

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1237

Appellee

Trial Court No. CR199901863

v.

William Edward Maddox, Jr.

DECISION AND JUDGMENT

Appellant

Decided: March 19, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

William Maddox, Jr., pro se.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, William Edward Maddox, Jr., appeals a judgment of the Lucas County Court of Common Pleas, journalized on August 25, 2009. The judgment denied Maddox's motion to vacate his sentence due to the trial court's failure to comply with statutory requirements for notice of postrelease control.

{¶ 2} Maddox was indicted on May 28, 1999, on two counts of felonious assault, violations of R.C. 2903.11(A)(2) and second degree felonies. The charges included a firearm specification under R.C. 2941.145. On June 7, 1999, appellant entered a plea of not guilty. Subsequently he pled no contest to the charges. In a judgment journalized on December 29, 1999, Maddox was sentenced to consecutive two year terms of imprisonment on each count of felonious assault and one year on the firearm specification. In total, appellant was sentenced for a period of incarceration of 13 years.

{¶ 3} On June 3, 2009, appellant filed, pro se¹, a motion with the trial court titled "Motion for Judicial Release." The trial court denied the motion in a judgment journalized on June 15, 2009.

{¶ 4} On July 28, 2009, appellant filed a "Motion for Determination of Unattended Bezak Proceedings." This motion was accompanied by a memorandum in which appellant characterized his earlier motion as including "a comprehensive request for sentencing." In the memorandum, appellant claimed that the trial court failed to comply with statutory requirements for notice of postrelease control and sought for the court to vacate his sentence. He claimed his sentence was void under the Ohio Supreme Court decisions of *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250 and *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197. Appellant also sought a hearing. We interpret the July 28, 2009 motion as a motion for resentencing based upon claimed sentencing errors with respect to notice of postrelease control.

¹Appellant has acted as his own attorney in this appeal and in the underlying motions filed with the trial court after imposition of sentence. His motions, their claimed legal basis, and the relief sought were frequently unclear and they required a studied review to determine their intended meaning.

{¶ 5} The trial court denied the motion in a judgment journalized on August 24, 2009. It is from the August 24, 2009 judgment that appellant appeals. He asserts two assignments of error on appeal:

{¶ 6} "Assignment of Error No. 1

{¶ 7} "Whether the trial court abused its discretion thereby depriving defendant/appellant due process of law when it denied 'without hearing' defendant's motion for sentencing pursuant to the provisions of *State v. Bezak*, 114 Ohio St.3d 94; *State v. Jordan*, 104 Ohio St.3d 21; *State v. Simpkins*, 117 Ohio St.3d 420; and, *State v. Holcomb*, 2009 WL 1864759 (Ohio App. 9th Dist.), 2009-Ohio-3187.

{¶ 8} "Assignment of Error No. 2

{¶ 9} "Whether defendant's guilty plea is *[sic] unconstitutional in light of the holdings in *State v. Boswell*, 121 Ohio St.3d 575; *State v. Nero*, 56 Ohio St.3d 106; O.R.C. §2943.032(E); and, *Woods v. Telb*, 89 Ohio St.3d 504, 511."

{¶ 10} Under Assignment of Error No. 1, appellant argues that his sentence is void because the trial court failed to provide notice of postrelease control either at the sentencing hearing or in the sentencing judgment. The sentencing hearing in this case proceeded on December 22, 1999. At that time, R.C. 2929.19(B)(3)(c) required a sentencing court to provide notice of postrelease control to offenders being sentenced for felonies of the second degree. The court is required to notify the defendant of postrelease control both during the sentencing hearing and in the sentencing judgment. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, paragraph one of the syllabus; *State v. Ayers*, 6th Dist. No. E-07-072, 2009-Ohio-393, ¶ 17.

{¶ 11} Appellant did not file a transcript of the sentencing hearing in this appeal. Appellant states in his appellate brief that a transcript was unavailable as it was destroyed "by a flood." There is no evidence in the record concerning unavailability of a transcript. The Ohio Rules of Appellate Procedure provide for alternative means to establish a record on appeal in the event a transcript is unavailable. An appellant can file a statement of evidence under App.R. 9(C) or an agreed statement of the record under App.R. 9(D). *State v. Estrada* (1998), 126 Ohio App.3d 553, 556. Appellant did not file either.

