

[Cite as *State v. Walker*, 2010-Ohio-4500.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94655

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GARY D. WALKER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED, MODIFIED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-504594-A and CR-507670-A

BEFORE: Rocco, P.J., McMonagle, J., and Stewart, J.

RELEASED AND JOURNALIZED: September 23, 2010

APPELLANT

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KENNETH A. ROCCO, P.J.:

{¶ 1} In this appeal assigned to the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.I, defendant-appellant Gary D. Walker, proceeding pro se, appeals from the trial court orders that denied his motions filed in two cases to “vacate void sentence and dismiss sentence for lack of jurisdiction.”

{¶ 2} The purpose of an accelerated appeal is to permit this court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158, 463 N.E.2d 655; App.R. 11.1(E). Upon a review of the record, this court concludes the trial court committed no error in

denying Walker's motions. The trial court's orders are affirmed, but the journal entries of sentence are ordered modified pursuant to R.C. 2967.28(C).

{¶ 3} The App.R. 9(A) record submitted in this case demonstrates as follows.

{¶ 4} In CR-504594, Walker entered a guilty plea to one count of attempted receiving stolen property. In CR-507670, Walker entered a guilty plea to one count of aggravated theft. Both of these offenses are fifth-degree felonies.

{¶ 5} On December 18, 2008, the trial court sentenced him in both cases. Walker received concurrent terms of one year; both sentencing journal entries state in relevant part that "post release [sic] control is part of this prison sentence for 3 years * * *." R.C. 2967.28(C) states the applicable period of postrelease control for Walker's offenses is "up to" three years.

{¶ 6} On October 19, 2009, Walker filed a pro se motion in each case requesting a "sentencing" pursuant to *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254. On October 22, 2009, the trial court issued journal entries denying his motions.

{¶ 7} On November 24, 2009, Walker filed an appeal of the trial court's orders in this court; his appeal was designated App. No. 94298. Subsequently, this court dismissed the appeal for failure to file a timely notice of appeal. App.R. 4(A).

{¶ 8} Instead of filing a request for a delayed appeal pursuant to App.R. 5(A), Walker returned to the trial court, and, on January 6, 2010, he filed in each of his underlying cases a “motion to vacate void sentence and motion to dismiss for lack of jurisdiction.” On January 14, 2010, the trial court denied his motions.

{¶ 9} Walker filed his notice of appeal in this case from the foregoing decisions in compliance with App.R. 4(A).

{¶ 10} He presents one assignment of error, arguing that the trial court acted improperly in denying his motion. He argues that because his convictions required “up to” three years of postrelease control, his original sentences in the underlying cases were “void,” and the trial court’s failure to “correct” them in a timely manner mandates “dismissal” of any period of postrelease control.

{¶ 11} This court disagrees with Walker’s argument, based upon *State v. Bailey*, Cuyahoga App. No. 93994, 2010-Ohio-1874, *State v. Cooper*, Cuyahoga App. No. 90144, 2008-Ohio-3459, and *State v. Spears*, Summit App. No. 24953, 2010-Ohio-1965.

{¶ 12} Without a transcript of Walker’s plea hearing, this court presumes regularity. *Id.*, ¶14. The journal entries in these cases demonstrate Walker was informed that postrelease control was a part of his sentence. Because he received some notice that his sentence included postrelease control, the erroneous statement of a longer length of time neither rendered his sentence

void, nor required a de novo sentencing hearing, nor mandated dismissal because of “unnecessary delay.” *Bailey*, ¶19-20; *Cooper*, ¶14; *Spears*.

{¶ 13} The journal entries of Walker’s sentences demonstrate they were not void, thus, the trial court properly denied his motions to “vacate void sentence and dismiss sentence for lack of jurisdiction.” *Cooper*; cf., *State v. Siwik*, Cuyahoga App. No. 92341, 2009-Ohio-3896.

{¶ 14} Walker’s assignment of error is overruled. The trial court’s orders are affirmed.

{¶ 15} However, Walker’s sentence is modified to reflect that he is subject to “up to” three years of postrelease control, pursuant to R.C. 2967.28(C). *State v. Simpson*, Cuyahoga App. No. 88301, 2007-Ohio-4301, ¶1111; *State v. Rogers*, Fayette App. No. CA2006-09-036, 2007-Ohio-3720.

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. Case remanded to the trial court for further proceedings consistent with this opinion.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

MELODY J. STEWART, J., CONCURS
CHRISTINE T. McMONAGLE, J., CONCURS
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