

[Cite as *State v. Sheppard*, 2015-Ohio-1143.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101497

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHRISTOPHER LEE SHEPPARD

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-582729-A

BEFORE: Keough, P.J., Kilbane, J., and Stewart, J.

RELEASED AND JOURNALIZED: March 26, 2015

ATTORNEY FOR APPELLANT

Thomas A. Rein
Leader Building, Suite 940
526 Superior Avenue
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: John Patrick Colan
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, P.J.:

{¶1} Defendant-appellant Christopher Lee Sheppard appeals from the trial court’s judgment sentencing him to nine months incarceration and three years mandatory postrelease control. For the reasons that follow, we affirm.

I. Background

{¶2} In March 2014, Sheppard was charged with one count of aggravated robbery in violation of R.C. 2911.01(A)(1) with one- and three-year firearm specifications, a first-degree felony, and one count of robbery in violation of R.C. 2911.02(A)(2), a second-degree felony.

{¶3} Pursuant to a plea agreement, Sheppard pleaded guilty to attempted robbery in violation of R.C. 2923.02/2911.02(A)(2), a third-degree felony, and the state nolleed the aggravated robbery count. At the plea hearing, the trial judge confirmed with the prosecutor that attempted robbery was an offense of violence for postrelease control purposes. Defense counsel raised no objection. The judge then conducted a Crim.R. 11 colloquy with Sheppard prior to accepting his plea. As part of the colloquy, the judge informed Sheppard that a mandatory three-year term of postrelease control would be imposed if the court sentenced him to prison.

{¶4} At the subsequent sentencing hearing, the prosecutor explained that Sheppard “in broad daylight walked into a bank, handed a teller a note indicating it was a robbery and threatened to shoot her head off,” but that he was ultimately unsuccessful in his robbery attempt.¹

¹Defense counsel’s representation to this court that the prosecutor told the trial court “this wasn’t a real bank robbery” is misleading. In fact, the prosecutor told the trial court, “Your Honor, the only reason we’re offering this plea deal is not because this wasn’t a real bank robbery, not because it wasn’t really actually a dangerous crime, but because it was — the defendant in broad daylight walked into a bank, handed a teller a note indicating it was a robbery and threatened to shoot her head off.” The prosecutor then told the court that the state offered the plea because Sheppard “did not get away with anything” and because it was unclear

The trial court imposed the minimum sentence of nine months incarceration and then, prior to imposing postrelease control, confirmed with both the prosecutor and defense counsel that attempted robbery is an offense of violence for postrelease control purposes. The trial court then advised Sheppard that when he was released from prison, he would be placed on three years mandatory postrelease control, and that if he violated the terms of postrelease control, he could go back to prison for up to half the term of his sentence.

{¶5} This appeal followed.

II. Analysis

{¶6} In a single assignment of error, Sheppard argues that the trial court improperly imposed three years mandatory postrelease control.

{¶7} If a defendant is subject to postrelease control, the trial court must inform him of postrelease control at the sentencing hearing and must include the postrelease control terms in the judgment of conviction. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 26. When a judge fails to properly impose statutorily mandated postrelease control as part of a defendant's sentence, the postrelease control sanction is void. *Id.*; *State v. Holdcroft*, 137 Ohio St.3d 526, 529, 2013-Ohio-5014, 1 N.E.3d 382.

{¶8} Here, Sheppard pleaded guilty to attempted robbery — a third- degree felony offense of violence. R.C. 2901.01(A)(9)(a). Therefore, the trial court was required to advise him that upon his release from prison, he would be subject to a mandatory three-year period of postrelease control supervision. *See* R.C. 2967.28(B)(3).² Additionally, the trial court was

from review of surveillance video and Sheppard's actions (he quickly abandoned his attempt and walked out of the bank) whether he actually had a gun.

²Under R.C. 2967.28(B), "each sentence to a prison term * * * for a felony of

required to notify Sheppard of the consequences of violating postrelease control and of the length of confinement that could be imposed for a postrelease control violation. R.C. 2929.19(B)(2)(e).

{¶9} The record reflects that the trial court did exactly that. The transcript of the sentencing hearing reflects that the trial court advised Sheppard that upon his release from prison, he would be placed on three years mandatory postrelease control supervised by the Adult Parole Authority. The trial court further advised Sheppard that if he violated the terms of postrelease control, he could go back to prison for up to half of his prison sentence, or four and a-half months. Further, the court advised him of the consequences of drawing another case while he was on postrelease control, and that he could be charged and imprisoned for escape if he violated postrelease control. Last, the record reflects that the trial court properly included the postrelease control sanction in the judgment entry of conviction.

{¶10} Nevertheless, Sheppard contends that the trial court did not properly impose postrelease control. Specifically, Sheppard contends that R.C. 2929.19(B)(2)(c), regarding sentencing hearings, provides that if the trial court imposes a prison sentence, it shall, among other things, “notify the offender that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for * * * a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person.” Sheppard argues that the trial

the third degree that is an offense of violence and is not a felony sex offense shall include a requirement that the offender be subject to a period of postrelease control imposed by the parole board after the offender’s release from imprisonment.” The statute further provides that the postrelease control period for a third-degree felony that is an offense of violence but not a felony sex offense is three years.

court was required to make a finding and advise him at sentencing that he was subject to postrelease control because he “caused or threatened to cause physical harm to a person” during his attempted robbery, and that it was required to include such a finding in the journal entry of conviction. Sheppard contends that in the absence of such a finding, the trial court improperly imposed postrelease control and, therefore, it should be vacated.

{¶11} Sheppard’s argument is specious. First, there is no statutory requirement that the court advise a defendant of any such finding when imposing postrelease control nor that it include such finding in the judgment entry of conviction. But even in the absence of such a statutory requirement, it could not be more apparent that the trial court found that Sheppard threatened to cause physical harm to the bank teller: as the prosecutor informed the court at sentencing, Sheppard walked into a bank, handed the bank teller a note indicating this was a robbery, and then “threatened to shoot her head off.” Furthermore, defense counsel conceded at sentencing that attempted robbery was indeed a third-degree felony offense of violence for postrelease control purposes. Under R.C. 2967.28(B), a third-degree felony offense of violence that is not a felony sex offense is subject to a mandatory three-year term of postrelease control. Accordingly, the trial court properly sentenced Sheppard to three years mandatory postrelease control, and the assignment of error is overruled.

{¶12} Judgment affirmed.

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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
MELODY J. STEWART, J., CONCUR