

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 10-CA-166
MICHAEL STEWART	:	
	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas Case No. 1999-CR-1409

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: April 18, 2011

APPEARANCES:

For Plaintiff-Appellee:

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Assistant Prosecuting Attorney
Stark County Prosecutor
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For Defendant-Appellant:

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Office of the Ohio Public Defender
250 E. Broad St., Ste. 1400
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Delaney, J.

{¶1} Defendant-Appellant, Michael Stewart appeals the judgment of the Stark County Court of Common Pleas, which classified him as a sexual predator in 2000. However, the judgment entry that he appeals this classification from deals strictly with correcting an error regarding post-release control. The State of Ohio is Plaintiff-Appellee.

{¶2} In 1999, Appellant was charged with one count of rape, in violation of R.C. 2907.02(A)(2), and one count of aggravated burglary, in violation of R.C. 2911.11(A)(1) for breaking into the apartment of his estranged wife and raping her. After a jury trial, Appellant was convicted of rape, but the jury was unable to come to a decision on the aggravated burglary charge. Appellant was sentenced to a term of 10 years in prison and was classified as a sexual predator after a hearing.

{¶3} Appellant appealed his conviction to this court in *State v. Stewart*, 5th Dist. Nos. 2000CA0356, 2000CA0357, 2001-Ohio-1775, and raised three assignments of error, including an assignment that his sexual predator classification was erroneous. This Court affirmed the judgment of the Stark County Common Pleas Court.

{¶4} Appellant subsequently filed a post-conviction petition, challenging his conviction. His claim was denied by the trial court and no appeal was taken from that judgment.

{¶5} In 2010, Appellant was renotified of his post-release control obligations via video conference in order to correct the imposition of post-release control. In the 2000 sentencing entry, the trial court imposed a period of post-release control “up to” a maximum period of five years. In the 2010 sentencing entry, the court amended the

entry to indicate that Appellant must serve “a mandatory period of five (5) years of post-release control pursuant to R.C. 2967.28(B).” It is from this 2010 sentencing entry that Appellant now appeals.

{¶6} Appellant raises one Assignment of Error:

{¶7} “I. THE TRIAL COURT ERRED IN FINDING MICHAEL STEWART TO BE A SEXUAL PREDATOR (OCTOBER 19, 2000 JOURNAL ENTRY, P. 1).”

I.

{¶1} In Appellant’s sole assignment of error, he argues that the trial court erred in classifying him as sexual predator in 2000.

{¶2} Appellant’s claims are without merit. Recently, the Ohio Supreme Court, in *State v. Fischer*, stated that “(1) when a judge fails to impose statutorily mandated post-release control as part of a defendant’s sentence, that part of the sentence that was void must be set aside, and,

{¶3} “(2) defendant’s remaining claims, which did not involve a void sentence or judgment, were barred by res judicata; overruling *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961.” *State v. Fischer*, 128 Ohio St.3d 92, 2010 -Ohio-6238, 942 N.E.2d 332.

{¶4} Accordingly, Appellant is precluded from contesting his sexual predator classification from 2000.

{¶5} Appellant’s assignment of error is overruled.

{¶6} For the foregoing reasons, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J.

Gwin, P.J. and

Hoffman, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
MICHAEL STEWART	:	
	:	
Defendant-Appellant	:	Case No. 10-CA-166
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN