

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	No. 15AP-930
Plaintiff-Appellee,	:	(C.P.C. No. 03CR-282)
v.	:	No. 15AP-931
Tvaris King,	:	(C.P.C. No. 04CR-350)
Defendant-Appellant.	:	No. 15AP-933
		(C.P.C. No. 00CR-5875)
		(REGULAR CALENDAR)

D E C I S I O N

Rendered on March 24, 2016

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Valerie Swanson*, for appellee.

On brief: *Tvaris King*, pro se.

APPEALS from the Franklin County Court of Common Pleas

BROWN, J.

{¶ 1} In these consolidated appeals, defendant-appellant, Tvaris King, appeals from judgments of the Franklin County Court of Common Pleas denying his motions to "declare judgment void" filed in common pleas case Nos. 00CR-5875, 03CR-282, and 04CR-350.

{¶ 2} On October 4, 2000, appellant was indicted in case No. 00CR-5875 on one count of aggravated burglary, in violation of R.C. 2911.11, and one count of felonious assault, in violation of R.C. 2903.11. On November 1, 2001, he entered a guilty plea to the lesser-included offense of Count 2 of the indictment, attempted felonious assault, a felony of the third degree. By judgment entry filed December 21, 2001, the trial court sentenced appellant to "a period of Intensive Method Community Control for Five (5) years."

{¶ 3} On January 16, 2003, appellant was indicted in case No. 03CR-282 on two counts of possession of cocaine, in violation of R.C. 2925.11, one count of aggravated possession of drugs, in violation of R.C. 2925.11, one count of receiving stolen property, in violation of R.C. 2913.51, one count of having a weapon while under disability, in violation of R.C. 2923.13, and one count of trafficking in cocaine, in violation of R.C. 2925.03. On April 15, 2003, he entered a guilty plea to one count of possession of cocaine, one count of receiving stolen property, and one count of trafficking in cocaine. Also on that date, appellant stipulated that he had violated his community control sanctions in case No. 00CR-5875.

{¶ 4} By entries filed April 22, 2003, the trial court sentenced appellant in case No. 03CR-282, and re-sentenced him in case No. 00CR-5875 following the court's revocation of community control. Specifically, in case No. 03CR-282, the court sentenced appellant to a total term of incarceration of three years; in case No. 00CR-5875, the court filed a "sanction following revocation" entry, sentencing appellant to a three-year term of imprisonment, with the sentence "to run concurrently to Case No. 03CR-282."

{¶ 5} On January 21, 2004, appellant was indicted in case No. 04CR-350 on one count of gross sexual imposition, in violation of R.C. 2907.05, and four counts of rape, in violation of R.C. 2907.02. On January 17, 2006, he entered an "*Alford*" plea to one count of gross sexual imposition. *North Carolina v. Alford*, 400 U.S. 25 (1970). By judgment entry filed January 19, 2006, the trial court sentenced appellant to a one-year term of incarceration. The court also declared appellant to be a sexually oriented offender.

{¶ 6} On May 7, 2014, appellant filed motions "to declare judgment void" in case Nos. 03CR-282 and 04CR-350, arguing that his sentences were void because the trial court did not comply with the statutory requirements of post-release control. On May 20, 2014, plaintiff-appellee, State of Ohio, filed a memorandum contra appellant's motions to declare judgment void. By entry filed May 29, 2014, the trial court held that appellant's motion to declare judgment void in case No. 03CR-282 was moot. By journal entry filed June 17, 2014, the trial court in case No. 04CR-350 denied appellant's motion to declare judgment void.

{¶ 7} On April 22, 2015, appellant filed petitions for a "writ of error coram nobis" in case Nos. 00CR-5875, 03CR-282 and 04CR-350. By entries filed on May 19, 2015, the

trial court denied appellant's petitions in case Nos. 00CR-5875 and 03CR-282, holding that the common law writ of coram nobis was not part of the law of Ohio. On June 16, 2015, the trial court denied appellant's petition in case No. 04CR-350. Appellant subsequently filed motions for relief from judgment in all three cases, requesting the court to reconsider its denial of his petitions for a writ of coram nobis. The trial court filed entries denying appellant's motion for relief from judgment in all three cases.

{¶ 8} On August 18, 2015, appellant filed motions to "declare judgment void" in case Nos. 00CR-5875, 03CR-282 and 04CR-350. On September 9, 2015, the trial court denied appellant's motions to declare judgment void in case Nos. 00CR-5875 and 03CR-282. By judgment entry filed on December 15, 2015, the trial court denied appellant's motion to declare judgment void in case No. 04CR-350.