{¶ 12} Absent a transcript or alternative record under App.R. 9(C) or 9(D), we must presume regularity in the proceedings below. *State v. Milazo*, 6th Dist. No. L-07-1264, 2008-Ohio-5137, ¶ 18; *State v. Martinez*, 6th Dist. No. WD-06-003, 2007-Ohio-3575, ¶ 14; *State v. Cook*, 6th Dist. No. WD-06-029, 2005-Ohio-1550, ¶ 32; *State v. Estrada*, 126 Ohio App.3d at 556. Accordingly, appellant's arguments based upon an asserted failure of the trial court to provide notice of postrelease control during the sentencing hearing are without merit.

{¶ 13} Appellant also claims that the trial court failed to incorporate a notice of his postrelease control obligation into its journal entry imposing sentence. On December 29, 1999, appellant's sentencing entry was journalized. It records that "Defendant has been given notice under R.C. 2929.19(B)(3) * * *." Appellant contends that this notification is insufficient because it makes mention of neither R.C. 2967.28 nor the term "postrelease control."

{¶ 14} In *State v. Milazo*, this court ruled that an identically worded entry of sentencing was satisfactory. *Milazo* at ¶ 24, 27, citing *State v. Blackwell*, 6th Dist. No. L-06-1296, 2008-Ohio-3268, ¶ 15. The entry stated that notice under R.C. 2929.19(B)(3) was provided to the defendant. *Milazo* at ¶ 24. The entry made no reference to R.C. 2967.28 and did not employ the term postrelease control. *Id.*

{¶ 15} The defendant in *State v. Milazo* argued that the language used in the sentencing entry failed to inform him that he was subject to postrelease control under R.C. 2967.28. *Id.* at ¶ 25. We ruled that a sentencing judgment entry specifically stating that the defendant was notified pursuant to R.C. 2929.19(B)(3) was sufficient because the version of R.C. 2929.19(B)(3) in effect at the time of judgment itself included the required notice of imposition of postrelease control under R.C. 2967.28. *Id.* at ¶ 25-26.

{¶ 16} We therefore conclude that the 1999 judgment entry of the trial court met the statutory requirements to incorporate notice of postrelease control into the sentencing judgment entry.

{¶ 17} Appellant's Assignment of Error No. 1 is not well-taken.

{¶ 18} Under Assignment of Error No. 2, appellant challenges the validity of his no contest plea due to a claimed failure of the trial court to notify him of postrelease control prior to his change of plea. Trial courts are required to inform a defendant of mandatory postrelease control during the Crim.R. 11 plea colloquy before accepting a

guilty or no contest plea. *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, ¶ 22, 25; *State v. Williams*, 6th Dist. No. F-08-008, 2010-Ohio-391, ¶ 13; *State v. Milazo* at ¶ 15.

{¶ 19} The state contends that the issue of the validity of appellant's no contest plea is not before this court because it was waived by appellant's failure to assert invalidity of the plea in proceedings below. Nevertheless, a trial court's failure to inform a defendant in the plea colloquy of postrelease control involves substantial rights and may be considered as plain error. See *State v. Kinkopf* (Feb. 22, 2001), 8th Dist. No. 90773, 2008-Ohio-6950, ¶ 7-14.

{¶ 20} Appellant, however, has failed to file a transcript of the plea hearing or an alternative record under App.R. 9(C) or 9(D). On this record we cannot determine whether the trial court referred to postrelease control at all in the plea colloquy as considered in *State v. Sarkozy* or whether the trial court discussed postrelease control at least in part and, by considering the totality of the circumstances, substantially complied with the requirements of Crim.R. 11 in accepting appellant's plea. The record is insufficient to demonstrate that the plea was not knowingly, voluntarily, and intelligently made. See *State v. Milazo* at ¶ 15-20. On this record, we must thus presume regularity of the plea hearing. *State v. Milazo* at ¶ 18; *State v. Martinez* at ¶ 14; *State v. Cook* at ¶ 32.

{¶ 21} Appellant's Assignment of Error No. 2 is not well-taken.

{¶ 22} Accordingly, we conclude that justice was done the appellant. The judgment of the trial court is affirmed. Appellant is ordered to pay costs pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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