

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 14CA010561

Appellee

v.

BRIAN T. KEYES

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 02CR060612

Appellant

DECISION AND JOURNAL ENTRY

Dated: May 11, 2015

MOORE, Judge.

{¶1} Defendant-Appellant, Brian Keyes, appeals from the judgment of the Lorain County Court of Common Pleas. This Court affirms in part and reverses in part.

I.

{¶2} In 2002, Mr. Keyes pleaded guilty to one count of rape, a first-degree felony. The court sentenced him to 9 years in prison and ordered him to serve his sentence concurrently with a 10- to 25-year sentence that he was serving in an unrelated case. There is no dispute that Mr. Keyes is still serving his 10- to 25-year prison sentence on the unrelated case.

{¶3} In December 2011, Mr. Keyes filed a motion to vacate and/or set aside his 9-year sentence due to an error in the court’s imposition of post-release control. The court denied his motion, and Mr. Keyes filed an appeal. This Court dismissed the appeal, however, because Mr. Keyes filed a motion to withdraw his notice of appeal shortly after its filing. *See State v. Keyes*, 9th Dist. Lorain No. 12CA010154 (Mar. 2, 2012).

{¶4} In November 2012, Mr. Keyes filed a “writ of coram nobis to vacate sentence,” in which he claimed that the Adult Parole Authority had improperly placed him on post-release control. Because he had completed his 9-year sentence and his sentencing entry did not contain the proper term of post-release control, he argued that the post-release control portion of his sentence was void and no longer subject to correction. Mr. Keyes asked the court to vacate the void portion of his sentence and to notify the Adult Parole Authority that he was not subject to post-release control. The court denied his writ, and Mr. Keyes did not appeal from the court’s judgment entry.

{¶5} In February 2014, Mr. Keyes filed a “writ of coram nobis to stay execution of [post-release control]” that was identical to the first writ that he filed. The trial court once again denied his writ.

{¶6} Mr. Keyes now appeals from the trial court’s denial of his second writ of coram nobis and raises five assignments of error for our review. For ease of analysis, we rearrange and consolidate several of the assignments of error.

II.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED BY DENYING THE WRIT OF CORAM NOBIS AND FAILING TO CORRECT THE ILLEGAL APPLICATION OF PRC BY THE ADULT PAROLE AUTHORITY[.]

{¶7} In his second assignment of error, Mr. Keyes argues that the trial court erred by denying his writ of coram nobis. The Ohio Supreme Court has held, however, that “the common-law writ[] of coram nobis * * * [is] not part of the law in Ohio.” *Perotti v. Stine*, 113 Ohio St.3d 312, 2007-Ohio-1957, ¶ 7, citing *State v. Perry*, 10 Ohio St.2d 175, 180 (1967).

Because Ohio does not recognize a writ of coram nobis, the trial court did not err by denying Mr. Keyes' writ. Mr. Keyes' second assignment of error is overruled.

ASSIGNMENT OF ERROR IV

PRC WAS IMPROPERLY APPLIED AS TO O.R.C. §2967.28 AND IS THEREFORE UNENFORCEABLE TO ANY MANNER OR ANY DEGREE.

{¶8} In his fourth assignment of error, Mr. Keyes argues that the trial court erred by not vacating the post-release control portion of his sentence as void. Because he has already completed his 9-year sentence, Mr. Keyes argues that he cannot be resentenced so as to include an order that he serve post-release control. He asks this Court to vacate the offending portion of his sentence and remand this matter to the trial court for an order terminating his term of post-release control.

{¶9} Because Mr. Keyes was convicted of first-degree felony rape, he was subject to a mandatory five-year term of post-release control. *See* R.C. 2967.28(B)(1). In his sentencing entry, however, the court failed to complete the section pertaining to post-release control. The section reads as follows:

The court has further notified [Mr. Keyes] that post [release] control is (mandatory/optional) in this case up to a maximum of (3/5) years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Ohio Rev. Code §2967.28. [Mr. Keyes] is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control.

Because the court did not impose a mandatory five-year term of post-release control upon Mr. Keyes, his sentence runs afoul of the post-release control statute.

{¶10} “[W]hen a judge fails to impose statutorily mandated post[-]release control as part of a defendant’s sentence, that part of the sentence is void and must be set aside.” *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, ¶ 26. If the error is not addressed until after a

defendant completes his prison term, “the courts no longer have authority to impose post[-]release control.” *State v. Leasure*, 9th Dist. Summit No. 25596, 2011-Ohio-3665, ¶ 7. In similar instances, this Court has remanded the matter to the trial court with instructions to vacate the portion of the defendant’s entry that attempted to impose post-release control and to note on the record that the defendant cannot be subject to resentencing due to the completion of his sentence. *See State v. Thomas*, 9th Dist. Summit No. 26699, 2013-Ohio-2078, ¶ 7. *Accord Leasure* at ¶ 7-8; *State v. Leasure*, 9th Dist. Summit No. 25682, 2011-Ohio-3666, ¶ 10-11; *State v. Yeager*, 9th Dist. Summit No. 25125, 2010-Ohio-3848, ¶ 8.

