

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 109560
v.	:	
	:	
TROY WINTERS,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 1, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-14-583833-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Gregory Ochocki, Assistant Prosecuting Attorney, *for appellee*.

Friedman & Gilbert L.L.C., and Mary Catherine Corrigan, *for appellant*.

EILEEN A. GALLAGHER, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1. Defendant-appellant Troy Winters appeals the trial

court's denial of his motion for a final, appealable order. Finding no merit to his appeal, we affirm.

Procedural History and Factual Background

{¶ 2} In 2014, Winters was charged with one count of felonious assault in violation of R.C. 2903.11(A)(1) (Count 1), one count of felonious assault in violation of R.C. 2903.11(A)(2) (Count 2) and one count of discharge of a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3) (Count 3). The charges arose out of the March 18, 2014 shooting of James Marshall. Each of the counts carried one-year and three-year firearm specifications.

{¶ 3} The case proceeded to a jury trial where Winters was found guilty on all counts. The trial court merged the two felonious assault counts and the firearm specifications for sentencing and the state elected that Winters be sentenced on Count 1. The trial court sentenced Winters to an aggregate 11-year prison term. On Count 1, the trial court sentenced Winters to three years on the three-year firearm specification to be served prior to and consecutive to eight years on the underlying offense. On Count 3, the trial court sentenced Winters to three years, to be served concurrently to the sentence on Count 1. The trial court also imposed three years of mandatory postrelease control.

{¶ 4} Winters' convictions were affirmed on appeal. *State v. Winters*, 8th Dist. Cuyahoga No. 102871, 2016-Ohio-928.

{¶ 5} On January 3, 2020, Winters filed a "Motion for a Final Order Pursuant to O.R.C. 2505.02(A), Crim.R. 32(C) and Article IV, Section 3(B)(2) to the

Ohio Constitution,” arguing that the trial court’s sentencing journal entry was not a final, appealable order because it “failed to reflect the periods of post-release control (PRC) on each count separately.” The trial court denied the motion.

{¶ 6} Winters appealed, raising the following assignment of error for review:

The trial court erred when it denied to issue the appellant Scott [sic] a final appealable order pursuant to O.R.C. 2505.02(A), Crim.R. 32(C), [a]nd Article IV, Section 3(B)(2) of the Ohio Constitution.

Law and Analysis

{¶ 7} Winters argues that the trial court erred in denying his motion for a final, appealable order. He contends that the trial court’s sentencing journal entry was not a final, appealable order because it imposed a collective three-year term of mandatory postrelease control instead of imposing a period of postrelease control separately on each count. Winters’ argument is meritless.

{¶ 8} As this court recently stated in *State v. Thompson*, 8th Dist. Cuyahoga Nos. 108520 and 108530, 2020-Ohio-671:

“This court has previously rejected the argument that a trial court is required to impose separate terms of postrelease control for each individual offense. *See State v. Davis*, 8th Dist. Cuyahoga No. 104574, 2018-Ohio-1147, ¶ 69-70; *State v. Makin*, 8th Dist. Cuyahoga No. 104010, 2017-Ohio-8569, ¶ 6-8; *State v. Byrd*, 8th Dist. Cuyahoga No. 98037, 2012-Ohio-5728, ¶ 3-33; *State v. Orr*, 8th Dist. Cuyahoga No. 96377, 2011-Ohio-6269, ¶ 46-50; *State v. Morris*, 8th Dist. Cuyahoga No. 97215, 2012-Ohio-2498, ¶ 16-18; *see also State v. Reed*, 2012-Ohio-5983, 983 N.E.2d 394, ¶ 12 (6th Dist.) ([T]he sentencing court only has the duty in multiple offense cases to notify the defendant of and impose the longest term of postrelease control applicable under R.C. 2967.28(B). * * * [T]he trial court need not announce at the sentencing hearing nor include in the sentencing judgment the applicable

postrelease control sanction for each individual offense * * *.’). * * * R.C. 2967.28(F)(4)(c) ‘precludes the court or parole board from imposing more than one period of postrelease control in cases that involve multiple convictions.’ See *Davis* at ¶ 70; see also R.C. 2967.28(F)(4)(c) (‘If an offender is subject to more than one period of postrelease control, the period of postrelease control for all of the sentences shall be the period of postrelease control that expires last, as determined by the parole board or court. Periods of postrelease control shall be served concurrently and shall not be imposed consecutively to each other.’).”

Id. at ¶ 29, quoting *State v. Parker*, 8th Dist. Cuyahoga No. 106585, 2018-Ohio-3677, ¶ 20. Thus, the trial court was not required to state, in its sentencing journal entry, “the applicable postrelease control sanction for each individual offense.” *Thompson* at ¶ 30.

{¶ 9} Furthermore, even if the trial court had erred in imposing postrelease control, Winters’ claim would be barred by res judicata. *State v. Harper*, Slip Opinion No. 2020-Ohio-2913, ¶ 43 (“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 the sentence will be subject to res judicata”); see also *State v. Hudson*, Slip Opinion No. 2020-Ohio-3849, ¶ 18 (“reiterat[ing]” its statement in *Harper* 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”). Because Winters did not raise the issue in his direct appeal, it is barred by res judicata.

{¶ 10} The trial court’s sentencing journal entry in this case constitutes a final, appealable order. In a criminal case, a valid judgment of conviction constitutes

a final, appealable order. *State v. Jackson*, 151 Ohio St.3d 239, 2017-Ohio-7469, 87 N.E.3d 1227, ¶ 11 (“A judgment of conviction qualifies as a final order under R.C. 2505.02(B).”). A judgment of conviction constitutes a “final order subject to appeal under R.C. 2505.02” when it sets forth: (1) the fact of the conviction, (2) the sentence, (3) the judge’s signature and (4) the time stamp indicating the entry upon the journal by the clerk. *State v. White*, 156 Ohio St.3d 536, 2019-Ohio-1215, 130 N.E.3d 247, ¶ 13; *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus. A valid judgment of conviction also requires “a full resolution of any counts for which there were convictions.” *Jackson* at ¶ 11. The trial court’s sentencing journal entry in this case complies with these requirements. *See also Thompson*, 2020-Ohio-671, at ¶ 36-37 (finding “no merit” to defendant’s contention that sentencing journal entry was not a final, appealable order where trial court did not impose separate terms of postrelease control for each individual offense).

{¶ 11} Accordingly, the trial court did not err in denying Winters’ motion for a final, appealable order. We overrule Winters’ assignment of error.

{¶ 12} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

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

EILEEN A. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and
MICHELLE J. SHEEHAN, J., CONCUR