

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

State of Ohio

Court of Appeals No. L-10-1127

Appellee

Trial Court No. CR 200602612

v.

Eduardo Hopkins

DECISION AND JUDGMENT

Appellant

Decided: December 21, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Timothy W. Longacre, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Eduardo Hopkins, appeals the judgment of the Lucas County Court of Common Pleas denying his “Motion for Sentencing.” For the following reasons, we affirm.

A. Facts and Procedural Background

{¶ 2} Hopkins was indicted on one count of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(f), and one count of trafficking in cocaine in violation of R.C. 2925.03(A)(2) and (C)(4)(g), both felonies of the first degree. On October 17, 2006, Hopkins entered a plea of guilty, pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), to the second count on the lesser included offense of attempted trafficking in cocaine, a violation of R.C. 2923.02 and 2925.03(A)(2) and (C)(4)(g), a felony of the second degree. The remaining count was dismissed. The trial court immediately proceeded to conduct a sentencing hearing, in which the court imposed a three-year sentence that was to be served consecutive to an 18-month sentence imposed in another case.

{¶ 3} On February 9, 2010, Hopkins filed a “Motion for Sentencing” in which he argued that the October 17, 2006 judgment entry was void because it failed to notify him that his sentence included a mandatory three-year term of postrelease control. In his motion, Hopkins sought to have the trial court vacate the sentence and conduct a de novo sentence hearing. On April 14, 2010, the trial court denied this motion, finding that the judgment entry was not defective, and, even assuming that it was, the failure to include a postrelease control requirement did not “negate, limit, or otherwise affect the mandatory period of post-release control that is required under division (B) of section 2967.28 of the Ohio Revised Code.”

{¶ 4} On May 10, 2010, Hopkins timely filed his notice of appeal from the April 14, 2010 judgment denying his motion for resentencing. On August 18, 2010, the trial court sua sponte held a full resentencing hearing at the request of the Ohio Department of Rehabilitation and Corrections. The hearing was held while this appeal was pending, and before briefs had been filed.

{¶ 5} Following the resentencing hearing, Hopkins' appointed counsel filed his brief and motion requesting withdrawal as appellate counsel with this court, pursuant to the guidelines established in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). We granted counsel's motion to withdraw. However, we determined that arguable legal issues remained regarding whether the October 17, 2006 sentencing hearing and corresponding judgment entry were defective. *State v. Hopkins*, 6th Dist. No. L-10-1127, 2011-Ohio-4144, ¶ 11. We determined that the August 18, 2010 resentencing hearing was void since the trial court lacked jurisdiction to conduct the hearing while the matter was on appeal. Accordingly, we appointed new appellate counsel to argue the appeal.

{¶ 6} Hopkins has since completed his sentence and has been released from the Ohio Department of Rehabilitation and Corrections.

B. Assignments of Error

{¶ 7} In his brief, Hopkins assigns the following errors for our review:

1. THE TRIAL COURT COMMITTED ERROR BY FAILING TO PROPERLY NOTIFY DEFENDANT-APPELLANT OF HIS POST-

RELEASE CONTROL OBLIGATIONS PRIOR TO THE COMPLETION OF HIS SENTENCE.

2. THE TRIAL COURT COMMITTED ERROR BY FAILING TO RE-SENTENCE DEFENDANT-APPELLANT PRIOR TO THE COMPLETION OF HIS STATED PERIOD OF INCARCERATION AND THEREFORE POST-RELEASE CONTROL MAY NOT NOW BE IMPOSED UPON DEFENDANT-APPELLANT.

II. Analysis

{¶ 8} In Hopkins’ first assignment of error, he argues that the trial court committed error by failing to provide him with proper notification of his postrelease control obligations prior to the completion of his sentence. Hopkins claims that “[t]here is really no dispute herein that the trial Court failed to properly notify the Defendant-Appellant that he would be subject to three (3) years of mandatory post-release control upon the completion of his sentence.” However, the state disagrees with this statement, and our review of the record reveals that the October 17, 2006 sentence provided adequate notice to Hopkins and complied with all procedural requirements.

