

[Cite as *State v. Taylor*, 2015-Ohio-2194.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 14CA010583

Appellee

v.

JASON TAYLOR

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 03CR063918

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 8, 2015

MOORE, Judge.

{¶1} Defendant, Jason L. Taylor, appeals from the judgment of the Lorain County Court of Common Pleas. We affirm, but remand the matter for the reasons discussed below.

I.

{¶2} In 2003, the Lorain County Grand Jury indicted Mr. Taylor on charges of breaking and entering and driving under suspension. Mr. Taylor entered guilty pleas to the charges. In a sentencing entry dated June 8, 2004, the trial court sentenced Mr. Taylor to ten months of incarceration on the breaking and entering charge and to six months of incarceration on the driving under suspension charge, to be served concurrently with each other, but consecutively to a sentence imposed in a separate case.

{¶3} Thereafter, Mr. Taylor filed the following documents which appear to request the trial court to order the Adult Parole Authority (“APA”) to remove his parole tail from convictions he incurred in 1996 because, he claimed, as part of his plea agreement in resolving

the 2003 charges, the parties agreed that his parole from the 1996 convictions would terminate. On August 1, 2013, Mr. Taylor filed a motion entitled “Motion to Compel [APA] to Follow Court Order.” The trial court denied this motion in an entry dated August 7, 2013.¹ On August 21, 2013, Mr. Taylor filed a motion entitled “Motion to Show Cause and Findings of Fact[.]” The trial court denied this motion in an entry dated September 13, 2013.²

{¶4} On October 28, 2013, Mr. Taylor filed a notice of appeal, purportedly from a judgment issued on October 15, 2013. *State v. Taylor*, 9th Dist. Lorain No. 13CA010488 (Apr. 2, 2014). This Court noted that Mr. Taylor did not attach to his notice of appeal or brief a copy of the order from which he appealed, and the docket did not contain an October 15, 2013 order. *Id.* Therefore, we ordered Mr. Taylor to file a copy of the journal entry from which he appealed. *Id.* Mr. Taylor then filed a copy of a June 8, 2004 order, a copy of the August 7, 2013 order, a copy of a September 13, 2013 order, and a copy of an October 15, 2013 order from a different case than that which was listed on his notice of appeal. *Id.* Upon the State’s motion we dismissed the appeal. *Id.*

{¶5} On April 21, 2014, Mr. Taylor filed a motion entitled “Motion to Clarify and to Certify Conflict,” in which he appears to again request the trial court to order the APA to terminate his parole tail. The trial court denied this motion in an entry dated April 22, 2014. Mr. Taylor timely filed a notice of appeal from the April 22, 2014 entry, and he now presents one assignment of error for our review.

¹ This journal entry is dated August 7, 2013 and date-stamped on August 8, 2013.

² This journal entry is dated September 13, 2013 and date-stamped on September 16, 2013.

II.

{¶6} Initially, we note that, although Mr. Taylor challenges the trial court’s failure to order the APA to remove the parole tail attendant to his 1996 convictions pursuant to the purported plea agreement into which he entered in resolving the 2003 charges, upon our review of the sentencing entry resolving the 2003 charges, we note an error in the imposition of post-release control. In resolving the 2003 charges, Mr. Taylor pleaded guilty to breaking and entering in violation of R.C. 2911.13, a felony of the fifth degree. Accordingly, he was “subject to a period of post-release control of up to three years after [his] release from imprisonment, if the parole board, in accordance with [R.C. 2967.28(D)], determines that a period of post-release control is necessary for [him].” R.C. 2967.28(C).

{¶7} However, in the sentencing entry, the trial court failed to complete the section pertaining to post-release control. The section reads as follows:

The court has further notified [Mr. Taylor] that post[-]release control is (mandatory/optional) in this case up to a maximum of (3/5) years, as well as the consequences for violating conditions of post[-] release control imposed by the Parole Board under Ohio Rev. Code §2967.28. [Mr. Taylor] is ordered to serve as part of this sentence any term of post[-]release control imposed by the Parole Board, and any prison term for violation of that post[-]release control.

