

[Cite as *State v. Nooks*, 2011-Ohio-4104.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 10AP-1033
v.	:	(C.P.C. No. 98CR-11-6443)
	:	
Jo[h]nathan W. Nooks, Jr.,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on August 18, 2011

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

*Johnathan W. Nooks, Jr.*, pro se.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Johnathan W. Nooks, Jr. ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which denied his motion for a de novo sentencing hearing. For the following reasons, we affirm.

{¶2} On June 2, 1999, the trial court held a hearing where it accepted appellant's guilty plea to aggravated murder and aggravated robbery. Before accepting

the plea, the trial court noted that appellant would be placed on post-release control after he is released from prison and that he could be re-imprisoned for violating the conditions of post-release control. Likewise, during sentencing, the court said, "[a]fter you are released from prison, you will have a period of post-release control of five years." (Tr. 14.) The court told appellant that if he violated post-release control, "[the] Parole Board could extend the prison term \* \* \* for a period up to six months for each violation." (Tr. 15.)

{¶3} On the day of the hearing, appellant signed a plea form indicating that he understood that he would be on post-release control for five years. The form also contained a provision stating, "I understand that a violation of post-release control conditions \* \* \* could result in \* \* \* reimprisonment for up to nine months" and "[t]he prison term(s) for all post-release control violations may not exceed one-half of the prison term originally imposed."

{¶4} Appellant also signed a notice of imprisonment on the date of the hearing. The form indicated that the "Court hereby notifies" appellant that if he violates a post-release control condition, the parole board may impose a prison term for up to nine months "and 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." The form also stated, "[i]f 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." In the sentencing entry, the court stated that it notified appellant orally and in writing of "the applicable periods of post-release control."

{¶5} On July 27, 2010, appellant filed a motion for a de novo sentencing hearing. In that motion, he argued that the post-release control part of his sentence was void because it was not imposed properly. The trial court denied the motion.

{¶6} Appellant appeals, raising the following assignments of error:

[I.] THE TRIAL COURT ERRED WHEN DENYING APPELLANT'S REQUEST FOR DE NOVO SENTENCING HEARING.

[II.] APPELLANT'S SENTENCE IS IMPOSED CONTRARY TO LAW.

[III.] THERE HAS BEEN AN UNREASONABLE DELAY IN RE-SENTENCING DEFENDANT-APPELLANT AND THE TRIAL COURT LACKS JURISDICTION TO RE-SENTENCE DEFENDANT-APPELLANT.

{¶7} We address together appellant's first and second assignments of error, in which he asserts that the trial court erred by denying his motion for a de novo sentencing hearing. We disagree.

{¶8} Appellant requested the new sentencing hearing on the basis that post-release control was not properly imposed when he was sentenced in 1999. As appellant acknowledged in his motion, post-release control applies to his aggravated robbery conviction, but not his aggravated murder conviction. See *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶36. As to his aggravated robbery conviction, the trial court had to notify appellant at the sentencing hearing about post-release control and incorporate the notice in the sentencing entry. See *State v. Williams*, 10th Dist. No.

08AP-1090, 2009-Ohio-3233, ¶7. Otherwise, the post-release control part of his sentence is void, and he is entitled to a hearing for the proper imposition of post-release control. See *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, ¶¶26-29.

{¶9} In *State v. Chandler*, 10th Dist. No. 10AP-369, 2010-Ohio-6534, ¶8, 14-15, this court concluded that post-release control was properly imposed where (1) the trial court orally informed the defendant about post-release control, (2) the defendant signed a plea form and notice of imprisonment discussing post-release control, and (3) the sentencing entry stated that the defendant was informed, orally and in writing, of the applicable period of post-release control.

{¶10} Here, as in *Chandler*, appellant signed a plea form and notice of imprisonment detailing the terms of post-release control and the sanctions he faced if he violated a condition of post-release control. In addition, as in *Chandler*, the trial court orally notified appellant about post-release control during the hearing where it accepted his plea and sentenced him to prison. And, as in *Chandler*, the trial court's sentencing entry stated that appellant was notified orally and in writing of the applicable period of post-release control.

{¶11} To be sure, while orally discussing post-release control, the trial court should have stated that the parole board could send him to prison for nine months if he violates a condition of post-release control, not six months. See R.C. 2967.28(F)(3) (stating that the parole board could impose a sanction of up to nine months imprisonment for a post-release control violation). But, considering the entire record

pursuant to *Chandler*, we discern no prejudice to appellant because the plea form and notice of imprisonment stated the correct sanctions for post-release control violations.

{¶12} For all these reasons, we hold that the trial court properly imposed post-release control as a part of appellant's sentence. The trial court did not err by denying appellant's motion for a de novo sentencing hearing, and we overrule his first and second assignments of error.

{¶13} In his third assignment of error, appellant contends that if we vacate his post-release control for being improperly imposed, we should not remand for resentencing because so much time has passed since he was initially sentenced. Because we have concluded that the trial court properly imposed post-release control, we render appellant's third assignment of error moot, and we need not address it. See App.R. 12(A)(1)(c).

{¶14} In summary, we overrule appellant's first and second assignments of error and render moot his third assignment of error. Thus, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and DORRIAN, JJ., concur.

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