

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
DUANE N. HICKS, II	:	Case No. 09CAA090088
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 09CRI 060310

JUDGMENT: Affirmed in Part; Sentence Vacated;
Remanded

DATE OF JUDGMENT ENTRY: June 25, 2010

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Farmer, P.J.

{¶1} On March 17, 2004, appellant, Duane Hicks, II, was convicted of aggravated robbery in Franklin County, Ohio (Case No. 04CR01379). Appellant was sentenced to four years in prison and thereafter granted judicial release and placed on community control sanctions. On September 8, 2005, appellant's community control sanctions were revoked and he was sentenced to three years in prison. Upon his release, he was placed on post-release control.

{¶2} On February 21, 2006, appellant was convicted of escape, again in Franklin County (Case No. 05CR096322). Appellant was sentenced to one year in prison and thereafter was placed on post-release control.

{¶3} On July 14, 2009, appellant pled guilty to one count of failure to appear in Delaware County, Ohio, the subject offense. By judgment entry on sentence filed September 1, 2009, the trial court sentenced appellant to six months in prison. The trial court also ordered appellant to serve 1336 days for violating post-release control in Case No. 04CR01379 and 1205 days for violating post-release control in Case No. 05CR006332, all to be served consecutively.

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

I

{¶5} "THE TRIAL COURT'S FAILURE TO DISCLOSE THE POSSIBILITY OF JUDICIAL SANCTIONS, WHEN THE COURT INFORMED DUANE HICKS OF THE RANGE OF POSSIBLE PENALTIES FOR THE OFFENSE OF FAILURE TO APPEAR, RENDERED MR. HICKS' GUILTY PLEA UNKNOWING, UNINTELLIGENT, AND

INVOLUNTARY. FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION."

II

{¶6} "THE TRIAL COURT ERRED BY CONVERTING MR. HICKS' REMAINING POSTRELEASE CONTROL INTO CONSECUTIVE JUDICIAL SANCTIONS WHEN TERMS OF POSTRELEASE CONTROL MUST BE SERVED CONCURRENTLY BY STATUTE. R.C. 2967.28(F)(4)(c); R.C. 2929.141; R.C. 2901.04(A)."

III

{¶7} "THE TRIAL COURT ERRED BY IMPOSING A JUDICIAL SANCTION GREATER THAN THREE YEARS, FOR VIOLATING A TERM OF POSTRELEASE CONTROL FOR THE THIRD-DEGREE FELONY OF ESCAPE, WHEN THE LONGEST TERM OF POSTRELEASE CONTROL AVAILABLE FOR THAT OFFENSE IS THREE YEARS. R.C. 2967.28(F)(4)(c); R.C. 2929.141; R.C. 2901.04(A)."

I

{¶8} Appellant claims his plea of guilty was not voluntary or intelligent because the trial court failed to inform him of the possible effects of his plea on his post-release control for the two prior cases from Franklin County. We disagree.

{¶9} During appellant's plea, there was no mention of the effect of the plea on his unrelated cases out of Franklin County. As stated by this court in *State v. Dixon*, Stark App. No. 2008CA00254, 2009-Ohio-3137, ¶20 and 22, respectively:

{¶10} "We have never construed Rule 11(D) to include a requirement that the trial court advise a defendant of every potential collateral consequence of a guilty plea.

In many cases, the revocation of probation or parole will not involve the same trial judge or even the same jurisdiction. There also is nothing in the record suggesting the trial court was even aware of Appellant's post-release control conditions out of the Mahoning County case.

{¶11} ****

{¶12} "The trial court was under no obligation under the criminal rules to inquire as to whether Appellant was on post-release control in another case or to determine whether that post-release control would be revoked if he pled guilty in an unrelated misdemeanor case."

{¶13} Upon review, we find the trial court did not err, and the omission of the effect of a plea on unrelated non-county cases did not invalidate appellant's plea.

{¶14} Assignment of Error I is denied.

II

{¶15} Appellant claims the trial court erred in converting his remaining post-release control time into consecutive sentences, as R.C. 2967.28(F)(4)(c), 2929.141, and 2901.04(A) mandate that the sentences be served concurrently. We disagree.

{¶16} R.C. 2967.28 (F)(4)(c) states the following:

{¶17} "(4) Any period of post-release control shall commence upon an offender's actual release from prison. If an offender is serving an indefinite prison term or a life sentence in addition to a stated prison term, the offender shall serve the period of post-release control in the following manner:

{¶18} "(c) If an offender is subject to more than one period of post-release control, the period of post-release control for all of the sentences shall be the period of

post-release control that expires last, as determined by the parole board or court. Periods of post-release control shall be served concurrently and shall not be imposed consecutively to each other."

{¶19} The state argues the cited section applies solely to "offenders serving an indefinite prison term or a life sentence in addition to a stated prison term." Appellee's Brief at 5.

{¶20} All of the original sentences were for a definite period of time: failure to appear, a six month sentence; aggravated robbery, a four year sentence; and escape, a one year sentence.

{¶21} Upon review, we find R.C. 2967.28(F)(4)(c) does not apply sub judice and the trial court did not err in running the remaining time consecutively.

{¶22} Assignment of Error II is denied.

III

{¶23} Appellant claims the trial court erred in imposing a judicial sanction greater than three years. The state concedes this argument in its brief at 5-6.

{¶24} Assignment of Error III is granted.

{¶25} The judgment of the Court of Common Pleas of Delaware County, Ohio is affirmed in part, and the sentence is vacated and the matter is remanded to said court for resentencing.

By Farmer, P.J.

Wise, J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ John W. Wise

s/ Patricia A. Delaney

JUDGES

SGF/sg 0608