{¶ 9} On appeal, appellant's pro se appellate brief sets forth the following two "issues" for review, which we construe as assignments of error:

ISSUE I: DID THE TRIAL COURT COMMIT CLEAR ERROR AT THE DEFENDANT'S 2003 SENTENCING WHEN IT FAILED TO SENTENCE MR. KING TO THE REQUIRED (3) THREE YEAR MANDATORY PERIOD OF POST-RELEASE CONTROL FOR A FELONY OF THE SECOND DEGREE?

ISSUE II: DID THE TRIAL COURT AS WELL AS TRIAL COUNSEL COMMIT CLEAR ERROR AT THE DEFENDANT'S 2006 CONVICTIONS SENTENCING OR PLEA CONSEQUENCES WHEN IT FAILED TO NOTIFY THE DEFENDANT OF THE MAXIMUM TIME HE FACED IN PRISON WHEN HIS PRIOR 2003 CONVICTIONS POST-RELEASE CONTROL SANCTION TIME WOULD BE CONSOLIDATED WITH HIS 2006 CONVICTIONS POST-RELEASE CONTROL SANCTION TIME AFTER SENTENCING?

{¶ 10} Appellant's assignments of error, challenging the trial court's judgments denying his motions to declare judgment void, are interrelated and we will consider them together. Under his first assignment of error, appellant argues that the trial court never provided proper post-release control notification in case No. 03CR-282, thereby rendering his sentence in that case void. Specifically, appellant argues that neither the journal entry nor sentencing transcript in that case mentions the required three-year

mandatory period of post-release control. Under his second assignment of error, appellant contends the trial court erred in failing to inform him that the period of post-release control in case No. 03CR-282 was to run concurrently with the period of post-release control imposed by the court in case No. 04CR-350.

{¶ 11} In response to the first assignment of error, the state maintains the record does not support appellant's claim that the trial court failed to properly notify him of post-release control in case No. 03CR-282. The state initially observes that appellant failed to provide a full transcript of the April 15, 2003 proceedings, during which the trial court (1) accepted appellant's stipulation to violations of his release on community control in case No. 00CR-5875, (2) conducted a change-of-plea hearing in case No. 03CR-282, and (3) conducted a sentencing hearing in case No. 03CR-282 and a re-sentencing hearing in case No. 00CR-5875. The state notes that appellant submitted only an excerpt of the transcript from these proceedings, and that such excerpt appears to be from the change-of-plea portion of the 2003 case. The state further argues that the record belies appellant's claim that the trial court failed to properly notify him of post-release control. Specifically, the state contends that the sentencing disposition sheet filed in case No. 03CR-282 states that appellant was notified orally and in writing of post-release control, and that the trial court's judgment entry in that case indicates he was notified of applicable periods of post-release control.

{¶ 12} Under Ohio law, in order to fulfill the requirements of the post-release control sentencing statutes, including R.C. 2929.19(B), "a trial court must provide statutorily compliant notification to a defendant regarding postrelease control at the time of sentencing, including notifying the defendant of the details of the postrelease control and the consequences of violating postrelease control." *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, ¶ 18. Further, "a trial court must incorporate into the sentencing entry the postrelease-control notice to reflect the notification that was given at the sentencing hearing." *Id.* at ¶ 19.

{¶ 13} Upon review, we agree with the state that the record does not support appellant's contention that the trial court failed to properly notify him of post-release control in case No. 03CR-282. As noted under the facts, on April 15, 2003, appellant entered a guilty plea to one count of possession of cocaine, one count of receiving stolen

property, and one count of trafficking in cocaine in that case. Page two of the guilty plea form signed by appellant in that case states in part: "If the court imposes a prison term, I understand that the following period(s) of post-release control is/are applicable." An "X" is marked in the box next to the following words: "F-2 * * * Three Years-Mandatory."

{¶ 14} The guilty plea form also contains the following statement:

I understand that a violation of post-release control conditions or the condition under R.C. 2967.131 could result in more restrictive non-prison sanctions, a longer period of supervision or control up to a specified maximum, and/or reimprisonment for up to nine months. The prison term(s) for all post-release control violations may not exceed one-half of the prison term originally imposed. I understand that I may be prosecuted, convicted, and sentenced to an additional prison term for a violation that is a felony. I also understand that such felony violation may result in a consecutive prison term of twelve months or the maximum period of unserved post-release control, whichever is greater. Prison terms imposed for violations or new felonies do not reduce the remaining post-release control period(s) for the original offense(s).

