

[Cite as *State v. Morris*, 2011-Ohio-2226.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-512
 : (C.P.C. No. 03CR-01-391)
 Craig Morris, :
 : (REGULAR CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on May 10, 2011

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

Yavitch & Palmer Co., L.P.A., and *Mickey Prisley*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Defendant-appellant, Craig Morris, appeals a judgment rendered by the Franklin County Court of Common Pleas, in which he was resentenced and was advised of mandatory post-release control ("PRC"). For the reasons that follow, we reverse the judgment of the trial court.

{¶2} At the conclusion of a jury trial underlying this matter, appellant was convicted of four counts of felonious assault, all second degree felonies, along with

accompanying firearm specifications. Upon appeal, this court affirmed appellant's convictions. See *State v. Morris*, 10th Dist. No. 05AP-1139, 2009-Ohio-2396.

{¶3} On July 14, 2009 and again on January 7, 2010, appellant filed motions to correct his improper sentence. Appellee, the State of Ohio, acknowledged the need for a resentencing hearing. On May 26, 2010, the trial court conducted such a hearing. The following day, the trial court issued an entry that imposed an 11-year sentence and notified appellant that he would be subject to three years of mandatory PRC. It is from this entry of judgment that appellant appeals and raises the following assignments of error:

Assignment of Error No. 1:

The trial court erred by failing to conduct a de novo sentencing hearing.

Assignment of Error No. 2:

The trial court's imposition of post-release control by videoconference violated Crim.R. 43(A) and Mr. Morris' Due Process right to be physically present at every stage of his criminal proceeding.

Assignment of Error No. 3:

Appellant was constructively denied the right to counsel as provided by the Sixth Amendment.

Assignment of Error No. 4:

The trial court's addition of post-release control to Mr. Morris' original sentence violated his right to be free from Double Jeopardy.

Assignment of Error No. 5:

Trial counsel was ineffective.

{¶4} Because it is dispositive of the instant appeal, we initially address appellant's third assignment of error.

{¶5} The Sixth Amendment affords a criminal defendant with the right to legal representation. *State v. Reddy*, 8th Dist. No. 92924, 2010-Ohio-5759, ¶41. In criminal proceedings that may result in incarceration, "the defendant must either be afforded counsel or knowingly, voluntarily, and intelligently waive that right." *State v. Miyamoto*, 3d Dist. No. 14-05-43, 2006-Ohio-1776, ¶13, citing *Argersinger v. Hamlin* (1972), 407 U.S. 25, 37, 92 S.Ct. 2006.

{¶6} In the instant matter, appellant sought to challenge the sentences imposed on more than just PRC. Further, he did not waive his right to counsel with respect to these other issues. Instead, he expressly indicated that he wanted counsel to advocate on his behalf. Nevertheless, his counsel indicated she was unaware of appellant's intent to challenge anything besides PRC and was accordingly unprepared to represent him with regard to anything else. She therefore made it clear that her representation solely related to PRC. In the trial court's entry, it acknowledged the limitation of appellant's representation in this regard.

{¶7} On appeal, both appellee and appellant agree that appellant was denied his Sixth Amendment right to counsel. As a result, both sides agree that a reversal is required for resentencing with representation. We agree.

{¶8} Based upon the foregoing, we sustain appellant's third assignment of error, which renders moot his first, second, fourth, and fifth assignments of error. We therefore

reverse and remand this matter for further proceedings in accordance with law and consistent with this decision.

Judgment reversed;
cause remanded for further proceedings.

KLATT and SADLER, JJ., concur.
