[Cite as *State v. Perry*, 2015-Ohio-1221.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-T-0029**
- vs -	:	
ROOSEVELT PERRY,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 01 CR 458.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Roosevelt Perry, pro se, PID: A423584, Grafton Correctional Institution, 2500 South Avon Belden Road, Grafton, OH 44044 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Roosevelt Perry, appeals from the April 17, 2014 judgment of the Trumbull County Court of Common Pleas, resentencing him for robbery and theft from an elderly person. For the reasons that follow, we affirm.

{¶2} By way of background, on September 19, 2001, appellant was indicted by the Trumbull County Grand Jury on four counts: count one, robbery, a felony of the second degree, in violation of R.C. 2911.02(A)(2) and (B); counts two and three,

robbery, felonies of the third degree, in violation of R.C. 2911.02(A)(3) and (B); and count four, theft from an elderly person, a felony of the fifth degree, in violation of R.C. 2913.02(A)(1) and (B)(3). Appellant pleaded not guilty to all charges at his arraignment.

{¶3} A jury trial commenced on February 4, 2002. Two days later, the jury returned a guilty verdict on all four counts. On February 26, 2002, the trial court sentenced appellant to a prison term of eight years on count one; five years on count two to run consecutive to count one; five years on count three to run concurrent to counts one and two; and count four to merge with count three for a total period of incarceration of 13 years. The court informed appellant that post-release control is mandatory up to a maximum of five years.

{¶4} Appellant filed his first appeal with this court, Case No. 2002-T-0035, alleging that his conviction with respect to count four, theft from an elderly person, was not supported by sufficient evidence, and that the trial court failed to comply with R.C. 2929.14(E)(4) in imposing consecutive sentences. On December 31, 2003, this court vacated appellant's sentence with regard to count four and remanded the matter to the trial court regarding the failure to comply with R.C. 2929.14(E)(4) with respect to counts one, two, and three. *State v. Perry*, 11th Dist. Trumbull No. 2002-T-0035, 2003-Ohio-7204.

{¶5} On February 10, 2003, appellant filed a petition to vacate or set aside his sentence. The following week, the trial court dismissed appellant's petition without a hearing because it was untimely. Appellant filed his second appeal with this court, Case No. 2003-T-0048. On June 25, 2004, this court affirmed the trial court's judgment. *State v. Perry*, 11th Dist. Trumbull No. 2003-T-0048, 2004-Ohio-3334.

{¶6} Pursuant to this court's remand in *Perry,* 2003-Ohio-7204, a resentencing hearing was held on August 2, 2004. The trial court sentenced appellant to a prison term of eight years on count one; five years on count two to run consecutive to count one; and five years on count three to run concurrent to counts one and two. Thus, once again, the trial court sentenced appellant to a total of 13 years and notified him that post-release control is mandatory up to a maximum of five years.

{¶7} Appellant filed his third appeal with this court, Case No. 2004-T-0113, asserting that the trial court's imposition of consecutive sentences based upon findings, pursuant to R.C. 2929.14(E)(4), not made by a jury nor admitted by appellant was contrary to law and violated his right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution. This court affirmed the judgment of the trial court on September 2, 2005. *State v. Perry*, 11th Dist. Trumbull No. 2004-T-0113, 2005-Ohio-4653.

{¶8} Appellant appealed this court's decision to the Ohio Supreme Court, which accepted his appeal. On May 3, 2006, the Supreme Court reversed our judgment and remanded the case to the trial court for resentencing pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. *In re Ohio Crim. Sentencing Statutes Cases*, 109 Ohio St.3d 313, 2006-Ohio-2109.

{¶9} Pursuant to the Supreme Court's remand, on May 22, 2006, a resentencing hearing was held. The trial court sentenced appellant to a prison term of eight years on count one; five years on count two to run consecutive to count one; five years on count three to run concurrent to counts one and two; and count four to merge with count three. Thus, the trial court, for the third time, imposed a total sentence of 13

years and informed appellant that post-release control is mandatory up to a maximum of five years.

{¶10} Appellant filed his fourth appeal with this court, Case No. 2006-T-0078, alleging that the trial court erred by imposing an illegal sentence. On April 27, 2007, this court affirmed the judgment of the trial court. *State v. Perry*, 11th Dist. Trumbull No. 2006-T-0078, 2007-Ohio-2050.

