

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOHN MICHALEK

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. Craig R. Baldwin, J.

Case No. 2016CA00096

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Common
Pleas, Case No. 2010CR0380

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 7, 2016

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Hoffman, J.

{¶1} Defendant-appellant John Michalek appeals the April 13, 2016 Judgment Entry entered by the Stark County Court of Common Pleas denying his “Motion to Vacate and Release the Imposition of Post-Release Control.” Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE¹

{¶2} On June 14, 2010, a jury convicted Appellant as charged by indictment of aggravated arson and retaliation. The trial court imposed a six year term of imprisonment as to the aggravated arson in violation of R.C. 2909.02(A)(1), and a one year term on the charge of retaliation in violation of R.C. 2921.05(B), ordering the terms to be served concurrently. The trial court ordered Appellant serve a period of five years post-release control on the aggravated arson, and an optional period of three years post-release control on the retaliation charge. The court explained the terms and consequences of violating post-release control.

{¶3} Appellant filed a direct appeal to this Court. Via Opinion and Judgment Entry of March 28, 2011, this Court affirmed, in part, and reversed, in part, Appellant's conviction and sentence. This Court's Opinion and Judgment Entry reversed Appellant's conviction on the charge of retaliation, and remanded the matter to the trial court for further proceedings. *State v. Michalek*, Stark App. No. 2010CA00186, 2011-Ohio-1628.

{¶4} Via Judgment Entry of April 8, 2011, the trial court dismissed the charge of retaliation, leaving intact Appellant's conviction and sentence for aggravated arson.

¹ A rendition of the underlying facts is unnecessary for resolution of this appeal.

{¶15} On April 6, 2016, Appellant filed a "Motion to Vacate and Release from Post-Release Control."

{¶16} Via Judgment Entry of April 13, 2016, the trial court denied Appellant's motion.

{¶17} Appellant appeals, assigning as error,

{¶18} I. THE TRIAL COURT ERRED IN NOT ORDERING APPELLANT'S RELEASE FROM POST-RELEASE CONTROL.

{¶19} Appellant maintains he has been released from prison pursuant to the terms of his original June 14, 2010 Sentence, and the trial court has not proceeded as directed by this Court in *State v. Michalek*, Stark App. No. 2010CA00186, 2011-Ohio-1628; therefore, the order of post-release control is void.² We disagree.

{¶10} As set forth in the Statement of the Case, supra, on April 8, 2011, the trial court dismissed Appellant's conviction for retaliation, leaving the remainder of his sentence for aggravated arson intact.³ Appellant did not appeal the April 8, 2011 Judgment Entry; therefore, his argument with regard to the failure to impose post-release control is barred by the doctrine of res judicata, as the issue was capable of being raised by direct appeal of the April 8, 2011 Judgment Entry.

² Appellant also raises on appeal for the first time an argument with regard to an order he register pursuant to the Arson Registry Law. Specifically, Appellant states, "After release, Appellant has been ordered to report and register in the Arson Registry Law that took effect on July 2013, more than three years after Appellant's conviction." Appellant does not cite the order, nor did Appellant file a direct appeal from the order. Appellant did not raise this argument in the proceedings before the trial court; therefore, the argument is waived.

³ Because this Court did not reverse Appellant's conviction for aggravated arson or the sentence imposed on the charge, the trial court's June 14, 2010 Judgment Entry remained a valid sentence.

{¶11} The April 13, 2016 Judgment Entry of the Stark County Court of Common Pleas is affirmed.

By: Hoffman, J.

Farmer, P.J. and

Baldwin, J. concur