[Cite as *State v. Johnpillai*, 2023-Ohio-2745.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 22AP-612 (C.P.C. No. 02CR-2394)
v.	:	(REGULAR CALENDAR)
Jesse Johnpillai,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 8, 2023

On brief: *G. Gary Tyack*, Prosecuting Attorney, and *Darren M. Burgess* for appellee.

On brief: *Jesse Johnpillai*, pro se.

APPEAL from Franklin County Court of Common Pleas

MENTEL, J.

{¶ 1} Defendant-appellant, Jesse Johnpillai, appeals from a September 15, 2022 judgment entry denying his motion to vacate a void sentence. For the reasons that follow, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On April 29, 2002, appellant was indicted by a Franklin County Grand Jury and charged with one count of aggravated robbery in violation of R.C. 2911.01, a felony of the first degree (Count One); one count of robbery in violation of R.C. 2911.02, a felony of the second degree (Count Two); and one count of robbery in violation of R.C. 2911.02, a

felony of the third degree. All three counts included firearm specifications pursuant to R.C. 2941.141 and 2941.145.

{¶ 3} On May 1, 2003, appellant pleaded guilty, pursuant to a plea agreement, to one count of aggravated robbery with a firearm specification in violation of R.C. 2911.01, a felony of the first degree. The remaining charges were dismissed nolle prosequi. The trial court sentenced appellant to a six-year term of incarceration and imposed a mandatory five-year term of post-release control. Appellant did not file a direct appeal in this case.

{¶ 4} On September 1, 2022, appellant filed a "motion to vacate void sentence and resentence the defendant." (Capitalization omitted.) Appellant argued that his sentence was void because he was not properly notified and sentenced to post-release control during the sentencing hearing. On September 6, 2022, the state filed a memorandum in opposition to appellant's motion contending that appellant's arguments constituted voidable error and were precluded under the doctrine of res judicata. The state also argued that the judgment entry stated that appellant was properly notified, orally and in writing, of the applicable periods of post-release control. On September 15, 2022, the trial court denied appellant's motion finding that appellant was informed of his post-release control obligations and, even if he had not been properly notified, the issue was precluded under the doctrine of res judicata as any defects in the imposition of post-release control could have been raised on direct appeal.

{¶ 5} Appellant filed a notice of appeal on October 6, 2022.

II. ASSIGNMENTS OF ERROR

{¶ 6} Appellant assigns the following as trial court error:

> [I.] Because the Defendant was not specifically sentenced to the mandatory term of five (5) years postrelease control at the sentencing hearing held May 1, 2003, the sentence is void and must be vacated, and a resentencing hearing must be held pursuant to State v. Fischer, 128 Ohio St. 3d 92, 2010-Ohio-6238, 942 N.E.2d 332.
>
> [II.] The Defendant's sentence and plea must be vacated because there is no record of the plea/sentencing hearing held May 1, 2003 in this case.
>
> [III.] The Defendant does not have a final-appealable order in accordance with Crim. R. 32(C) because the judgment entry of the plea/sentencing hearing held May 1, 2003, does not contain

> a disposition on the Specifications to Counts Two and Three, nor is there a disposition on Specification Two to Count One.

(Sic passim.)

III. LEGAL ANALYSIS

A. Appellant's First and Second Assignments of Error

{¶ 7} As appellant's first and second assignments of errors are interrelated, we will address them together. In appellant's first assignment of error, he contends that his sentence is void as he was not properly sentenced to post-release control or that he was notified that, as a non-citizen, he could be deported after the service of his sentence. In appellant's second assignment of error, appellant argues that his sentence and plea must be vacated as there is no record of the sentencing hearing.

{¶ 8} The doctrine of mootness is based in the "case" or "controversy" language of the U.S. Constitution, Article III, Section 2. *State v. Beach*, 10th Dist. No. 20AP-589, 2021-Ohio-4497, ¶ 21, citing *Bradley v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 10AP-567, 2011-Ohio-1388, ¶ 11. A case is considered moot when "they are or have become fictitious, colorable, hypothetical, academic or dead. The distinguishing characteristic of such issues is that they involve no actual genuine, live controversy, the decision of which can definitely affect existing legal relations." *Doran v. Heartland Bank*, 10th Dist. No. 16AP-586, 2018-Ohio-1811, ¶ 12. It is well-established that Ohio courts lose jurisdiction over a moot question. *Soltesz v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 19AP-444, 2020-Ohio-365, ¶ 12. When an appeal is deemed moot, the case must be dismissed as it no longer presents a justiciable controversy for review. *Beach* at ¶ 21, citing *Grove City v. Clark*, 10th Dist. No. 01AP-1369, 2002-Ohio-4549, ¶ 11.