{¶11} Approximately six years later, on March 12, 2013, appellant filed a pro se "Motion to Correct Illegal Sentence," asserting, inter alia, that the trial court had improperly imposed post-release control. The state agreed.[1] On March 24, 2014, the trial court conducted a video resentencing and issued a fourth sentencing entry on April 17, 2014, which is the subject of the instant appeal.[2]

{¶12} In that entry, the court sentenced appellant to a prison term of eight years on count one; five years on count two to run consecutive to count one; five years on count three to run concurrent to counts one and two; and count four to merge with count three. Thus, the trial court, for the fourth time, imposed a total sentence of 13 years. However, the court, for the first time, properly notified appellant that he is subject to a mandatory three years of post-release control on counts one, two, and three.[3] The court also denied any additional jail time credit.[4]

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1. In the first three sentencing entries, the trial court improperly notified appellant that post-release control is mandatory up to a maximum of five years.

2. Appellant did not file a transcript of the March 24, 2014 proceedings.

3. In each of the four sentencing entries, the trial court gave appellant credit for time served in the Trumbull County Jail beginning June 13, 2001.

4. In his "Motion to Correct Illegal Sentence," appellant, for the first time, argued he was entitled to more jail time credit than originally awarded in 2002.

{¶13} Appellant filed his fifth appeal with this court, Case No. 2014-T-0029, and asserts the following assignment of error:

{¶14} "The trial court committed prejudicial error by imposing post release control on March 24, 2014 when the sentence expired on March 12, 2014 in violation of Article I, Section 10 of the Ohio Constitution, rendering post release control imposed on March 24, 2014 void."

{¶15} This case involves a pro se appellant. Although there are limits, pro se litigants are generally afforded leniency. *See Henderson v. Henderson*, 11th Dist. Geauga No. 2012-G-3118, 2013-Ohio-2820, ¶22, citing *In re Rickels*, 3rd Dist. Paulding No. 11-03-13, 2004-Ohio-2353, ¶4; *State v. Chilcutt*, 3rd Dist. Crawford Nos. 3-03-16 and 3-03-17, 2003-Ohio-6705, ¶9; *State ex rel. Karmasu v. Tate*, 83 Ohio App.3d 199, 206 (4th Dist.1992); *In re Paxton*, 4th Dist. Scioto No. 91-CA2008 (June 30, 1992).

{¶16} As stated, upon appellant's pro se "Motion to Correct Illegal Sentence," the trial court conducted a video resentencing on March 24, 2014. Thereafter, the trial court issued a sentencing entry on April 17, 2014, imposing for the fourth time a total prison sentence of 13 years, and properly notifying appellant for the first time that he is subject to a mandatory three years of post-release control on counts one, two, and three. The trial court again gave appellant credit for time served in the Trumbull County Jail beginning June 13, 2001 and denied any additional jail time credit.

{¶17} Appellant now takes issue with the March 24, 2014 video resentencing and claims that he objected to it. We note that criminal, indigent defendants are constitutionally entitled to a transcript, at state expense, to perfect an appeal. *See, e.g., Griffin v. Illinois*, 351 U.S. 12 (1956); *Mayer v. Chicago*, 404 U.S. 189 (1971); *State ex*

rel. Dillard v. Duncan, 45 Ohio St.2d 134 (1976). However, this is not a case where a criminal, indigent defendant ordered but was denied a transcript. *See Mentor v. Meyers*, 11th Dist. Lake No. 2012-L-141, 2014-Ohio-2011, ¶52-65 (O'Toole, J., dissenting). Rather, the record in this case reveals that appellant (a criminal, indigent defendant) never ordered and filed a transcript of the March 24, 2014 proceedings. In fact, on his pro se "Notice of Appeal," appellant did not indicate that he ordered either a partial or complete transcript.

{¶18} App.R. 9(B) requires the ordering of a complete or partial transcript at the time of filing a notice of appeal. This court has held that when a defendant's appeal challenges his sentence, a transcript of the sentencing hearing is necessary. *Warren v. Clay*, 11th Dist. Trumbull No. 2003-T-0134, 2004-Ohio-4386, ¶3.

{¶19} In any event, even if the lack of a transcript was not an issue, appellant's argument still fails. Appellant alleges his sentence is void because the trial court imposed post-release control on March 24, 2014 *after* his sentence had expired. Appellant claims he was awarded nine months of "jail time credit" and had earned "good time credit." Therefore, according to appellant, his sentence expired on March 12, 2014. Appellant's contention, however, appears nowhere in the record. The trial court's docket reveals that the resentencing hearing at issue occurred *before* the expiration of his 13-year sentence and the court, pursuant to appellant's own motion, corrected a void imposition of post-release control.

