

COURT OF APPEALS
MUSKINGUM 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-	:	
	:	
BENJAMIN D. WILLS	:	Case No. CT2015-0009
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. CR2014-0307
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	October 30, 2015
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APPEARANCES:

For Plaintiff-Appellee

GERALD V. ANDERSON, II
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Zanesville, OH 43702-0189

For Defendant-Appellant

DAVID A. SAMS
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Farmer, J.

{¶1} On October 8, 2014, the Muskingum County Grand Jury indicted appellant, Benjamin Wills, on two counts of receiving stolen property in violation of R.C. 2913.51. On January 5, 2015, appellant pled guilty as charged. By judgment entry filed February 23, 2015, the trial court sentenced appellant to an aggregate term of twelve months in prison.

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

I

{¶3} "THE DEFENDANT-APPELLANT'S PLEA WAS UNKNOWING, UNINTELLIGENT AND INVOLUNTARY, AS THE TRIAL COURT DID NOT ADVISE OF POST-RELEASE-CONTROL AND ITS RAMIFICATIONS."

II

{¶4} "THE TRIAL COURT DID NOT ADVISE OF POST-RELEASE-CONTROL AND ITS RAMIFICATIONS AT SENTENCING."

I

{¶5} Appellant claims his plea was not knowingly, intelligently or voluntarily made because he was not fully advised of the consequences of violating post release control under R.C.2929.141(A)(1). We disagree.

{¶6} R.C. 2929.141 governs commission of an offense by person under post release control. Subsection (A)(1) states the following:

(A) Upon the conviction of or plea of guilty to a felony by a person on post-release control at the time of the commission of the felony, the court may terminate the term of post-release control, and the court may do either of the following regardless of whether the sentencing court or another court of this state imposed the original prison term for which the person is on post-release control:

(1) In addition to any prison term for the new felony, impose a prison term for the post-release control violation. The maximum prison term for the violation shall be the greater of twelve months or the period of post-release control for the earlier felony minus any time the person has spent under post-release control for the earlier felony. In all cases, any prison term imposed for the violation shall be reduced by any prison term that is administratively imposed by the parole board as a post-release control sanction. A prison term imposed for the violation shall be served consecutively to any prison term imposed for the new felony. The imposition of a prison term for the post-release control violation shall terminate the period of post-release control for the earlier felony.

{¶7} On January 5, 2015, appellant signed a "Plea of Guilty" which contained the following language:

I understand that if I am now on felony probation, parole, under a community control sanction, or under post release control from prison, this

plea may result in revocation proceedings and any new sentence could be imposed consecutively.

Post Release Control. In addition, a period of supervision by the Adult Parole Authority after release from prison is:***Optional up to 3 years (F/3 no physical harm or threat of physical harm; F/4 and F/5)

A violation of any post release control rule, or condition can result in a more restrictive sanction while I am under post release control, an increased duration of supervision or control, up to the maximum term and re-imprisonment even though I have served the entire stated prison term imposed upon me by this Court for all offenses.

If I violate conditions of supervision while under post release control, the Parole Board could return me to prison for up to nine months for each violation, for a total of ½ of my originally stated prison term. If the violation is a new felony, I could receive a prison term of the greater of one year or the time remaining on post release control, in addition to any other prison term imposed for the offense.

{¶8} During the plea hearing, after defense counsel acknowledged that appellant had reviewed and understood the "Plea of Guilty" form "as well as all the concepts contained within the plea form," the trial court specifically informed appellant of the following (January 5, 2015 T. at 6-7):

THE COURT: Do you understand that if you went to prison in this matter, it's optional, but upon your release from prison, the Adult Parole Authority could place you upon what is known as post-release control. That could be for a period of up to three years.

While on post-release control, you would be subject to a variety of rules and regulations. Should you fail to follow those rules and regulations, you could be sent back to prison for a period of up to nine months for each rule violation you may commit. The total amount of time you could be sent back to prison would be equal to one-half of your original prison sentence.

If you commit a new felony while on post-release control, in addition to any sentence you receive for that new felony, additional prison time could be added to that sentence in the form of the time you have left on post-release control or one year, whichever is greater. Do you understand that?

THE DEFENDANT: Yes, sir.

{¶9} Upon review, we find these warnings to be sufficient to make the guilty plea knowingly, intelligently, and voluntarily entered into by appellant.

{¶10} Assignment of Error I is denied.

II

{¶11} Appellant claims the trial court did not advise him of post release control and its ramifications at sentencing. We disagree.

{¶12} At the sentencing hearing, the trial court stated the following (February 23, 2015 T. at 13-14):

THE COURT: ***I must inform you, upon your release from prison it's optional that the Adult Parole Authority could place you on what is known as post-release control. That could be for a period of up to three years. While on post-release control you will be subject to a variety of rules and regulations. Should you fail to follow those rules and regulations you could be sent back to prison for a period of up to nine months for each rule violation you may commit. Total amount of time you could be sent back to prison would be equal to one-half your original prison sentence.

If you commit a new felony while on post-release control, in addition to any sentence you receive for that new felony, additional prison time could be added to that sentence in the form of time you have left on post-release control, or one year, whichever's greater.

Do you understand what I just went over?

THE DEFENDANT: Yes. Yes, Your Honor.

THE COURT: Do you have any questions about your sentence?

THE DEFENDANT: No.

{¶13} Upon review, we find the trial court advised appellant of post release control and the language "could be added" is sufficient and tantamount to saying "consecutive to."

{¶14} Assignment of Error II is denied.

{¶15} The judgment of the Court of Common Pleas of Muskingum County, Ohio
is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

SGF/sg 1014