{¶8} Because the court did not impose a discretionary three-year term of post-release control upon Mr. Taylor, his sentence does not comport with the post-release control statute.

{¶9} “[W]hen a judge fails to impose statutorily mandated post[-]release control as part of a defendant’s sentence, that part of the sentence is void and must be set aside.” *State v. Keyes*, 9th Dist. Lorain No. 14CA010561, 2015-Ohio-1757, ¶ 10, quoting *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, ¶ 26. “If the error is not addressed until after a defendant completes his prison term, ‘the courts no longer have authority to impose post[-]release control.’” *Keyes* at ¶ 10, quoting *State v. Leasure*, 9th Dist. Summit No. 25596, 2011-Ohio-3665, ¶ 7. “In similar

instances, this Court has remanded the matter to the trial court with instructions to vacate the portion of the defendant's entry that attempted to impose post-release control and to note on the record that the defendant cannot be subject to resentencing due to the completion of his sentence." *Keyes* at ¶ 10 , citing *State v. Thomas*, 9th Dist. Summit No. 26699, 2013-Ohio-2078, ¶ 7.

{¶10} "This Court, therefore, remands this matter to the trial court to vacate the portion [of the] sentencing entry that attempted to impose post-release control." *Keyes* at ¶ 14 , quoting *Thomas* at ¶ 7. See *State v. Leasure*, 9th Dist. Summit No. 25682, 2011-Ohio-3666, ¶ 11 (noting this Court has inherent power to vacate the part of a sentence that improperly imposes post-release control). On remand, the court shall also note on the record that, "because [Mr. Taylor] has completed his prison sentence, he will not be subject to resentencing pursuant to law." *Keyes* at ¶ 14, quoting *Thomas* at ¶ 7. We now turn to Mr. Taylor's assignment of error.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY DENYING [MR. TAYLOR'S] MOTION AND FAILED TO FOLLOW THE COURT ORDER OF ANOTHER JUDGE THAT WAS FROM THE SAME COURTHOUSE IN ORDER TO CORRECT THE APA PLACING A PAROLE TAIL THAT'S BEEN REVOKED.

{¶11} In his sole assignment of error, Mr. Taylor argues that the trial court erred in failing to order the APA to remove his parole tail. We disagree.

{¶12} First, we note that Mr. Taylor filed his motion and appeal pro se. With respect to pro se litigants, this Court has held:

[P]ro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of

his mistakes. This Court, therefore, must hold [pro se appellants] to the same standard as any represented party.

State v. Taylor, 9th Dist. Lorain No. 14CA010549, 2014-Ohio-5738, ¶ 5, quoting *Sherlock v. Myers*, 9th Dist. Summit No. 22071, 2014-Ohio-5178, ¶ 3.

{¶13} In his motion, it appears that Mr. Taylor sought the same relief from the trial court in his April 21, 2014 motion as he had sought in his August 1, 2013 and August 21, 2013 motions. “Res judicata may be applied to bar further litigation of issues that were raised previously *or could have been raised previously in an appeal.*” (Emphasis omitted and added.) *State v. Houston*, 73 Ohio St.3d 346, 347, 1995-Ohio-317. Here, because Mr. Taylor failed to perfect an appeal from the entries denying his previously filed motions that sought the same relief, he is now precluded by res judicata from raising this argument. *See State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus. Moreover, to the extent that Mr. Taylor may be challenging his plea agreement, such an argument should have been raised in a direct appeal from his sentencing entry. *See State v. Boware*, 9th Dist. Summit No. 27446, 2014-Ohio-5779, ¶ 6, and *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, ¶ 17.

{¶14} Accordingly, Mr. Taylor’s sole assignment of error is overruled.

III.

{¶15} Mr. Taylor’s assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas is affirmed, and this matter is remanded to the trial court for further proceedings consistent with this decision.

Judgment affirmed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

HENSAL, P. J.
CONCURS.

CARR, J.
CONCURS IN JUDGMENT ONLY.

APPEARANCES:

JASON TAYLOR, pro se, Appellant.

DENNIS P. WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.