{¶ 9} On January 11, 2023, the state filed a motion to supplement the record with a recently prepared transcript of the May 1, 2003 sentencing hearing. The state wrote that the transcript became available as it was prepared and filed in connection with another appeal to this court. The stated argued that the transcript resolved several of the arguments asserted in appellant's brief. This court, without opposition from appellant, granted the motion. Because the state was able to supplement the May 1, 2003 transcript into the record, appellant's second assignment of error concerning whether the sentence must be vacated based on the lack of a record of the hearing is moot. Accordingly, we must dismiss

appellant's second assignment of error as it no longer presents a justiciable controversy for review.

{¶ 10} Regarding appellant's first assignment of error, we must first examine whether this argument is precluded under the doctrine of res judicata. In *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, ¶ 18, the Supreme Court of Ohio "reevaluate[d] the basic premise of [its] void-sentence jurisprudence." *Id.* at ¶ 34. The *Harper* court wrote "[a] sentence is void when a sentencing court lacks jurisdiction over the subject matter of the case or personal jurisdiction over the accused." *Id.* at ¶ 42. When the trial court has jurisdiction to act "sentencing errors in the imposition of postrelease control render the sentence voidable, not void, and the sentence may be set aside if successfully challenged on direct appeal." *Id.* In *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, ¶ 27, the Supreme Court wrote that *Harper* was not limited to cases involving the imposition of post-release control. The *Henderson* court found that when the sentencing court has jurisdiction over a case and defendant, a sentence based on an error would be deemed voidable, and "[n]either the state nor the defendant can challenge [a] voidable sentence through a postconviction motion." *Henderson* at ¶ 43.

{¶ 11} Pursuant to R.C. 2931.03, a common pleas court has subject-matter jurisdiction over felony cases. *Harper* at ¶ 25. A court has personal jurisdiction over a person "by lawfully issued process, followed by the arrest and arraignment of the accused and his plea to the charge." *Henderson* at ¶ 36. A defendant also submits to the jurisdiction of the sentencing court when the individual does not object to the court's exercise of jurisdiction over him. *Id.* In the case sub judice, the sentencing court had jurisdiction over appellant's felony case. Consequently, appellant's alleged sentencing error concerning the imposition of post-release control constitutes voidable error and is barred under res judicata as it could have been challenged on direct appeal.

{¶ 12} Appellant contends that *Harper* cannot be applied retroactively as his conviction became final in 2002. Appellant's argument is without merit. In *Henderson*, the Supreme Court applied *Harper* to a conviction that became final prior the issuance of the *Harper* decision. Similarly, in *State v. Hudson*, 161 Ohio St.3d 166, 2020-Ohio-3849, the Supreme Court found a sentencing entry that did not include the notice of consequences of violating post-release control could have been raised on direct appeal and, therefore, was

precluded by res judicata. The *Hudson* court applied *Harper* even though the sentencing error at issue predated the Supreme Court's issuance of the *Harper* decision. The *Hudson* court offered a clear warning as to the consequences of failing to raise potential errors on direct appeal: "to prosecuting attorneys, defense counsel, and pro se defendants throughout this state: they are on notice that any claim that the trial court has failed to properly impose postrelease control in the sentence must be brought on appeal from the judgment of conviction or it will be subject to principles of res judicata." *Id.* at ¶ 18. This court has previously found that if *Harper* was not intended to be applied retroactively, *Henderson* would have been resolved differently. *See State v. D.M.*, 10th Dist. No. 21AP-118, 2022-Ohio-108, ¶ 8.

{¶ 13} Arguendo, even if we were to consider appellant's first assignment of error, appellant's claims are plainly contradicted by the sentencing transcript, disposition sheet, and judgment entry. The transcript reveals that the trial court conducted an extensive Crim.R. 11 colloquy that notified appellant of the maximum penalties involved and the rights he was waiving by entering a plea of guilty. Relevant to the instant appeal, the trial court also notified appellant that there was a mandatory term of five years of post-release control as well as the consequences of entering a guilty plea as a non-citizen. (*See* May 1, 2003 Tr. at 11.)[1] The May 2, 2003 judgment entry reads "[a]fter the imposition of sentence,

---

[1] The May 1, 2003 transcript reads in relevant part:

> THE COURT: Do you understand that on the aggravated robbery with the firearm specification, that there is mandatory - - a mandatory prison term of three years on the firearm specification?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: Do you understand that that is in addition to any time that the Court imposes on the aggravated robbery?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: And do you understand that there is the possibility of a sentence of up to 10 years on the aggravated robbery?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: I understand that you are not a citizen of the United States?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: Do you understand that as a result of that, your pleas of guilty in these cases could result in your being deported?
>
> THE DEFENDANT: Yes, ma'am.

the Court notified the Defendant, orally and in writing, of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c),(d), and (e)." *Id*. at 2. (*See also* May 1, 2003 Disposition Sheet at 1) (indicating that "Defendant [was] notified of * * * Post Release Control in writing and orally."). Moreover, appellant signed the entry of a guilty plea, which acknowledged the five-year mandatory period of post-release control. Given these facts, we find appellant's argument that he was not notified of the imposition of the five-year period of post-release control and the consequences of entering a guilty plea as a non-citizen to be without merit.[2]

{¶ 14} Accordingly, appellant's first assignment of error is overruled.

