

[Cite as *State v. Taylor*, 2016-Ohio-8057.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104313

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RICHARD TAYLOR

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-10-538028-A

BEFORE: McCormack, P.J., Stewart, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: December 8, 2016

FOR APPELLANT

Richard Taylor, pro se
Inmate No. 593092
Marion Correctional Institution
P.O. Box 57
Marion, OH 43301

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Brett Hammond
Assistant County Prosecutor
9th Floor, Justice Center
1200 Ontario Street
Cleveland, OH 44113

TIM McCORMACK, P.J.:

{¶1} Appellant Richard Taylor, pro se, appeals from the trial court's judgments denying two motions challenging his sentence. Appellant Taylor filed five years after his conviction and sentence. For the following reasons, we affirm the trial court's judgments.

{¶2} Appellant was indicted for one count of attempted murder, two counts of felonious assault, and one count of carrying concealed weapons. The attempted murder and felonious assault counts also carried a notice of prior conviction specification and a repeat violent offender specification.

{¶3} In October 2010, under a plea agreement, appellant pleaded guilty to one count of felonious assault, a felony of the second degree, with the prior conviction specification. The remaining counts and specifications were nolle. The trial court sentenced him to three years in prison and also imposed three years of mandatory postrelease control. The sentencing entry advised appellant that if he violated the terms of his postrelease control, the parole board may impose a prison term up to one-half of the original sentence.

{¶4} Years after his sentencing, appellant filed multiple pro se motions claiming his sentencing was deficient. In this appeal, he challenges the trial court's denial of two of these motions: a "Motion for Sentencing" he filed on December 9, 2015, and a "Motion for Clarification of Procedural Posture of Proceedings" filed on January 14,

2016. In these motions, appellant claimed his sentencing entry was not a final appealable order and his postrelease control notification was “facially deficient.” The trial court denied these two motions on March 8, 2016. On appeal, appellant raises two assignments of error, which we will address together. They state:

1. Whether, and absence [sic] each of the two essential elements required to compose a [‘judgment of conviction’], i.e, (1) an adjudication of guilt; and, (2) the ensuring sentence, there is a final appealable order pursuant to: O.R.C. § 2505.02; Crim.R. 32(C); and, *State v. Whitfield*, 124 Ohio St.3d 319, at: ¶24; and, *State v. Frazier*, 2006 Ohio Ap. LEXIS 3265, At: [P13), thereby implicating due process pursuant to: U.S.C.A. Const. Amend. 6.
2. Whether, and in the absence of a final appealable order as defined in *Whitfield*, 124 Ohio St. 3d 319, at: ¶24 (thereby implicating a judgment of conviction), a criminal defendant’s motion to withdraw plea under such circumstances must be construed as a pre-sentence motion and therefore ‘freely and liberally granted,’ *see; State v. Boswell*, 121 Ohio St. 3d 575.

{¶5} In these assignments of error, appellant argues that the sentencing entry was deficient because it did not contain a finding of guilt, and therefore the sentencing entry was not a final appealable order. He claims that in the absence of a final appeal order, if he were to file a motion to withdraw the guilty plea, that motion should be construed as a presentence motion and reviewed under a more liberal standard.

{¶6} Crim.R. 32(C) requires that “[a] judgment of conviction shall set forth the fact of conviction and the sentence.” “A judgment of conviction is a final order subject

to appeal under R.C. 2505.02 when it sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk." *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of syllabus. Appellant complains his sentencing entry did not contain "the fact of the conviction."

{¶7} A review of appellant's sentencing entry shows it contains the following statement: "Defendant retracts former plea of not guilty and enters a plea of guilty to felonious assault * * *. Court accepts defendant's guilty plea." Appellant argues that the mere acceptance of a defendant's plea is not enough to satisfy the requirement of "the fact of the conviction."

{¶8} This court rejected a similar claim in *State v. Rogers*, 8th Dist. Cuyahoga No. 99246, 2013-Ohio-3246. This court held that the defendant's guilty plea was itself a conviction; by stating in its journal entry that the defendant had entered a plea of guilty, the trial court satisfied the requirement that a judgment set forth "the fact of conviction." *Id.* at ¶ 19, citing *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163 and *Lester*. See also *State v. Beachum*, 6th Dist. Sandusky Nos. S-10-041 and S-10-042, 2012-Ohio-285, ¶ 19.

{¶9} Appellant in addition claims the trial court failed to properly advised him of the consequence of a violation of his postrelease control and that deficiency rendered his sentence void.

{¶10} The trial court must notify a defendant regarding postrelease control at sentencing, including details of the postrelease control and the consequences of a violation of postrelease control, and the trial court must also set forth the postrelease notification in the sentencing entry. *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 18.

{¶11} Here, a review of the sentencing entry indicates appellant was notified of the three years of postrelease control and consequences of a violation of the postrelease control, which may include a prison term of up to one-half of the prison term originally imposed for his offense. Appellant does not allege the trial court failed to properly advise him of postrelease control at his sentencing hearing. Even if he did, he fails to include in the record a transcript of the sentencing hearing, and this court will presume regularity and propriety of the sentencing hearing. *State v. McGee*, 8th Dist. Cuyahoga No. 101307, 2014-Ohio-5289.

{¶12} For the foregoing reasons, appellant's first and second assignments of error are overruled. The trial court's judgments are affirmed.

It is ordered that appellee recover of 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. 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.

TIM McCORMACK, PRESIDING JUDGE

MELODY J. STEWART, J., and
ANITA LASTER MAYS, J., CONCUR