PATTERSON, Pro Se
Inmate No. A564-655
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P.O. Box 901
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Farmer, J.

{¶1} On March 11, 2009, the Stark County Grand Jury indicted appellant, Brandon Patterson, on one count of attempted murder in violation of R.C. 2903.02 and 2923.02, and two counts of felonious assault in violation of R.C. 2903.11, all containing firearm specifications. Appellant was also indicted on one count of having a weapon while under disability in violation of R.C. 2923.13. Said charges arose from the shooting of two individuals at a party.

{¶2} A jury trial commenced on April 29, 2009. The jury found appellant guilty as charged. By judgment entry filed May 19, 2009, the trial court sentenced appellant to an aggregate term of twenty years in prison. Appellant filed an appeal. This court affirmed appellant's convictions. *State v. Patterson*, 5th Dist. Stark No. 2009CA00142, 2010-Ohio-2988.

{¶3} On October 29, 2014, appellant filed a motion to correct sentence and termination order, claiming the sentencing entry did not indicate the order in which the sentences were to be served and the trial court failed to impose a sanction for each offense. By judgment entry filed November 5, 2014, the trial court denied the motion.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "TRIAL COURT VIOLATED DEFENDANTS RIGHT TO U.S. AMEND. 5TH, 6TH, & 14TH, & OH. CONST. ART. 1, § 10, & 16, WHEN IT FAILED TO CORRECT THE ABSENCE OF STATUTORY MANDATED SANCTIONS & THE IMPROPER "SENTENCING PACKAGE" CONSTRUCTION OF JOURNAL ENTRY."

II

{¶6} "TRIAL COURT VIOLATED DEFENDANTS RIGHT TO U.S. AMEND. 5TH, 6TH, & 14TH, & OH. CONST. ART. 1, § 10, & 16, WHEN IT FAILED TO CORRECT THE AMBIGUOUS JOURNAL ENTRY."

{¶7} Preliminarily, we note this case comes to us on the accelerated calendar. App.R. 11.1, which governs accelerated calendar cases, provides in pertinent part the following:

(E) Determination and judgment on appeal

The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.

The decision may be by judgment entry in which case it will not be published in any form.

{¶8} One of the important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Association*, 11 Ohio App.3d 158 (10th Dist.1983).

{¶9} This appeal shall be considered in accordance with the aforementioned rules.

I, II

{¶10} Appellant claims the trial court erred in denying his motion to correct sentence and termination order because his sentencing entry did not include "offense-specific" penalties and did not indicate the order in which his multiple-count sentences were to be served. We disagree.

{¶11} "Where a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21." *State v. Reynolds*, 79 Ohio St.3d 158, 1997-Ohio-304, syllabus. Because appellant's motion was a petition for postconviction relief, we find it is barred by the doctrine of res judicata as outlined by the Supreme Court of Ohio in *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus:

Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at trial, which resulted in that judgment of conviction, or on an appeal from that judgment.

{¶12} Appellant could have raised the aforementioned issues on direct appeal, but did not do so.

{¶13} In addition, appellant filed his petition for postconviction relief more than five years after his sentencing, well after the expiration of the time mandated under R.C. 2953.21(A)(2) (both previous and current versions). Because appellant failed to meet the time restriction of R.C. 2953.21(A)(2) and the jurisdictional requirements of R.C. 2953.23, the trial court did not have jurisdiction to entertain the motion/petition.

{¶14} Nevertheless, in reviewing the trial court's sentence, both on the record and in the May 19, 2009 judgment entry, we find the trial court set forth specific penalties for each offense. May 6, 2009 T. at 6-7. The attempted murder count and the felonious assault count, both involving the same victim, as well as the accompanying firearm specifications, were merged, with appellant receiving ten years in prison on the attempted murder count and three years on the firearm specification. The trial court specifically stated the ten year term was to be served subsequent to the three year firearm sentence. The trial court also sentenced appellant to three years in prison on the second felonious assault count involving another victim, as well as three years on the accompanying firearm specification. The trial court specifically stated the three year term was to be served subsequent to the three year firearm sentence. Lastly, the trial court sentenced appellant to one year on the weapons count, and ordered all of the sentences to be served consecutively for a total aggregate sentence of twenty years in prison.

{¶15} We find the trial court properly imposed specific sentences on each offense under R.C. 2929.14.

{¶16} During the May 6, 2009 sentencing hearing at 7, the trial court informed appellant that he was subject to "supervision by the parole authority" and said

supervision "would be for at least five years." In its judgment entry filed May 19, 2009, the trial court specifically notified appellant that "post release control is mandatory in this case up to a maximum of five (5) years." The trial court failed to properly notify appellant that his post-release control was mandatory for five years under R.C. 2967.28(B)(1). *State v. Green*, 5th Dist. Stark No. 2010CA00198, 2011-Ohio-1636. *Accord State v. Smalls*, 5th Dist. Stark No. 2013CA00086, 2013-Ohio-5674. The state concedes this issue. Appellee's Brief at 2.

{¶17} Appellant argues the trial court did not set forth the sequence in which the consecutive sentences are to be served in relation to his argument (newly raised in his appellate brief) that the trial court improperly imposed post-release control. Appellant argues the trial court cannot now re-impose post-release control because he has already served six years and it is "unclear which sanction is completed already and to which sanction PRC will attach." Appellant's Brief at 8.

{¶18} Appellant has not completed his prison term; therefore, a proper term of post-release control can be imposed. *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197. As to "which sanction PRC will attach," R.C. 2967.28(F)(4)(c) provides that "[p]eriods of post-release control shall be served concurrently and shall not be imposed consecutively to each other." Therefore, in a multiple-count case, the trial court is required to notify the defendant of the longest applicable period of post-release control, in the case sub judice, five years.

{¶19} Furthermore, the six years appellant has served relates to the two three year sentences he received for the firearm specifications. R.C. 2929.14(C)(1)(a).

{¶20} Upon review, we find the trial court did not err in denying appellant's motion to correct sentence and termination order. However, appellant is entitled to a new sentencing hearing, limited to the proper imposition of post-release control (mandatory five years). *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, paragraph two of the syllabus.

{¶21} The sole assignment of error is denied.

{¶22} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed, but the matter is remanded to said court for the proper imposition of post-release control.

By Farmer, J.

Gwin, P.J. and

Delaney, J. concur.