

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-113
	:	(C.P.C. No. 02CR-378)
Shawn R. Mays,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 28, 2010

Ron O'Brien, Prosecuting Attorney, and *John H. Cousins, IV*,
for appellee.

Yeura R. Venters, Public Defender, and *David L. Strait*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶1} Shawn R. Mays is appealing from the entry of a nunc pro tunc entry entered on January 15, 2010. He assigns a single error for our consideration:

The trial court erred by re-sentencing Defendant-Appellant when he was not present and had not waived his right to be present.

{¶2} This is one of a series of cases in which inmates who are nearing the end of their term of incarceration have had their sentencing entry reviewed in order to clarify whether or not a period of post-release control has been validly applied to them. A hearing to address the issue in open court is routinely scheduled in the courtroom of the sentencing judge, but the inmate is not physically brought to court. Instead, a video link is established between the correctional institution where the inmate is incarcerated and the courtroom. The sentencing judge then clarifies that post-release control applies and states the length of the post-release control. A nunc pro tunc entry is then generated to reflect the results of the most recent court proceedings.

{¶3} The assignment of error asks us to consider the propriety of the process used to communicate and clarify post-release control. Here, however, we note that the original sentencing entry for Shawn R. Mays included the following:

After 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).

{¶4} In addition, a criminal disposition sheet generated at the time of the original sentencing notes that "S.B. 186 satisfied."

{¶5} The entry of guilty plea form signed by Shawn R. Mays in 2002 includes a provision which states that "if the Court imposes a prison term, I understand that the following period(s) of post-release control is/are applicable: F-1.....Five Years-Mandatory." This entry of guilty plea was also signed by the original sentencing judge.

{¶6} Further, the record before us includes a document entitled:

NOTICE
(Prison Imposed)

After you are released from prison, you (will) have a period of post-release control for 5 years following your release from prison. If you violate post-release control sanctions imposed upon you, any one or more of the following may result:

(1) The Parole Board may impose a more restrictive post-release control sanction upon you: and

(2) The Parole Board may increase the duration of the post-release control subject to a specified maximum; and

(3) The more restrictive sanction that the Parole Board may impose may consist of a prison term, provided that the prison term cannot exceed nine months and the maximum cumulative prison term so imposed for all violations during the period of post-release control cannot exceed one-half of the stated prison term originally imposed upon you; and

(4) If the violation of the sanction is a felony, you may be prosecuted for the felony and, in addition to any sentence it imposes on you for the new felony, the Court may impose a prison term, subject to a specified maximum, for the violation.

I hereby certify that the Court read to me, and gave me in writing, the notice set forth herein.

{¶7} The notice is signed by Shawn R. Mays.

{¶8} Under the circumstances, post-release control was appropriately included in the sentence in 2002. The subsequent hearing was unnecessary and had no legal effect. As a result, no prejudicial error occurred. As a result, even if an error occurred, it was not prejudicial.

{¶9} Since no prejudicial error occurred, the sole assignment of error is overruled.

{¶10} The case is remanded for the sole purpose of vacating the nunc pro tunc entry which was filed after the proceeding in which Shawn R. Mays did not participate. The original judgment and sentence are not otherwise before us on direct appeal and are therefore still in place.

*Nunc pro tunc entry vacated; cause
is remanded for further appropriate
proceedings.*

FRENCH and SADLER, JJ., concur.
