[Cite as *State v. Robinson*, 2016-Ohio-1387.]

[Vacated opinion. Please see 2016-Ohio-2931]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103559

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

PAUL ROBINSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-06-483238-A

BEFORE: Keough, P.J., E.A. Gallagher, J., and Blackmon, J.

RELEASED AND JOURNALIZED: March 31, 2016

APPELLANT

Paul Robinson
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ATTORNEYS FOR APPELLEE

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1. The purpose of an accelerated appeal is to allow the court to render a brief and conclusory opinion. *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1; App.R. 11.1(E).

{¶2} On July 20, 2006, defendant-appellant, Paul Robinson, was charged with attempted murder in violation of R.C. 2923.02 and 2903.02; felonious assault in violation of R.C. 2903.11; kidnapping in violation of R.C. 2905.02; and domestic violence in violation of R.C. 2929.25. He pleaded no contest to the indictment and was convicted of attempted murder, felonious assault, kidnapping, and domestic violence.

{¶3} The trial court sentenced Robinson to an aggregate prison term of 15 years. Robinson subsequently filed a direct appeal, claiming that the trial court abused its discretion by accepting his plea, failing to grant his motion to withdraw his plea, and failing to order a competency examination before accepting his plea. He did not challenge his sentence. This court affirmed the trial court's judgment. *State v. Robinson*, 8th Dist. Cuyahoga No. 89136, 2007-Ohio-6831.

{¶4} The Ohio Supreme Court later denied Robinson's motion for leave to appeal. *State v. Robinson*, 118 Ohio St.3d 1409, 2008-Ohio-2340, 886 N.E.2d 872.

{¶5} Thereafter, Robinson filed an application with this court to reopen his appeal, asserting that he was denied the effective assistance of appellate counsel. This

court dismissed Robinson's application. *State v. Robinson*, 8th Dist. Cuyahoga No. 89136, 2009-Ohio-1679.

{¶6} In 2014, Robinson filed a motion for resentencing, arguing that his convictions should have merged as allied offenses, and that the trial court committed plain error in failing to consider the issue of merger at the time of sentencing. This court affirmed the trial court's denial of the motion, finding that the allied offenses argument was barred by the doctrine of res judicata. *State v. Robinson*, 8th Dist. Cuyahoga No. 101426, 2014-Ohio-5435, ¶ 15.

{¶7} Robinson then filed a "motion for correction of sentence and termination order," asserting that there is no such crime as attempted felony murder and challenging the imposition of postrelease control. Robinson now appeals from the trial court's denial of his motion.

{¶8} In his first assignment of error, Robinson contends that the journal entry of sentencing is ambiguous because it does not specify the order in which the sentences are to be served. As this court has previously determined, any challenge to Robinson's sentence is barred by the doctrine of res judicata because he could have raised the argument on direct appeal. And even if we were to review the merits of Robinson's argument, we would find no support for his assertion that a sentencing court commits reversible error by not expressly providing the order for service of consecutive sentences. There are statutes and rules that refer to the order of how sentences are to be served. *State v. Jackson*, 7th Dist. Mahoning No. 13 MA 121, 2014-Ohio-2249, ¶ 44, citing R.C.

2929.14(C)(1)(a), R.C. 2929.20(C)(1)-(4), R.C. 2967.19(C)(1), and Ohio Adm. Code 5120-2-03 (finding no requirement that all sentencing entries imposing consecutive sentences contain a statement regarding the sequence of the sentences).

{¶9} In his second assignment of error, Robinson contends that he should be resentenced because the trial court did not properly impose postrelease control at sentencing. He asserts that although he was told that he would be subject to five years postrelease control, the trial court did not advise him of the consequences of a violation and did not include those consequences in the journal entry of sentencing.

{¶10} A trial court must provide statutorily compliant notification regarding postrelease control to a defendant at sentencing, including notifying the defendant of the details of postrelease control and the consequences of violating postrelease control. *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718; *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, paragraph one of the syllabus. The trial court must also incorporate notification of postrelease control in the sentencing entry. *Id.* If the trial court properly notifies the defendant about postrelease control at sentencing, but the notification is inadvertently omitted from the sentencing entry, the omission can be corrected with a nunc pro tunc entry if the defendant has not yet completed his prison term on the charges underlying the postrelease control sanction. *State v. Lawson*, 8th Dist. Cuyahoga No. 100626, 2014-Ohio-3498, ¶ 13-16. In such circumstances, the defendant is not entitled to a new sentencing hearing. *Id.*

{¶11} The transcript of the sentencing hearing reflects that the trial court advised Robinson of both postrelease control and the consequences of violating postrelease control. (Tr.179.)[1] The journal entry of sentencing contains the advisement that Robinson will be subject to five years of postrelease control but does not specify the consequences of violating postrelease control. Because Robinson has not completed his 15-year sentence for attempted murder (ten years for attempted murder with five years on the repeat violent offender specification to be served prior to and consecutive to the ten-year sentence for attempted murder), the omission can be corrected with a nunc pro tunc entry.

{¶12} Robinson is not entitled to a new sentencing hearing.

{¶13} In his third assignment of error, Robinson contends that his conviction for attempted felony murder is void because attempted felony murder is not a cognizable crime in Ohio. *See State v. Nolan*, 141 Ohio St.3d 454, 2014-Ohio-4800, 25 N.E.3d 1016, ¶ 10 ("[a]ttempted felony murder is not a cognizable crime in Ohio."). But Robinson was not convicted of felony murder in violation of R.C. 2903.02(B). He was convicted of attempted murder in violation of R.C. 2903.02(A) for purposely attempting to cause the death of Linda Wright.

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[1]The trial court stated: "You're sentenced to an effective fifteen years. You are sentenced to an additional five years of postrelease control. Your failure to abide by the terms and conditions of PRC will result in the Parole Board being able to give you 7.5 years of administrative time and/or charge you with new crimes that you can do an additional five years for."

{¶14} Robinson also asserts in this assignment of error that he should have been convicted of second instead of first-degree kidnapping because the evidence demonstrated that Wright was released unharmed in a safe place. This argument is barred by the doctrine of res judicata because Robinson could have raised it on direct appeal.

{¶15} The first and third assignments of error are overruled. The second assignment of error regarding the imposition of postrelease control is sustained in part. We affirm the trial court's judgment denying Robinson's motion to correct his sentence but remand to the trial court to enter a nunc pro tunc entry that reflects the consequences of violating postrelease control.

{¶16} Judgment affirmed and remanded.

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.

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

EILEEN A. GALLAGHER, J., and
PATRICIA ANN BLACKMON, J., CONCUR