

[Cite as *State v. Poole*, 2017-Ohio-8323.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105765

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MOSES POOLE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-08-512088-A, CR-09-520203-A, and CR-09-522821-A

BEFORE: Keough, A.J., E.T. Gallagher, J., and Jones, J.

RELEASED AND JOURNALIZED: October 26, 2017

APPELLANT

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KATHLEEN ANN KEOUGH, A.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 this court to render a brief and conclusory opinion. *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1.

{¶2} Defendant-appellant, Moses Poole, appeals his convictions and sentence in three separate cases. For the reasons that follow, we affirm, but remand for further proceedings consistent with this opinion.

{¶3} In November 2009, Poole entered a plea to the indictments in three different cases. In CR-09-522821, Poole pleaded no contest to two counts of aggravated burglary, and one count each of domestic violence, having weapons while under disability, and disrupting public services. With the exception of the having weapons while under disability count, the remaining counts carried both one- and three-year firearm specifications. Following the merger of the firearm specifications, Poole was sentenced to a total prison term of six years — three years on the firearm specification to be served consecutive and prior to the base sentence of three years for both counts of aggravated burglary; three years on the firearm specification to be served consecutive and prior to the base sentence of one year for domestic violence; and one-year sentences for having weapons while under disability and disrupting public services. The court noted that “all counts merge,” but that the sentence would run concurrent with CR-08-512088, but consecutive to CR-09-520203. The court also imposed five years of postrelease control.

{¶4} In CR-09-520203, Poole pleaded no contest to two counts of felonious assault, both containing one- and three-year firearm specifications, and one count of having weapons while under disability. Following merger of the firearm specifications, Poole was sentenced to a total prison term of five years — three years on the firearm specifications to be served consecutive and prior to the base sentence of two years for both counts of felonious assault; and one year for having weapons while under disability. The court stated that both counts of felonious assault “merge” and ran concurrent to the weapons under disability charge. Additionally, the court noted that “[i]n Case Number 522821 all counts merge but [are to] run consecutive to CR 520203” but “concurrent to CR 512088, for a total prison sentence of 11 years.” The court noted that three years of postrelease control was part of the sentence.

{¶5} In CR-08-512088, Poole pleaded no contest to two counts of trafficking, both containing schoolyard specifications, and one count of drug possession. The court sentenced Poole to concurrent one-year prison terms for a total sentence of one year. The court noted that three years of postrelease control was part of the sentence.

{¶6} Poole did not file a direct appeal of his convictions. However, in February 2017, Poole filed a motion to clarify his sentences, contending that the Bureau of Sentence Computation had notified him that his total prison sentence was 19 years. This sentence included a 13-year sentence imposed in CR-09-524446 (which is not subject to this appeal) for involuntary manslaughter — three years on the mandatory firearm specification to be served consecutive and prior to the base sentence of 10 years. The

trial court ordered the 10-year base sentence to be served concurrently with the nonmandatory sentences in CR-08-512088, CR-09-520203, and CR-09-522821. In CR-09-520203 and CR-09-522821, Poole was sentenced to serve a mandatory three years on a firearm specification in each case.

{¶7} Accordingly, the trial court denied Poole's motion to clarify, but indicated that Poole was serving sentences for three mandatory consecutive three-year gun specifications and a base sentence of 10 years for a total of 19 years.

{¶8} Subsequently, in April 2017, Poole filed a motion to withdraw his plea in all three cases pursuant to Crim.R. 32.1, contending that the trial court failed to merge allied offenses and failed to comply with Crim.R. 11. The trial court summarily denied his motion. Poole now appeals, raising three assignments of error, which will be addressed together where appropriate.

{¶9} In his first assignment of error, Poole contends that the trial court erred in denying his postsentence motion to withdraw his plea because the sentencing journal entries were void and violated his constitutional rights to due process and protection against double jeopardy. Within this assignment of error, Poole argues that the trial court failed to merge allied offenses of similar import and that the sentencing journal entries fail to inform him of the consequences of violating postrelease control. In his second assignment of error, Poole contends that the trial court failed to comply with Crim.R. 11 when it accepted his guilty plea.

{¶10} Except for the issue raised regarding postrelease control, which will be discussed later in the opinion, we find that Poole's first and second assignments of error and the issues raised therein are barred by res judicata.

{¶11} Moreover, Poole has not filed a transcript of the proceedings. Generally, without affirmative evidence in the record indicating otherwise, we presume regularity in the trial court proceedings. *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, ¶ 19. Presuming regularity in this instance requires us to presume that Poole was properly advised of his Crim.R. 11 rights prior to entering his pleas of no contest in these cases. Accordingly, we find no Crim.R. 11 violation.

{¶12} Poole's argument that the trial court failed to merge allied offenses is also without merit. He maintained in his motion to withdraw his plea that the court sentenced him to allied offenses by sentencing him to serve three consecutive three-year firearm specifications. Because Poole pleaded no contest to three separate cases all involving mandatory firearm specifications, the trial court did not commit error in ordering him to serve three consecutive three-year firearm specifications; the issue of allied offenses is not implicated in this case.

{¶13} Poole's first and second assignments of error are overruled.

{¶14} In his third assignment of error, Poole contends that the trial court abused its discretion when it denied his motion to withdraw his guilty plea because the sentencing journal entries do not provide the proper postrelease control notifications.

{¶15} As previously noted, Poole did not provide a transcript of the proceedings to this court. Accordingly, presuming regularity of the proceedings, we presume that Poole was correctly advised whether the period of postrelease control was mandatory or discretionary and of the consequences of violating postrelease control. The nature of the postrelease control term and the consequences, however, were not incorporated into the sentencing journal entry as required by *State v. Grimes*, Slip Opinion No. 2017-Ohio-2927, ¶ 1:

[T]o validly impose postrelease control when the court orally provides all the required advisements at the sentencing hearing, the sentencing entry must contain the following information: (1) whether postrelease control is discretionary or mandatory, (2) the duration of the postrelease-control period, and (3) a statement to the effect that the Adult Parole Authority * * * will administer the postrelease control pursuant to R.C. 2967.28 and that any violation by the offender of the conditions of postrelease control will subject the offender to the consequences set forth in that statute.

{¶16} The state concedes that Poole's sentencing entries fail to notify him of any consequences concerning a violation of postrelease control sanctions. In accordance with *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 30, the matter is remanded for the trial court to incorporate those consequences in each sentencing entry, nunc pro tunc.

{¶17} Accordingly, Poole's assignment of error is overruled, but the matter is remanded for the court to correct, nunc pro tunc, the journal entries in these cases.

{¶18} Judgment affirmed; case remanded for further proceedings consistent with this opinion.

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 correction and 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, ADMINISTRATIVE JUDGE

EILEEN T. GALLAGHER, J., and
LARRY A. JONES, SR., J., CONCUR