

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

BRANDON C. PATTERSON

Defendant-Appellant

: JUDGES:

- : Hon. W. Scott Gwin, P.J.
- : Hon. William B. Hoffman, J.
- : Hon. Patricia A. Delaney, J.

: Case No. 2015CA00125

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2009-CR-
0136

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

October 13, 2015

APPEARANCES:

For Plaintiff-Appellee:

JOHN D. FERRERO, JR.
STARK CO. PROSECUTOR
RENEE M. WATSON
110 Central Plaza South, Ste. 510
Canton, OH 44702-1413

For Defendant-Appellant:

BRANDON C. PATTERSON, PRO SE
Inmate No. A564-655
Trumbull Correctional Institution
Leavittsburg, OH 44430

Delaney, J.

{¶1} Appellant Brandon C. Patterson appeals from the Judgment Entry - Resentencing of the Stark County Court of Common Pleas dated June 1, 2015. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} A statement of the facts underlying appellant's criminal convictions is not necessary to our resolution of this appeal.

{¶3} Appellant was found guilty upon trial by jury of one count of attempted murder with a firearm specification [R.C. 2923.02(A) and 2903.02(B)], two counts of felonious assault with firearm specifications [R.C. 2903.11], and one count of having a weapon while under disability [R.C. 2923.13]. Appellant was sentenced to a prison term of 20 years.

{¶4} We affirmed appellant's convictions and sentence in *State v. Patterson*, 5th Dist. Stark No. 2009CA00142, 2010-Ohio-2988, appeal not allowed, 126 Ohio St.3d 1619, and habeas corpus denied in *Patterson v. Kelly*, N.D. Ohio No. 5:11 CV 997, 2012 WL 406987 (Feb. 8, 2012) [*Patterson I*].

{¶5} Appellant then filed a "Motion for Correction of Sentence and Termination Order" arguing the trial court did not indicate the order in which his sentences were to be served and failed to impose a sanction for each offense, which the trial court overruled. We affirmed the trial court's decision in *State v. Patterson*, 5th Dist. Stark No. 2014CA00220, 2015-Ohio-1714, appeal not allowed, 2015-Ohio-3958, ___ N.E.3d ___ [*Patterson II*].

{¶6} In *Patterson II*, we affirmed the decision of the trial court but also found appellant was entitled to a new sentencing hearing limited to the proper imposition of post-release control pursuant to *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, paragraph two of the syllabus. *Id.* at ¶ 20.

{¶7} On May 27, 2015, the resentencing hearing was held and the trial court imposed a mandatory 5-year term of post-release control.

{¶8} Appellant now appeals from the judgment entry of his resentencing. Appellant raises three assignments of error:

ASSIGNMENTS OF ERROR

{¶9} "I. THE TRIAL COURT ABUSED ITS DISCRETION BY REIMPOSING PUNISHMENTS, ON A CONVICTION AND A SENTENCE, TO A CRIME NOT COGNIZABLE IN OHIO, WARRANTING A VACATUR ORDER." [*Sic* throughout.]

{¶10} "II. THE TRIAL COURT LACKED SUBJECT-MATTER JURISDICTION OVER THE PERSON, WHEN POSTRELEASE CONTROL HAD EXPIRED PRIOR TO REIMPOSING A SANCTION AND/OR A COMBINATION OF SANCTIONS, RESULTING IN A VOID, VOIDABLE, OR NULLITY OF A CONVICTION AND SENTENCE."

{¶11} "III. THE TRIAL COURT ABUSED ITS DISCRETION WHEN VACATING A PRIOR JUDGMENT BY LEAVE OF COURT, WITHOUT CREDITING JAIL-TIME CREDIT AND THE CREDIT FOR TIME SERVED, WHILE AWAITING RE-SENTENCING AS SUBSTANTIAL RIGHT." [*Sic* throughout.]

ANALYSIS

I., II., III.

{¶12} This case comes to us on the accelerated calendar. App.R. 11.1 governs accelerated-calendar cases and states in pertinent part:

(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.

{¶13} One of the most 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 Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983).

{¶14} With these principles in mind, we turn to appellant's three assignments of error which are related and will be considered together. Each of appellant's arguments, all unrelated to the imposition of post-release control, is barred by res judicata.

{¶15} Appellant's disjointed arguments summarily raise a number of issues: alleged clerical errors in calculation of jail-time credit; merger of allied offenses; and the status of the offense of attempted felony murder. None of these arguments are premised upon the imposition of post-release control at resentencing. We have found

arguments such as these to be barred by res judicata on appeals from resentencing if the issues did not arise from the resentencing hearing itself. See, *State v. Oweis*, 5th Dist. Delaware No. 11 CAA 06 0050, 2012-Ohio-443, ¶ 12, citing *State v. Fischer*, 128 Ohio St.3d 92, 2010–Ohio–6238, 942 N.E.2d 332 and *State v. Franklin*, 8th Dist. No. 95991, 2011–Ohio–4953.

{¶16} Appellant had multiple prior opportunities to litigate the claims he sets forth in the instant appeal via his direct appeal from his convictions and sentence, an avenue he did pursue in *Patterson I* without raising these claims. He also moved for post-conviction relief and appealed the trial court's denial thereof in *Patterson II*, again without raising these claims. This latest round of new arguments is thus barred by principles of res judicata. The *Perry* court explained the doctrine as follows:

Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant 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 the trial which resulted in that judgment of conviction or on an appeal from that judgment.

State v. Perry, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967).

{¶17} Moreover, our remand in *Patterson II* was limited to resentencing to properly impose post-release control pursuant to *Fischer*, supra. In that case, the Ohio Supreme Court noted the effect of res judicata on the remaining portion of the sentence:

* * * Just as *Saxon* held that a complete resentencing is not required when a defendant on appeal prevails on a challenge only

as to one offense in a multiple-offense case, a complete de novo resentencing is not required when a defendant prevails only as to the postrelease-control aspect of a particular sentence. In this situation, the postrelease-control component of the sentence is fully capable of being separated from the rest of the sentence as an independent component, and the limited resentencing must cover only the post release control. It is only the postrelease-control aspect of the sentence that is void and that must be rectified. The remainder of the sentence, which the defendant did not successfully challenge, remains valid under the principles of res judicata. See *Saxon* [109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824], at ¶ 17–19.” *Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, at ¶ 21–22 (O'Connor, J., dissenting, joined by Lundberg Stratton, J.).

State v. Fischer, 128 Ohio St.3d 92, 97, 2010-Ohio-6238, 942 N.E.2d 332, 338-39, ¶ 17 (2010)

{¶18} We find appellant’s assignments of error are barred by res judicata and the finality of appellate judgments. Appellant’s three assignments of error are overruled.

CONCLUSION

{¶19} Appellant's three assignments of error are overruled and the judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J. and

Gwin, P.J.

Hoffman, J., concur.