

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
FIFTH DISTRICT
COURT OF APPEALS

AUG 20 2015

MUSKINGUM COUNTY, OHIO
TODD A. BICKLE, CLERK

STATE OF OHIO

Plaintiff-Appellee

-vs-

JARYD W. MOORE

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. CT2015-0027

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. CR2013-0224

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

APPEARANCES:

For Plaintiff-Appellee

GERALD V. ANDERSON II
27 North Fifth Street
P.O. Box 189
Zanesville, OH 43702-0189

For Defendant-Appellant

KRISTOPHER A. HAINES
250 East Broad Street
Suite 1400
Columbus, OH 43215

Farmer, J.

{¶1} On August 25, 2012, appellant, Jaryd Moore, was sentenced by the Court of Common Pleas of Muskingum County, Ohio, to eighteen months in prison after being convicted on one count of gross sexual imposition in violation of R.C. 2907.05 (Case No. CR2012-0022). Appellant was classified as a Tier I sex offender. Appellant served his sentence and was released on July 21, 2013. He was placed on post-release control for five years.

{¶2} On October 9, 2013, the Muskingum County Grand Jury indicted appellant on one count of failure to register his address change as a sex offender in violation of R.C. 2950.05. On December 9, 2013, appellant pled guilty as charged. By entry filed January 17, 2014, the trial court sentenced appellant to eight months in prison, terminated his post-release control, and ordered him to serve the remainder of his post-release control in prison, over four years, consecutive to the eight month sentence. A nunc pro tunc entry was filed on February 7, 2014 to correct a typographical error.

{¶3} On April 16, 2015, appellant filed a motion to vacate judicial-sanction sentence, claiming post-release control was not properly imposed in Case No. CR2012-0022 and therefore, he could not be given a "judicial-sanction sentence for violating void postrelease control." By journal entry filed April 20, 2015, the trial court denied the motion.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶5} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED MR. MOORE'S MOTION TO VACATE HIS VOID JUDICIAL-SANCTION SENTENCE."

{¶6} Preliminarily, we note this case comes to us on the accelerated calendar. App.R. 11.1, which governs accelerated calendar cases, provides in pertinent part the following:

(E) Determination and judgment on appeal

The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusory form.

The decision may be by judgment entry in which case it will not be published in any form.

{¶7} One of the important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Association*, 11 Ohio App.3d 158 (10th Dist.1983).

{¶8} This appeal shall be considered in accordance with the aforementioned rules.

I

{¶9} Appellant claims the trial court erred in denying his motion to vacate judicial-sanction sentence. We disagree.

{¶10} Appellant argues because post-release control was not properly imposed in Case No. CR2012-0022, and he has already served his sentence in the case, he could not be given a "judicial-sanction sentence for violating void postrelease control" in the case sub judice.

{¶11} Appellant does not contest the imposition of post-release control during the sentencing *hearing* in Case No. CR2012-0022, and did not file a transcript of the hearing for our review. Therefore, we presume the regularity of that hearing. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197 (1980). Appellant contests the sentencing *entry*, claiming the trial court erred in failing to notify him of the possible consequences of violating his post-release control pursuant to R.C. 2929.19(B)(2)(e), specifically, that "the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender."

{¶12} The subject sentencing entry filed on April 25, 2012 in Case No. CR2012-0022 included the following notification regarding post-release control:

The Court further notified the defendant that "Post Release Control" is mandatory in this case for five (05) years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code §2967.28. The defendant is

ordered to serve as part of this sentence any term for violation of that post-release control.

{¶13} We find the language in this sentencing entry, that the trial court notified appellant of "the consequences for violating conditions of post release control imposed by the Parole Board," coupled with the presumption of regularity regarding the oral notification during the sentencing hearing, to be sufficient to give appellant notice of the post-release control sanction. See *State v. Ball*, 5th Dist. Licking No. 13-CA-17, 2013-Ohio-3443; *State v. Clark*, 2nd Dist. Clark No. 2012-CA-16, 2013-Ohio-299; *State v. Milem*, 2nd Dist. Clark No. 2013-CA-103, 2014-Ohio-5804.

{¶14} Upon review, we find the trial court did not err in denying appellant's motion to vacate judicial-sanction sentence.

{¶15} The sole assignment of error is denied.

{¶16} The judgment of the Court of Common Pleas of Muskingum County, Ohio
is hereby affirmed.

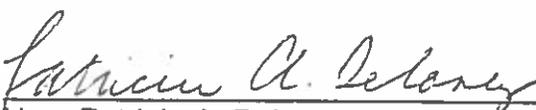
By Farmer, J.

Gwin, P.J. and

Delaney, J. concur.


Hon. Sheila G. Farmer


Hon. W. Scott Gwin


Hon. Patricia A. Delaney

SGF/sg 7/23

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO

FIFTH APPELLATE DISTRICT

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STATE OF OHIO

Plaintiff-Appellee

-vs-

JARYD W. MOORE

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. CT2015-0027

This matter is before this court upon appellant's motion for reconsideration of this court's decision entered August 20, 2015.

The test generally applied upon the filing of an application for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been. *Matthews v. Matthews*, 5 Ohio App.3d 140 (10th Dist.1981).

In the opinion and judgment entry filed August 20, 2015, this court affirmed appellant's sentence, finding the following at ¶ 13:

We find the language in this sentencing entry, that the trial court notified appellant of "the consequences for violating conditions of post release control imposed by the Parole Board," coupled with the presumption of regularity regarding the oral notification during the sentencing hearing, to be sufficient to give appellant notice of the post-release control sanction. *See State v. Ball*, 5th Dist. Licking No. 13-CA-17, 2013-Ohio-3443; *State v.*

Clark, 2nd Dist. Clark No. 2012-CA-16, 2013-Ohio-299; *State v. Milem*, 2nd Dist. Clark No. 2013-CA-103, 2014-Ohio-5804.

In his motion, appellant argues this court should have followed its decision in *State v. Richard-Bey*, 5th Dist. Muskingum Nos. CT2014-0012 and CT2014-0013, 2014-Ohio-2923, and subsequent cases in-line with *Richard-Bey*. We disagree. As cited above, this court presumed the regularity of the proceedings during the sentencing hearing. As noted by this court at ¶ 11: "Appellant does not contest the imposition of post-release control during the sentencing *hearing* in Case No. CR2012-0022, and did not file a transcript of the hearing for our review. Therefore, we presume the regularity of that hearing. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197 (1980)."

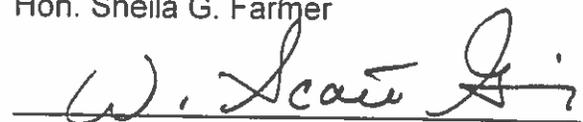
We find the decision sub judice, relying on *Ball* rather than *Richard-Bey*, to be the better practice in determining whether the requirements of R.C. 2967.28 have been met.

Upon review, we do not find an obvious error or an issue that was not considered or was not fully considered.

Appellant's motion for reconsideration is denied.

SO ORDERED.


Hon. Sheila G. Farmer


Hon. W. Scott Gwin