{¶11} The State argues that this Court should presume regularity in the proceedings because Mr. Keyes has failed to set forth evidence that the Adult Parole Authority has actually imposed post-release control upon him. It further argues that this matter is either moot because Mr. Keyes has already completed his sentence or not yet ripe for review because he has yet to complete his 10- to 25-year indefinite sentence and be placed on post-release control. Finally, it argues that the trial court properly denied Mr. Keyes relief because he could not use a writ of coram nobis to challenge the actions of the Adult Parole Authority.

{¶12} Although Ohio does not recognize a writ of coram nobis, *see Perotti, supra*, courts have the inherent authority to recognize and set aside void judgments. *See State v. Watson*, 9th Dist. Summit No. 26777, 2014-Ohio-2373, ¶ 5. Accordingly, it was within the trial court’s authority to consider Mr. Keyes’ argument that his sentence was void, irrespective of the fact that a writ of coram nobis was not the proper vehicle for his argument. Moreover, there was no need for Mr. Keyes to prove that the Adult Parole Authority had actually imposed post-release control upon him. To demonstrate that a portion of his sentencing entry was void, the only evidence Mr. Keyes needed was the sentencing entry itself. That entry clearly reflects that

the trial court failed to properly impose post-release control. Consequently, that portion of Mr. Keyes' entry is void. *See Fischer* at ¶ 26.

{¶13} Finally, we reject the State's arguments that Mr. Keyes' appeal is either moot or not yet ripe for our review. The fact that Mr. Keyes has completed his underlying sentence does not make the appeal moot. *See, e.g., Leasure*, 2011-Ohio-3665, at ¶ 7-8 (vacating post-release control portion of completed sentence). Further, the fact that he is still in prison on an unrelated sentence does not mean that the appeal is not yet ripe for our review. *See, e.g., Yeager*, 2010-Ohio-3848, ¶ 7-8 (vacating post-release control portion of completed sentence while the defendant was still serving a sentence on another charge). This Court has never required parties to wait until a defendant is actually serving his term of post-release control before allowing a challenge to its imposition. Were that the case, this Court could never order a resentencing. *See Leasure* at ¶ 10 (post-release control may not be ordered once offender has completed his sentence). The only way in which this Court would be unable to afford Mr. Keyes any meaningful relief would be if he had already served his entire term of post-release control. Because that is not the case, Mr. Keyes' appeal is properly before us at this time.

{¶14} As set forth above, the post-release control portion of Mr. Keyes' sentencing entry is void and, because he has already completed his prison term, he cannot be resentenced. *See id.* at ¶ 7, 10. "This Court, therefore, remands this matter to the trial court to vacate the portion [of the] sentencing entry that attempted to impose post-release control." *Thomas*, 2013-Ohio-2078, at ¶ 7. On remand, the court shall also note on the record that, "because [Mr. Keyes] has completed his prison sentence, he will not be subject to resentencing pursuant to law." *Id.* Mr. Keyes' fourth assignment of error is sustained on this basis.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED BY DISMISSING THE MOTION WITHOUT A HEARING AND FAILED TO PROVIDE REASON AS TO WHY SAID MOTION WAS DISMISSED[.]

ASSIGNMENT OF ERROR III

THE TRIAL COURT FAILED TO IMPOSE PRC AT THE ONSET OF SENTENCING AS WAS STATUTORILY MANDATED, AND THEREFORE THE ADULT PAROLE AUTHORITY WAS WITHOUT AUTHORITY OR JURISDICTION TO IMPOSE ANY TERM, OF SUPERVISION.

ASSIGNMENT OF ERROR V

THIS COURT DOES HAVE JURISDICTION TO CORRECT THE ILLEGAL PLACEMENT OF PRC EVEN THOUGH THERE IS A FINALITY OF SENTENCE AT THE TRIAL COURT.

{¶15} Based on our resolution of Mr. Keyes' second and fourth assignments of error, his remaining assignments of error are moot and we decline to address them. *See* App.R. 12(A)(1)(c).

III.

{¶16} Mr. Keyes' second assignment of error is overruled and his fourth assignment of error is sustained for the reasons outlined above. His remaining assignments of error are moot. The judgment of the Lorain County Court of Common Pleas is affirmed in part, reversed in part, and the cause is remanded for further proceedings consistent with the foregoing opinion.

Judgment affirmed in part,
reversed in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

CARLA MOORE
FOR THE COURT

HENSAL, P. J.
CARR, J.
CONCUR.

APPEARANCES:

BRIAN KEYES, pro se, Appellant.

DENNIS P. WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.