

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-106
	:	(C.P.C. No. 00CR-3791)
David G. Fox,	:	
	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 7, 2011

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*,
for appellee.

David G. Fox, pro se.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} David G. Fox is appealing the trial court's denial of his motion seeking a new sentencing hearing. He assigns two errors:

[1.] TRIAL COURT ERRED WHEN, AT APPELLANT'S SENTENCING HEARING, IT NOTIFIED APPELLANT THAT HE WAS SUBJECT TO P.R.C., AND THEN INCORPORATED THAT NOTIFICATION AND IMPOSITION INTO APPELLANT'S SENTENCING ENTRY, WHEN THE ONLY CHARGE APPELLANT WAS SENTENCED FOR

WAS MURDER, AN UNCLASSIFIED FELONY TO WHICH P.R.C. DOES NOT APPLY.

[II.] TRIAL COURT ERRED WHEN, AT APPELLANT'S SENTENCING HEARING, IT FAILED TO ADVISE APPELLANT OF HIS CRIM.R.32 RIGHT TO APPEAL THE CONVICTION AND SENTENCE OF MURDER.

{¶2} Fox was indicted in 2000 and charged with aggravated murder, with a firearm specification. A jury found him guilty in February 2001. As a result, he was sentenced to a term of incarceration of 20 years to life consecutive to a three-year term of incarceration for the firearm specification.

{¶3} A direct appeal was pursued and a panel of this court found that the evidence was insufficient to support a conviction for aggravated murder, but was sufficient to support a conviction for murder.

{¶4} As a result of that appeal, a new sentencing hearing was conducted and Fox received the mandatory sentence of incarceration of 15 years to life, consecutive to three years of incarceration on the firearm specification. The second sentencing hearing occurred on May 16, 2002. Fox has been filing a variety of motions and petitions since then.

{¶5} Fox is correct to assert that he is not subject to post-release control on his murder conviction. He is not serving a definite sentence such that post-release control applies. Instead, if he is ever released from prison, it will be because the Ohio Adult Parole Authority grants him parole.

{¶6} The trial court judge who sentenced Fox in May 2002 incorrectly mentioned post-release control in the sentencing entry, but that mention has no effect on Fox.

Further, that incorrect reference could have been appealed years ago, but was not. Fox is now stuck with the references in the sentencing entry. In legalese, it is *res judicata*.

{¶7} The first assignment of error is overruled.

{¶8} When Fox was sentenced the second time, he was aware of what to do to appeal his case. The trial court gave a sentence which was mandated by state statute, except for the reference to post-release control. No appeal could have had any merit except for the incorrect reference to post-release control. An appellate panel could have ordered the incorrect reference to be stricken, but such an appeal would not have any practical effect on Fox. Fox was not harmed by the trial court's failure to mention the right to a second appeal, a right Fox probably was aware of anyway.

{¶9} The failure to advise Fox of his right to a second appeal was not prejudicial error.

{¶10} The second assignment of error is overruled.

{¶11} Both assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT, P.J., and CONNOR, J., concur.
