

[Cite as *State v. Hall*, 2011-Ohio-4834.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 10AP-816
v.	:	(C.P.C. No. 01CR-04-2169)
	:	
Paul S. Hall,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 22, 2011

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

Paul S. Hall, pro se.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by defendant-appellant, Paul S. Hall, from a judgment of the Franklin County Court of Common Pleas denying appellant's motion to request the imposition of a valid sentence.

{¶2} On April 12, 2001, appellant was indicted on one count of attempted murder, one count of felonious assault, two counts of aggravated arson, and one count of kidnapping. On August 9, 2001, appellant entered a guilty plea to one count of attempted

murder, one count of felonious assault, and one count of aggravated arson. The trial court sentenced appellant by judgment entry filed August 10, 2001.

{¶3} On June 28, 2002, appellant filed a motion for delayed appeal. By memorandum decision rendered December 24, 2002, this court denied appellant's motion for delayed appeal.

{¶4} On May 3, 2005, appellant filed a motion to "correct improper sentence imposed." By decision and entry filed August 2, 2005, the trial court denied appellant's motion. Appellant filed an appeal from the trial court's judgment denying his motion, and this court subsequently affirmed the decision of the trial court. *State v. Hall*, 10th Dist. No. 05AP-957, 2006-Ohio-2742. In this court's decision, we construed appellant's motion as both a petition for post-conviction relief, as well as a Crim.R. 32.1 motion to withdraw a guilty plea. This court found that, construed as a petition for post-conviction relief, appellant's motion was untimely, and that appellant's Crim.R. 32.1 motion to withdraw his guilty plea "does not address a manifest injustice." *Hall* at ¶18.

{¶5} On April 19, 2010, appellant filed a motion to "request the imposition of a valid sentence." In the accompanying memorandum in support, appellant argued that his sentence was void for failure by the trial court to include proper post-release control notification, and he requested that the court conduct a de novo sentencing hearing. The state filed a memorandum in opposition to appellant's motion. By decision and entry filed July 28, 2010, the trial court denied appellant's motion to request the imposition of a valid sentence.

{¶6} On appeal, appellant sets forth the following three assignments of error for this court's review:

[I.] The trial court erred when it denied petitioner a valid sentence as required by Ohio statutes and his rights under the Due Process Clause of the United States Constitution.

[II.] The trial court erred when it denied petitioner a final appealable order in violation of the Fourteenth Amendment right to Due Process of Law.

[III.] The sentencing court erred when it treated petitioner's case differently than other similarly positioned defendants before the Franklin County Court of Common Pleas and other Ohio courts seeking relief from sentences in which post release control was not imposed as required by statute, in violation of the Fourteenth Amendment right to Equal Protection Under the Laws.

{¶7} Appellant's first and second assignments of error are interrelated and will be considered together. Under his first assignment of error, appellant contends that the trial court erred in denying his request for a valid sentence. More specifically, appellant contends that the trial court's August 10, 2001 sentencing entry is void for failure of the trial court to set forth in the entry the mandatory term of post-release control. Under his second assignment of error, appellant asserts that, because his sentence was void as a result of the court's improper notification, the trial court erred in denying him the right to de novo sentencing.

{¶8} In response, the state argues that post-release control was properly imposed by the court when appellant was sentenced in 2001, and therefore the trial court did not err in denying his request for a de novo sentencing hearing. Upon review of the record, we agree.

{¶9} The record reflects that the trial court's August 10, 2001 judgment entry states in part: "After the 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)." The record further indicates that, as part of the plea agreement, appellant signed a form stating in part: "I understand that the following period(s) of post-release control is/are applicable." An "X" was marked in the box next to the words "Five Years – Mandatory." Both appellant and his counsel signed this form.

{¶10} Appellant was also provided with a "Prison Imposed" notice, which stated in part:

The Court hereby notifies the Defendant as follows:

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 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 in 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.

{¶11} The record further indicates that, as part of appellant's motion in response to the state's memorandum in opposition to his motion for imposition of a valid sentence,

filed June 15, 2010, appellant attached a copy of a portion of the transcript of the trial court's sentencing hearing. The attached transcript portion reflects that the trial court informed appellant orally, at the time of sentencing, that he was subject to a period of five years "mandatory post release control."

{¶12} In *State v. Chandler*, 10th Dist. No. 10AP-369, 2010-Ohio-6534, this court cited with approval our earlier decision in *State v. Mays*, 10th Dist. No. 10AP-113, 2010-Ohio-4609, for the proposition that post-release control is properly imposed in the original sentencing entry where: (1) "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"; (2) the appellant "signed a plea form that specified the five-year period for post-release control"; and (3) "the record contains a notice signed by appellant stating the five-year period." *Chandler* at ¶14. See also *State v. Cunningham*, 10th Dist. No. 10AP-452, 2011-Ohio-2045, ¶18; *State v. Knowles*, 10th Dist. No. 10AP-119, 2011-Ohio-4477, ¶18.

{¶13} The record in the instant case, as reflected above, indicates that: (1) the trial court's August 10, 2001 sentencing entry stated that the court notified appellant of the applicable period of post-release control; (2) appellant's signed plea form stated that he would be subject to five years of mandatory post-release control (and also stated that a violation of post-release control could result in more restrictive sanctions, including a longer period of supervision or control, and/or re-imprisonment for up to nine months); and (3) the notice signed by appellant reflected he would have a period of post-release control of five years. Based upon this court's holdings in *Mays* and *Chandler*, as well as the other authority cited, we agree with the state's argument that post-release control was

properly imposed, and therefore appellant's sentence is not void. Accordingly, the trial court did not err in denying appellant's motion seeking a de novo sentencing hearing, and appellant's first and second assignments of error are overruled.

{¶14} Under his third assignment of error, appellant argues that the trial court's failure to grant his request for a de novo sentencing hearing constitutes a denial of equal protection. More specifically, appellant argues in his brief that he is "aware of at least two cases" from Franklin County in which defendants were granted a de novo sentencing hearing because the court's judgment entry failed to impose post-release control. As noted by the state, however, those cases are not part of the record in this case. Further, in light of our disposition of the first and second assignments of error, finding that post-release control was properly imposed in the instant case, appellant's third assignment of error is without merit and is overruled.

{¶15} Based upon the foregoing, appellant's first, second, and third assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.