{¶20} The record before us establishes that appellant began serving his 13-year sentence on June 13, 2001. Thus, when the court resentenced appellant and imposed

the proper post-release control on March 24, 2014, appellant's sentence in this matter had not expired. In any event, we note that appellant is still in prison to date.

{¶21} Appellant filed his pro se appellate brief with this court on May 27, 2014 and his reply brief on July 1, 2014. On the cover page of both briefs, appellant lists his address as follows: "Roosevelt Perry #A423-584 Grafton Correctional Institution 2500 South Avon Belden Road Grafton, Ohio 44044." Also, as of this writing, an offender search of the Ohio Department of Rehabilitation and Correction lists "Roosevelt Perry," prison I.D. No. "A423584" as "INCARCERATED" at "Grafton Correctional Institution" for the 2002 Trumbull County offenses at issue as well as for a 1991 aggravated robbery case from Cuyahoga County. www.drc.ohio.gov/OffenderSearch.[5] The "Expiration Stated Term" is listed as "05/12/2016." *Id.*

{¶22} In addition, although appellant twice requested that the trial court schedule a hearing, he now claims he was not given notice of the March 24, 2014 resentencing hearing. However, our review of the trial court's docket**,** contained in the record as well as accessible online, reveals the following March 11, 2014 notation: "HEARING SET: Event: SENTENCING HEARING Date: 03/24/2014 Time: 1:00 pm Judge: KONTOS, PETER J Location: COURTROOM 3 ## PLEASE NOTE: THIS IS A VIDEO SENTENCING.##" Although the record does not specifically identify which parties were notified of this scheduling, appellant's attorney was apparently notified as appellant appeared with his attorney for the video conference. Page three of the April 17, 2014 sentencing entry states: "On March 24, 2014, the Defendant was present by video for a re-sentencing hearing along with Defense Attorney Brendan Keating[.]" Also, prison

5. Ohio courts of appeals can take judicial notice of public records accessible on the Internet. *In re Helfrich*, 5th Dist. Licking No. 13CA20, 2014-Ohio-1933, ¶35, citing *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, ¶8.

officials were apparently notified of the March 24, 2014 hearing as well, since they provided the video link from the prison to Judge Kontos' courtroom.

{¶23} Additionally in his reply brief appellant argues that the trial court should not have conducted his sentencing hearing by video conference over his objection. Appellant quotes the following from R.C. 2929.191(C): "* * * The offender has the right to be physically present at the hearing * * *." However, appellant failed to include the next portion of the statute which provides:

> **{¶24}** * *except that, upon the court's own motion or the motion of the offender or the prosecuting attorney, the court may permit the offender to appear at the hearing by video conferencing equipment if available and compatible. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender were physically present at the hearing.

{¶25} Therefore, it was not error for the trial court to conduct the hearing by video conference.

{¶26} Upon review, the trial court committed no error by imposing post-release control on March 24, 2014 as appellant's sentence had not expired. Thus, the record does not support appellant's assertion that the trial court issued a void sentence.

{¶27} For the foregoing reasons, appellant's sole assignment of error is not well-taken. The judgment of the Trumbull County Court of Common Pleas is affirmed.

THOMAS R. WRIGHT, J., concurs,

TIMOTHY P. CANNON, P.J., concurs in judgment only with a Concurring Opinion.

TIMOTHY P. CANNON, P.J., concurring in judgment only.

{¶28} I concur in judgment only with the opinion of the majority.

{¶29} The lead opinion cites to *Griffin v. Illinois*, 351 U.S. 12 (1956) and *Mayer v. Chicago*, 404 U.S. 189 (1971) for the proposition that indigent defendants are constitutionally entitled to a transcript, at state's expense, to perfect an appeal. First, the appellant in this case has not alleged any error with the failure to afford him a transcript. It is not an issue in this appeal, and there is no reason to address it.

{¶30} Second, with respect to the majority's sweeping statement that "criminal, indigent defendants are constitutionally entitled to a transcript, at state's expense, to perfect an appeal," the United States Supreme Court, in *Mayer*, clarified that the state need not always provide a complete verbatim transcript, but a "record of sufficient completeness." *Mayer*, *supra*, paragraph one of the syllabus. "'Alternative methods of reporting trial proceedings are permissible if they place before the appellate court an equivalent report of the events at trial from which the appellant's contentions arise.'" *Id.* at 194, quoting *Draper v. Washington*, 372 U.S. 487 (1963), syllabus. It is clear there is no unfettered right to a transcript at state's expense.