

[Cite as *State v. Hobson*, 2010-Ohio-2638.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23392
vs.	:	T.C. CASE NO. 08CR3436
BRENT HOBSON	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

.

O P I N I O N

Rendered on the 11th day of June, 2010.

.

Mathias H. Heck, Jr., Pros. Attorney; Johnna M. Shia, Atty. Reg.
No. 0067685, Asst. Pros. Attorney, P.O. Box 972, Dayton, OH 45422
Attorneys for Plaintiff-Appellee

J. David Turner, Atty. Reg. No. 0017456, P.O. Box 281771, Kettering,
OH 45429-0771
Attorney for Defendant-Appellant

.

GRADY, J.:

{¶ 1} Defendant, Brent Hobson, appeals from his conviction
and sentence for escape, R.C. 2921.34(A)1), for violating a
condition of his post-release control.

{¶ 2} Defendant was convicted of a felony drug offense in 2002,
and was sentenced to a term of imprisonment. Defendant served

the term and was released in 2005. He was then placed on five years post-release control, under the supervision of Chris Hickman of the Ohio Adult Parole Authority.

{¶3} Chris Hickman met with Defendant and explained the conditions of his post-release control. One of those conditions was that Defendant report to his supervising officer as he was directed. Defendant was also advised that he would remain on post-release control until a court ordered its termination. Defendant acknowledged his understanding of those matters orally and by signing a written "Conditions of Supervision Contract."

{¶4} In 2007, Defendant was charged by indictment with one count of escape, R.C. 2921.34(A)(1), for violating a condition of his post-release control. Defendant entered a plea of no contest and was convicted. The court imposed a two-year prison term at a hearing held on June 30, 2008, but ordered execution of the sentence stayed upon Defendant's posting of an appeal bond.

{¶5} Defendant posted the appeal bond and was released on July 15, 2008. On July 18, 2008, at the request of Chris Hickman, the court amended the appeal bond it had ordered by adding, as an additional condition, that Defendant continue to comply with the conditions of his post-release control.

{¶6} After his release, Defendant tested positive following a test for drugs. Thereafter, Chris Hickman twice ordered

Defendant to appear at Hickman's office, on July 17 and on August 13, 2008, but Defendant failed to appear both times. A warrant was issued for Defendant's arrest. He was arrested when he appeared at Hickman's office on August 15, 2008.

{¶ 7} Defendant was again indicted on a charge of escape, R.C. 2921.34(A)(1), on October 6, 2008, for violating a condition of his post-release control arising from his 2002 felony drug offense because of his two failures to appear as directed. Defendant was found guilty following a bench trial. He was sentenced to a two-year term of imprisonment, to be served consecutive to the two-year term for his prior 2007 escape offense the court had imposed on June 30, 2008. Defendant filed a notice of appeal.

FIRST ASSIGNMENT OF ERROR

{¶ 8} "FAILURE OF SENTENCING COURT TO NOTIFY OFFENDER AT SENTENCING HEARING OR ANY OTHER COURT HEARING THAT HE ABIDE BY THE ADDITIONAL CONDITIONS OF POST-RELEASE CONTROL AS A CONDITION OF HIS APPEAL BOND INVALIDATES THAT CONDITION AS A MATTER OF LAW AND CONVICTION MUST BE REVERSED."

{¶ 9} In order for a defendant to be subject to a term of post-release control after completion of a prison term, the court must so advise the defendant at the hearing in which the prison term is imposed. R.C. 2929.19(B)(5). The court does not satisfy that requirement by merely incorporating the post-release control

advisement into the Crim.R. 32(C) judgment of conviction the court files, setting forth the sentence of imprisonment imposed at the hearing. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085; *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250.

{¶ 10} Defendant argues that his second conviction for escape is invalid because the court failed, when it granted the appeal bond following his first conviction for escape, to advise him that he would be subject to post-release control. Instead, the court added that condition through an amendment of the bail it had allowed, pursuant to Crim.R. 46(E). Such an amendment, Defendant argues, is no different from the form of judgment of conviction improperly employed for purposes of the advice requirement that R.C. 2929.19(B)(5) imposes that *Jordan* and *Bezak* rejected.

{¶ 11} Even were we to agree that the holdings in *Jordan* and *Bezak* likewise apply to a condition of an appeal bond allowed pursuant to Crim.R. 46, we would necessarily reject an application of those holdings on the facts before us.

{¶ 12} The second conviction and sentence of escape, from which this appeal was taken, was not based on a finding that Defendant violated the conditions of his appeal bond requiring continued compliance with Defendant's conditions of post-release control. Rather, the second conviction and sentence arise out of Defendant's further violations of the condition that Defendant

report to his supervising officer as directed, which had been imposed following Defendant's release from prison in 2005. The indictment of October 6, 2008, on which the second conviction for escape was entered, so reflects. Defendant does not contend that the condition was not imposed in 2002, or that the court failed to advise him when he was convicted and sentenced in 2002 that he would be subject to post-release control.

{¶ 13} It is undisputed that Defendant failed to report as directed on July 17 and August 13, 2008, and that the conditions of post-release control imposed in 2005 then remained in effect. The evidence demonstrates that Defendant violated that condition. The assignment of error is overruled. The judgment from which the appeal was taken will be affirmed.

FAIN, J. And FROELICH, J., concur.

Copies mailed to:

Johnna M, Shia, Esq.
J. David Turner, Esq.
Hon. Timothy N. O'Connell