B. Appellant's Third Assignment of Error

{¶ 15} In appellant's third assignment of error, he argues that the sentencing entry does not constitute a final appealable order because it "does not contain a disposition on the Specifications to Counts Two and Three, nor is there a disposition on Specification Two to Count One." (Appellant's Brief at 3.)

> THE COURT: Do you also understand that any jail-time credit that is awarded in these cases, you cannot get double jail-time credit? That is, you can't get that jail-time credit again for the cases that you have in Licking County?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: Finally, on the felony of the first degree, the aggravated robbery, do you understand that there is a mandatory post-release control period after you serve the period of incarceration, that for five years you will be under the supervision of the Adult Parole Authority for that offense?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: Has any anyone made any promises to you or threatened you in order to get you to change your plea of not guilty and enter a plea of guilty today?
>
> THE DEFENDANT: No, ma'am.
>
> THE COURT: Do you have any questions about the rights that you're waiving or about the potential consequences of entering these pleas of guilty?
>
> THE DEFENDANT: No.
>
> THE COURT: Do you want to go forward then at this time and plead guilty in each of these cases?
>
> THE DEFENDANT: Yes, ma'am.

(May 1, 2003 Tr. at 10-12.)

[2] Appellant's reliance on *Fischer* is misplaced as the Supreme Court's decisions in *Harper* and *Henderson* would control.

{¶ 16} As an initial matter, we note that, contrary to appellant's argument, the sentencing entry does, in fact, contain a disposition on the specifications to Counts Two and Three of the indictment. The entry reads in relevant part, "[i]t is ORDERED that a Nolle Prosequi be entered for Counts Two and Three of the indictment." (May 2, 2003 Jgmt. Entry at 1.) The Supreme Court has explained that a firearm specification is a sentence enhancement, not a separate criminal offense. *State ex rel. Rodriguez v. Barker*, 158 Ohio St.3d 39, 2019-Ohio-4155, ¶ 10, citing *State v. Ford*, 128 Ohio St.3d 398, 2011-Ohio-765, ¶ 17. As the firearm specifications were attached to Counts Two and Three of the indictment, the nolle prosequi applies to those specifications.

{¶ 17} As to Count One, the indictment contained two accompanying firearm specifications: specification one was pursuant to R.C. 2941.145, which carries a mandatory three-year prison term, while specification two was pursuant to R.C. 2941.141, which carries a mandatory one-year prison term. (Apr. 29, 2002 Indictment.) The sentencing entry indicates that appellant entered a guilty plea to Count One to wit: "Aggravated Robbery with Specification," though it does not specify whether the guilty plea was to specification one or two. (Jgmt. Entry at 1.) In the judgment entry, however, the trial court imposed "a sentence of three (3) years on the aggravated robbery and three (3) years on the firearm specification," indicating the sentence was pursuant to specification one under R.C. 2941.145. (Jgmt. Entry at 1.) The judgment entry does not indicate the specifications merged for purposes of sentencing or otherwise mention the specification pursuant to R.C. 2941.141. Thus, the issue presented under appellant's third assignment of error relates to the trial court's alleged failure to dispose of specification two, under R.C. 2941.141, for Count One of the indictment.

{¶ 18} Appellant argues the trial court's May 3, 2003 judgment entry finding him guilty of aggravated robbery is not a final appealable order due to the trial court's failure to dispose of the one-year firearm specification pursuant to R.C. 2941.141. However, because a firearm specification is not a distinct criminal offense, but merely a sentence enhancement, "a trial court's failure to address a specification does not affect the finality of the order." *Rodriguez* at ¶ 10, citing *Ford* at ¶ 17; *see also State ex rel. Jones v. Ansted*, 131 Ohio St.3d 125, 2012-Ohio-109, ¶ 1-2 (holding a sentencing order was a final, appealable order, even if it did not dispose of every firearm specification). Therefore, any alleged error

in appellant's sentencing entry related to the disposition of the firearm specifications attached to Count One does not render the judgment entry less than final.

{¶ 19} Accordingly, appellant's third assignment of error is overruled.

IV. CONCLUSION

{¶ 20} Having overruled appellant's first and third assignments of error, and dismissed appellant's second assignment of error as moot, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

LUPER SCHUSTER and EDELSTEIN, JJ., concur.
