

[Cite as *State v. Klausman*, 2011-Ohio-4980.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 10AP-794
v.	:	(C.P.C. No. 00CR-5161)
	:	
Charles T. Klausman,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 29, 2011

Ron O'Brien, Prosecuting Attorney, and *Kimberly M. Bond*, for appellee.

Keith O'Korn, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by defendant-appellant, Charles T. Klausman, from an entry of the Franklin County Court of Common Pleas re-sentencing appellant on the issue of post-release control.

{¶2} On August 29, 2000, appellant was indicted on one count of murder, in violation of R.C. 2903.02. On November 6, 2001, appellant entered a plea of not guilty by reason of insanity. On January 18, 2002, appellant withdrew his previous plea of not guilty, and entered a guilty plea to the stipulated lesser-included offense of voluntary

manslaughter. By entry filed January 23, 2002, the trial court sentenced appellant to a term of incarceration of ten years.

{¶3} On September 6, 2005, appellant filed a motion for judicial release. By entry filed November 2, 2005, the trial court denied appellant's motion. On July 22, 2009, appellant filed a second motion for judicial release, which the trial court denied by entry filed October 20, 2009.

{¶4} On July 22, 2010, the trial court held a re-sentencing hearing. At the start of the hearing, the trial court stated in part: "Based upon * * * a recent Supreme Court decision, this court is required to resentence Mr. Klausman in order to impose the mandatory five years of post-release control that was not imposed at the time of his sentencing." (July 22, 2010, Tr. 2-3.) Also on July 22, 2010, the trial court filed a sentencing entry in which the court recited portions of the original entry. The court's entry further stated in part:

The Court advised the defendant that he will be subject to five years of mandatory post-release control after his release from prison. The Court also notified defendant that, should he violate a condition of post-release control, 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 him.

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

ASSIGNMENT OF ERROR #1

THE RESENTENCING ENTRY IS NOT A FINAL APPEALABLE ORDER.

ASSIGNMENT OF ERROR #2

THE TRIAL COURT LACKED JURISDICTION TO IMPOSE POST-RELEASE CONTROL UPON THE APPELLANT.

ASSIGNMENT OF ERROR #3

THE RESENTENCING WAS CONTRARY TO LAW.

{¶6} Under his first assignment of error, appellant asserts that the trial court's July 22, 2010 sentencing entry is void for failure of the court to comply with the requirements of *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. Under the second assignment of error, appellant argues that the trial court lacked jurisdiction to impose post-release control during the July 22, 2010 hearing because appellant had already been released from prison. In his third assignment of error, appellant contends that the July 22, 2010 entry was contrary to law because it indicates that the court considered sentencing factors that have been declared unconstitutional by the Supreme Court of Ohio in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

{¶7} We initially address the state's contention that the re-sentencing hearing was unnecessary, and that the trial court's July 22, 2010 sentencing entry should be vacated because post-release control was correctly imposed by the trial court's original 2002 judgment entry. For the reasons which follow, we agree.

{¶8} As noted, appellant entered a guilty plea in 2002 to one count of voluntary manslaughter. As part of his 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." Appellant and his counsel both signed this form. The transcript of the January 18, 2002 sentencing hearing reflects that the trial court orally informed appellant, during sentencing, that he was subject to "a five-year period of post-release control." (Jan. 18, 2002, Tr. 40.)

{¶9} Also on January 18, 2002, appellant signed 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.

{¶10} The trial court's January 23, 2002 sentencing 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)."

{¶11} In *State v. Mays*, 10th Dist. No. 10AP-113, 2010-Ohio-4609, the defendant was nearing the end of his term of incarceration, and a hearing was held in order to clarify whether or not a period of post-release control had been validly applied. Following the hearing, the trial court issued a nunc pro tunc entry clarifying that post-release control

was applicable, and stating the length of the post-release control. The defendant appealed, challenging the fact that the re-sentencing hearing was conducted through the use of a videoconference.

{¶12} In *Mays*, this court declined to address the merits of the appeal on the basis that post-release control had been properly imposed in the original proceeding. Under the facts of *Mays*, the initial sentencing entry stated in part: "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)." *Mays* at ¶3. Further, the entry of guilty plea form signed by the defendant in 2002 included a provision stating: "[I]f 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." *Id.* at ¶5. The defendant in *Mays* also signed a "Prison Imposed" notice, which contained identical language as the notice form in the instant case. In *Mays* at ¶8, this court held that, "[u]nder the circumstances, post-release control was appropriately included in the sentence in 2002," and therefore the later re-sentencing hearing "was unnecessary and had no legal effect."

{¶13} This court has subsequently applied the holding in *Mays* to cases involving similar factual circumstances. See *State v. Chandler*, 10th Dist. No. 10AP-369, 2010-Ohio-6534, ¶14 (citing with approval *Mays* 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"). 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; *State v. Quintanilla*, 10th Dist. No. 10AP-703, 2011-Ohio-4593, ¶16-18.

{¶14} As set forth above, the record in the instant case indicates that: (1) the trial court's original 2002 sentencing entry stated that the court "notified the Defendant, orally and in writing, of the applicable periods of post-release control"; (2) the plea form signed by appellant notified him that he would be subject to five-years of mandatory post-release control if a prison term was imposed; (3) appellant signed a "Prison Imposed" notice, stating he would be subject to a five-year period of post-release control; and (4) the trial court orally notified appellant at the sentencing hearing that he was subject to a five-year period of post-release control. Based upon this court's holdings in *Mays*, *Chandler*, and the other authority cited above, we agree with the state that post-release control was properly imposed through the original sentencing hearing and the court's 2002 sentencing entry.

{¶15} Pursuant to *Mays*, the re-sentencing hearing in the instant case "was unnecessary and had no legal effect." *Mays* at ¶8. Accordingly, appellant's three assignments of error, all raising challenges with respect to the re-sentencing entry, are overruled, and we remand this matter to the trial court with instructions to vacate the entry of July 22, 2010, leaving in effect appellant's original judgment.

*Judgment affirmed;
cause remanded with instructions.*

KLATT and FRENCH, JJ., concur.