{¶ 15} The sentencing disposition sheet in case No. 03CR-282 contains an "X" in a box beside the following notation: "Defendant notified of * * * Post Release Control in writing and orally." Further, the trial court's sentencing entry in case No. 03CR-282 states in part: "After the imposition of sentence, 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)."

{¶ 16} This court has previously held that "post-release control may be properly imposed when the 'applicable periods' language in a trial court's sentencing entry 'is combined with other written or oral notification of the imposition of post-release control.'" *State v. Maser*, 10th Dist. No. 15AP-129, 2016-Ohio-211, ¶ 12, quoting *State v. Ragland*, 10th Dist. No. 13AP-451, 2014-Ohio-798, ¶ 17 (rejecting appellant's claim that his sentence was void).

{¶ 17} While appellant contends the trial court failed to properly notify him orally of post-release control, the record supports the state's argument that appellant has submitted only an excerpt of the transcript from the 2003 sentencing hearing and, as

further argued by the state, the excerpt appears to be from the change-of-plea portion of the proceedings. Specifically, in the excerpt provided, the trial court notes that appellant and his co-defendant are "pleading to mandatory time," and that "[p]ost-release control is mandatory with respect to [appellant] and optional with respect to [co-defendant]." (Apr. 15, 2003 Excerpt of Sentencing Proceedings, 3.)

{¶ 18} Under Ohio law, an appellant has a duty to file such parts of the transcript that are necessary for evaluating a trial court's decision. *State v. Jalloh*, 10th Dist. No. 13AP-411, 2014-Ohio-2730, ¶ 12. In the absence of an adequate record, "we presume regularity in the trial court proceedings," and we therefore "presume that the trial court orally notified [appellant] of the consequences of violating his post-release control." *Id.* Accordingly, appellant has failed to demonstrate that his sentence in case No. 03CR-282 is void, and we find no merit to his first assignment of error. Appellant's first assignment of error is overruled.

{¶ 19} Appellant contends, under his second assignment of error, that the trial court erred during the 2006 sentencing proceedings by failing to notify him that his prior post-release control sanction imposed in case No. 03CR-282 would run concurrently with the post-release control imposed by the court in case No. 04CR-350. Appellant's argument, in which he asserts that his "prior post-release control was not dealt with" by the trial court during the 2006 sentencing proceedings, appears to be premised on the contention (raised under his first assignment of error) that his conviction in case No. 03CR-282 is void.

{¶ 20} As addressed above, we find no merit to appellant's claim that the sentence in case No. 03CR-282 is void. Further, a review of the portions of the record in case No. 04CR-350 that are properly before this court on appeal do not suggest that the trial court failed to properly notify appellant of post-release control during the 2006 sentencing proceedings. Appellant signed an "Entry of Guilty Plea" form in that case acknowledging that he would be sentenced to a "Five year[] Mandatory" period of post-release control. Appellant also signed a "Notice (Prison Imposed)" form informing him that he "will * * * have a period of post-release control for 5 years following [his] release from prison." The sentencing disposition sheet in case No. 04CR-350 has a checkmark beside the following language: "Defendant notified of Post Release Control in writing and orally." Underneath

that line are the words: "5 yrs. Mandatory." Further, the trial court's judgment entry in case No. 04CR-350 states in part: "The court * * * notified the defendant of the applicable period of 5-years mandatory post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)."

{¶ 21} We also agree with the state's contentions that appellant had no reason to assume his multiple post-release control sanctions would not run concurrently, or that the court was required to provide notice with respect to the interaction of post-release control previously imposed in a separate case. *See* R.C. 2967.28(F)(4)(c) (providing in part that "[p]eriods of post-release control shall be served concurrently"). *See also State v. Hamby*, 2d Dist. No. 24328, 2011-Ohio-4542, ¶ 37 (statute "does not require notice" of concurrent nature of term, "it merely states how they will run"). Appellant's second assignment of error is overruled.

{¶ 22} Based on the foregoing, appellant's first and second assignments of error are not well-taken and are overruled, and the judgments of the Franklin County Court of Common Pleas are hereby affirmed.

Judgments affirmed.

TYACK and HORTON, JJ., concur.
