

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
MARQUIS R. TODDIE	:	Case No. 15CA25
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case Nos. 1998-CR-272D and 2003-CR-519D

JUDGMENT: Affirmed in Part and Remanded

DATE OF JUDGMENT: June 29, 2015

APPEARANCES:

For Plaintiff-Appellee

MATTHEW C. DeROSA
38 South Park Street
Mansfield, OH 44902

For Defendant-Appellant

MARQUIS R. TODDIE, Pro Se
#55395-060
F.C.I. Elkton
P.O. Box 10
Lisbon, OH 44432

Farmer, J.

{¶1} On December 3, 1998, appellant, Marquis Toddie, pled guilty to one count of aggravated trafficking in drugs in violation of R.C. 2925.03, a felony in the fourth degree (Case No. 1998-CR-0272). By sentencing entry filed December 22, 1998, the trial court sentenced appellant to six months in jail.

{¶2} On January 13, 2004, appellant pled guilty to trafficking in drugs in violation of R.C. 2925.03, a felony in the fourth degree (Case No. 2003-CR-0519). By sentencing entry filed February 24, 2004, the trial court sentenced appellant to seventeen months in prison with up to five years of post-release control.

{¶3} On December 19, 2014, appellant filed a motion to find the sentencing entries void because post-release control was not imposed in the 1998 case and was improperly imposed in the 2003 case. By order filed March 24, 2015, the trial court denied the motion, finding appellant failed to appeal the sentences and the Department of Rehabilitation and Correction's imposition of post-release control.

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

I

{¶5} "THE TRIAL COURT ERRED IN FINDING THAT RES JUDICATA BARS REVIEW OF A VOID JUDGMENT, WHEN THE TRIAL COURT RULED THAT THE APPELLANT FAILED TO APPEAL EITHER SENTENCE OR THE DRC'S DETERMINATION TO IMPOSE POST RELEASE CONTROL."

II

{¶6} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN NOT FINDING THE JUDGMENT ENTRIES IN BOTH TRIAL NUMBER'S VOID, WHEN THE TRIAL COURT FAILED TO COMPLY WITH THE STATUTORY REQUIREMENTS OF THE OHIO REVISED CODE."

{¶7} Preliminarily, we note these cases come 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 conclusory 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 find the sentencing entries void because the sentencing court failed to comply with the statutory requirements of the Ohio Revised Code as post-release control was not imposed in the 1998 case and was improperly imposed in the 2003 case, the trial court failed to notify him of the possibility of community control in both cases, and failed to impose a mandatory driver's license suspension in the 1998 case.

{¶11} In its judgment entry filed March 24, 2015, the trial court denied appellant's motion, stating: "The defendant failed to appeal either sentence or the DRC's determination to impose post release control."

{¶12} Appellant argues the trial court erred in finding the doctrine of res judicata applied in his case. As for his arguments relative to the imposition of post-release control, we agree. As for his arguments relative to the mandatory driver's license suspension and notification of the possibility of community control, we disagree.

{¶13} Appellant's motion was a petition for postconviction relief. *State v. Reynolds*, 79 Ohio St.3d 158, 1997-Ohio-304. Given that appellant was sentenced on December 22, 1998 and February 24, 2004 and his motion was filed on December 19, 2014, we find his motion to be untimely. R.C. 2953.21(A)(2). Appellant has not met the criteria for a late filing under R.C. 2953.23(A)(1).

{¶14} Furthermore, his arguments are barred under the doctrine of res judicata. As stated by the Supreme Court of Ohio in *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraphs eight and nine of the syllabus, the doctrine of res judicata is applicable to

petitions for postconviction relief. The *Perry* court explained the doctrine at 180-181 as follows:

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.

{¶15} In reviewing appellant's motion, we find the arguments therein could have been raised at trial or on direct appeal.

{¶16} However, the Supreme Court of Ohio has held that res judicata does not apply to a "sentence that does not include the statutorily mandated term of postrelease control." *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, paragraph one of the syllabus. The *Fischer* court also held at paragraph three of the syllabus: "Although the doctrine of res judicata does not preclude review of a void sentence, res judicata still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence."

{¶17} As long as appellant has not completed serving his sentences, proper terms of post-release control can be imposed. *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126; *State v. Patterson*, 5th Dist. Stark No. 2014CA00220, 2015-Ohio-1714.

{¶18} Upon review, we remand the matter to the trial court for new sentencing hearings limited to the proper imposition of post-release control. *Fischer, supra*, at paragraph two of the syllabus.

{¶19} Assignment of Error I and II are granted as they relate to the imposition of post-release control.

{¶20} The judgment of the Court of Common Pleas of Richland County, Ohio is affirmed in part, and the matter is remanded to said court for new sentencing hearings limited to the proper imposition of post-release control.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

SGF/sg 615