

[Cite as *State v. Chandler*, 2010-Ohio-6534.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-369
 : (C.P.C. No. 99CR02-0818)
 Teddie C. Chandler, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on December 30, 2010

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, Teddie C. Chandler ("appellant"), filed this appeal seeking reversal of a judgment by the Franklin County Court of Common Pleas imposing a five-year period of post-release control and finding him to be a Tier III sex offender. For the reasons that follow, we affirm in part and reverse in part.

{¶2} On February 19, 1999, appellant was indicted by the Franklin County Grand Jury on eight counts of gross sexual imposition, each a third-degree felony, and

six counts of rape, each a first-degree felony. On October 16, 2000, appellant agreed to plead guilty to two counts of rape, with nolle prosequis being entered as to the remaining counts. As part of the agreement, the parties jointly recommended that appellant be sentenced to ten-year terms of incarceration on each of the two counts, with the sentences to be served concurrently.

{¶3} As part of the plea agreement, appellant signed a form entitled "ENTRY OF GUILTY PLEA." This form included a provision stating that "if the court imposes a prison term, I understand that the following period(s) of post-release control is/are applicable." An "X" was then marked in the box next to the words "Five Years – Mandatory." This form was also signed by appellant's trial counsel and the trial court.

{¶4} In addition, the record reflects that as part of the plea agreement, the court provided appellant with a form that stated:

NOTICE
(Prison Imposed)

The Court hereby notifies the Defendant as follows:

* * *

B. Post-Release Control

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 sanction 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.

{¶5} Following this language in the form is a signature line, signed by appellant.

{¶6} During the plea hearing, the trial court addressed appellant regarding the ramifications of pleading guilty, to ensure that appellant's plea was being entered knowingly, voluntarily, and intelligently. The trial court asked appellant, "Do you understand that after serving the period of incarceration on this case, that there is a mandatory five-year post-release control period?" (Plea Hearing Tr. at 7.) Appellant responded that the issue had been explained to him.

{¶7} The trial court held a sentencing hearing on October 23, 2000. As part of the hearing, the trial court asked appellant's trial counsel, "Have you had an opportunity to explain to Mr. Chandler that after serving the period of incarceration in this case that there will be a mandatory post-release control period of five years imposed?" (Sentencing Hearing Tr. at 28-29.) Counsel responded in the affirmative. The trial court then imposed the jointly recommended sentences of ten years on each of the two rape counts, and ordered the sentences to be served concurrently.

{¶8} In its sentencing entry, the trial court did not specifically state that the period of post-release control was to be five years. However, the entry did state that "[a]fter the imposition of sentence, the Court notified the Defendant, orally and in writing, of the applicable periods of post-release control." The trial court included in the sentencing entry a finding that appellant is a sexual predator.

{¶9} As appellant approached the end of his term of incarceration, the case was scheduled for a resentencing hearing in order for the court to clarify the period of post-release control applicable to appellant. Appellant appeared at the hearing by videoconference. The court imposed the same sentence of two concurrent ten-year sentences on the two counts of rape. The court also specifically imposed a five-year period of post-release control, and found appellant to be a Tier III sexual offender.

{¶10} Appellant filed this appeal, asserting three assignments of error:

ASSIGNMENT OF ERROR NUMBER ONE

THE TRIAL COURT'S IMPOSITION OF POST-RELEASE CONTROL VIA VIDEOCONFERENCE VIOLATED THE DEFENDANT'S RIGHT TO BE PHYSICALLY PRESENT FOR SENTENCING GUARANTEED BY CONSTITUTIONAL DUE PROCESS RIGHTS, CRIM.R. 43(A), R.C. 2929.19, AND R.C. 2929.191.

ASSIGNMENT OF ERROR NUMBER TWO

THE TRIAL COURT VIOLATED THE DEFENDANT'S STATUTORY RIGHTS, DUE PROCESS RIGHTS, AND RIGHT TO COUNSEL, WHEN IT FAILED TO PROVIDE NOTICE TO THE DEFENDANT OF HIS SENTENCING DATE AND FORCED THE DEFENDANT TO BE SENTENCED WITHOUT ANY OPPORTUNITY TO PREPARE OR TO OBTAIN COUNSEL OF HIS CHOICE.

ASSIGNMENT OF ERROR NUMBER THREE

THE TRIAL COURT ERRED WHEN IT CLASSIFIED THE DEFENDANT AS A TIER III SEX OFFENDER IN CONTRAVENTION OF THE SUPREME COURT DECISION IN *STATE V. BODYKE*, [126] OHIO ST.3D [266], 2010-OHIO-2424, [933] N.E.2D [753].

{¶11} Appellant's assignments of error will be addressed together. Disposition of this appeal is governed by our decision in *State v. Mays*, 10th Dist. No. 10AP-113, 2010-Ohio-4609.

{¶12} *Mays* involved another defendant who, like appellant, was resentenced due to concerns about whether post-release control had been properly imposed. Also as in this case, the defendant in *Mays* challenged the method used to conduct his resentencing hearing, including the defendant's appearance via videoconference connecting the court with the institution in which the defendant was incarcerated.

{¶13} We declined to address the defendant's constitutional challenges to the use of videoconferencing in these resentencing hearings. *Id.* at ¶3. Instead, we considered the record, and concluded that post-release control had been properly imposed because the record showed that: (1) the court's original sentencing entry made reference to the fact that the defendant had been informed of the applicable period of post-release control; (2) the plea form signed by the defendant specifically stated that there would be a five-year period of post-release control; and (3) the record included a notice, also signed by the defendant, specifying the five-year period of post-release control. *Id.* at ¶3-7. We concluded that, under these circumstances, post-release control had been properly imposed at the time of the original sentencing. *Id.* at ¶8. As a result, "[t]he subsequent hearing was unnecessary and had no legal effect." *Id.*

{¶14} In this case, as in *Mays*, the original sentencing entry states that appellant was informed of the applicable period of post-release control without specifying that the applicable period was five years, appellant signed a plea form that specified the five-year period for post-release control, and the record contains a notice signed by appellant stating the five-year period. In addition, the transcript of the hearing at which the court accepted appellant's guilty plea shows that the court informed appellant that the period of post-release control would be five years.

{¶15} Thus, under these circumstances, we must conclude, as we did in *Mays*, that post-release control was properly imposed in the original sentencing entry, and the March 12, 2010 resentencing hearing was unnecessary. We further conclude, as we did in *Mays*, that the lack of necessity to hold the resentencing hearing means that the new sentencing entry had no legal effect. Furthermore, the trial court's conclusion that appellant is a Tier III sexual offender also had no legal effect.

{¶16} Consequently, we overrule appellant's first and second assignments of error and sustain appellant's third assignment of error. The judgment of the Franklin County Court of Common Pleas is affirmed in part and reversed in part, and this matter is remanded to that court for further proceedings in accordance with law and consistent with this decision.

*Judgment affirmed in part, reversed in part;
cause remanded.*

KLATT and CONNOR, JJ., concur.
