

[Cite as *State v. McIntosh*, 2010-Ohio-6471.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93714

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

AKIL MCINTOSH

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART AND REMANDED IN PART

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-447580

BEFORE: Sweeney, J., Gallagher, A.J., and DeGenaro, J.*

RELEASED AND JOURNALIZED: December 30, 2010

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JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant Akil McIntosh (“defendant”) appeals his guilty plea and sentence of 18 years to life in prison. After reviewing the facts of the case and pertinent law, we affirm defendant’s conviction and prison sentence, but remand this case for the limited purpose of issuing a new sentencing journal entry.

{¶ 2} On May 3, 2004, defendant pled guilty to murder in violation of R.C. 2903.02(A) with a three-year firearm specification. The court sentenced him to 15 years to life in prison for the murder and three years in prison for the firearm specification, to be served consecutively.

{¶ 3} Defendant appeals and raises two assignments of error for our review.

I. “The trial court abused its discretion by accepting the appellant’s invalid

plea.”

{¶ 4} II. “The trial court erred by failing to properly advised [sic] the appellant as to his terms for postrelease control.”

{¶ 5} The underlying purpose of Crim.R. 11(C) is for the court to give a defendant enough information to allow him or her to make an intelligent, voluntary, and knowing decision of whether to plead guilty. See *State v. Ballard* (1981), 66 Ohio St.2d 473, 613 N.E.2d 591. Pursuant to Crim.R. 11(C)(2)(a), the court must personally inform a defendant of, among other things, “the nature of the charges and of the maximum penalty involved * * *.” Included in a maximum penalty is postrelease control, when applicable. *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, 881 N.E.2d 1224.

{¶ 6} First, defendant argues that his guilty plea is invalid, because the court did not sufficiently inquire into whether he understood the nature of the affirmative defense of self-defense. Defendant alleges that when he was arrested, he informed the police he acted in self-defense, and an understanding of this concept was necessary before he could enter a valid plea.

{¶ 7} This issue is controlled by *State v. Reynolds* (1988), 40 Ohio St.3d 334, 533 N.E.2d 342, in which the Ohio Supreme Court held that in a criminal case, “the trial court is not required, pursuant to Crim.R. 11(C), to apprise [the defendant] of the affirmative defenses * * * prior to accepting his plea of guilty * *

*.”

{¶ 8} Second, defendant argues that his sentence is void because the trial

court improperly instructed him that “post release control is part of this prison sentence for the maximum period allowed for the above felony(s) under R.C. 2967.28.” Defendant pled guilty to murder, an unclassified felony to which the postrelease control statute does not apply. Rather, defendant will be eligible for parole after serving 18 years in prison. R.C. 2967.13(A)(1).

{¶ 9} A substantially similar issue was addressed in *State v. Austin*, Cuyahoga App. No. 93028, 2009-Ohio-6108. Austin was convicted of aggravated murder, which is also an unclassified felony to which postrelease control does not apply. Nonetheless, the sentencing journal entry included the following: “Postrelease control is part of this prison sentence for the maximum time allowed for the above felony(s) under R.C. 2967.28.”

{¶ 10} This is the same language found in the sentencing journal of the instant case. In *Austin*, this court found no error. “While this court has recently held that such broad language is insufficient to satisfy the statutory notification requirements when the defendant faces mandatory postrelease control, we find the instant case distinguishable because Austin does not face any term of postrelease control. See generally *State v. Siwik*, 8th Dist. No. 92341, 2009-Ohio-3896. Accordingly, we do not find that the sentencing entry is void because it limits postrelease control to what is authorized under R.C. 2967.28 and, therefore, does not actually impose any term of postrelease control.” *Austin*, ¶7.

{¶ 11} Given this, we find that defendant’s plea was voluntary, intelligent,

and knowing, and his sentence of 18 years to life in prison was proper. Defendant's two assignments of error are overruled.

{¶ 12} Judgment affirmed. Case remanded to the trial court to issue a new sentencing journal entry eliminating any reference to postrelease control.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

SEAN C. GALLAGHER, A.J., and
*MARY DEGENARO, J., CONCUR

*(Sitting by Assignment: Judge Mary DeGenaro of the Seventh District Court of Appeals.)