{¶ 9} Notification of a postrelease control sentence imposed prior to September 30, 2011, is governed by former R.C. 2929.19(B)(3)(c)-(e),¹ which requires the trial court to notify the defendant at the sentencing hearing that he or she will be

¹ In 2011, R.C. 2929.19(B)(3)(c)-(e) was renumbered to R.C. 2929.19(B)(2)(c)-(e).

subject to a term of postrelease control if the defendant is being sentenced for a felony of the first, second, or third degree. In *Woods v. Telb*, 89 Ohio St.3d 504, 733 N.E.2d 1103 (2000), paragraph two of the syllabus, the Supreme Court of Ohio held that “a trial court must inform the defendant at sentencing or at the time of a plea hearing that post-release control is part of the defendant's sentence.” In this case, Hopkins was convicted of a second-degree felony. Accordingly, he was subject to a mandatory postrelease control term of three years. R.C. 2967.28(B)(2). Further, the trial court was required to notify him of that mandatory term at the sentencing hearing. *Woods* at paragraph two of the syllabus.

{¶ 10} As required by *Woods*, the trial court informed Hopkins that postrelease control was part of his sentence at the sentencing hearing. In fact, the trial court explained the postrelease control portion of Hopkins’ sentence in detail:

THE COURT: Now, that 4 years and 6 months, that’s 4 and a half years, doesn’t end the time you’re facing. Because after you served your time you’re placed on post release control under the supervision of the Adult Parole Authority for a period of 3 years. If you violate the conditions the Adult Parole Authority can make them more severe or send you back to the institution in increments of 90 days, but up to one half of your stated prison term. One half of 4 years and 6 months is another 2 years and 3 months. So now you’re looking at 6 years and 9 months in the penitentiary by entering this plea. Do you understand that?

MR. HOPKINS: Yes, ma'am.

THE COURT: And again, knowing that do you maintain your *Alford* guilty plea?

MR. HOPKINS: Yes, ma'am.

{¶ 11} The foregoing dialogue makes it clear that Hopkins was verbally notified of his mandatory postrelease control sentence. The fact that the word “mandatory” does not appear in the transcript is not dispositive. Instead, the court provides adequate notification to the defendant where the court’s language makes it clear that the postrelease control sentence is not discretionary. *See State v. Lake*, 6th Dist. No. WD-10-058, 2012-Ohio-1236, ¶ 6 (holding that the phrase “you will be subject to five years of post-release control” provides proper notification to the defendant).

{¶ 12} Hopkins was also notified of the postrelease control aspect of his sentence in his signed plea agreement and the October 17, 2006 judgment entry. The plea agreement provided:

If I am sentenced to prison for a felony 2 or a felony 3 which involved causing or threatening physical harm, I will have mandatory post release control of 3 years. * * * 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 50% of my originally stated term.

Further, the judgment entry provided: “Defendant given notice of appellate rights under R.C. 2953.08 and post release control notice under R.C. 2929.19(B)(3) and R.C. 2967.28.”

{¶ 13} Notably, the language in the judgment entry is similar to the language used in *State v. Tribue*, 6th Dist. Nos. L-10-1250, L-10-1251, 2011-Ohio-4282, where we held that a judgment entry that states “Defendant given notice of appellate rights under R.C. 2953.08 and notice under R.C. 2929.19(B)(3)” provides sufficient notice of the imposition of postrelease control. Here, the judgment entry includes even more information than the judgment entry in *Tribue*, in that it references both R.C. 2929.19(B)(3) and 2967.28, and it also explains that the notice pursuant to those statutes relates to postrelease control.

{¶ 14} In light of the foregoing, it is evident that Hopkins was properly notified of his postrelease control obligations in writing through the plea agreement and the judgment entry, and also orally at the sentencing hearing. Accordingly, Hopkins’ first assignment of error is not well-taken.

{¶ 15} In Hopkins’ second assignment of error, he argues that the trial court failed to resentence him prior to his completion of the original prison term. Therefore, Hopkins claims that he cannot be subject to any postrelease control obligations. Having concluded that the trial court properly notified Hopkins of his postrelease control obligations when he was originally sentenced in 2006, Hopkins’ second assignment of error is not well-taken.

III. Conclusion

{¶ 16} Based on the foregoing, the judgment of the Lucas County Court of Common Pleas is hereby affirmed. Costs are hereby assessed to appellant in accordance with 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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>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: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
