

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 08AP-1090
 : (C.P.C. No. 03CR09-6358)
 Vincent D. Williams, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on June 30, 2009

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

Vincent D. Williams, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Vincent D. Williams, appeals from a judgment of the Franklin County Court of Common Pleas denying his motion to vacate sentence. For the following reasons, we affirm that judgment.

{¶2} In 2004, a jury found appellant guilty of one count of attempted burglary and one count of possessing criminal tools. Accordingly, on March 1, 2004, the trial court imposed a five-year prison sentence for appellant's attempted burglary conviction and a concurrent 12-month prison sentence for his possessing criminal tools conviction. The

trial court also imposed an additional, consecutive period of 873 days for appellant's violation of his post-release control that was imposed in a previous case.¹

{¶3} On appeal, this court affirmed appellant's convictions and sentence. *State v. Williams*, 10th Dist. No. 04AP-279, 2004-Ohio-6254. Notably, appellant argued in that appeal that the trial court could not have legally imposed the remainder of his post-release control sentence from the previous case because the trial court's sentencing entry in the previous case failed to notify him of the possible sanctions for a violation of his post-release control. We disagreed and affirmed the trial court's imposition of the remainder of his post-release control sentence from his previous case. We rejected appellant's claim, in part, because appellant did not provide this court with the record of proceedings in his previous case in which post-release control was imposed. *Id.* at ¶27.

{¶4} Subsequently, on October 12, 2007, appellant filed a motion to vacate void sentence. In his motion, he again argued that the trial court's imposition of the remainder of his post-release control sentence from the previous case was a nullity because the trial court in that previous case did not properly notify him of his post-release control sanction. He also claimed that the trial court failed to properly notify him of the period of post-release control imposed in the instant case. The trial court found that appellant had been

¹ According to the state's trial court briefs in this matter, appellant pled guilty to one count of burglary in 2000 and was sentenced to three years in prison. In a 2001 case, appellant pled guilty to one count of attempted burglary and received a 12-month sentence, to be served concurrently with the burglary case. Appellant did not present the sentencing entry or sentencing transcript of either case to the trial court in the case at bar. In 2003, after appellant served his sentences in the 2000 and 2001 cases, he was apparently placed on post-release control for a period of three years. Appellant's 2004 convictions included the violation of his post-release control.

properly notified of post-release control at his sentencing hearing and, therefore, denied appellant's motion.

{¶5} Appellant appeals and assigns the following error:

APPELLANT WAS DENIED DUE PROCESS OF LAW WHEN THE FRANKLIN COUNTY COURT OF COMMON PLEAS DENIED HIS MOTION TO VACATE VOID SENTENCE AND TO SET ASIDE THE SENTENCE OF 873 DAYS GIVEN IN VIOLATION OF POST RELEASE CONTROL; WHICH APPELLANT WAS NOT LEGALLY SENTENCED TO IN THE FIRST PLACE.

{¶6} Appellant continues to argue that the trial court's imposition, in this case, of the remainder of his post-release control sentence from his previous case is invalid because he was not properly notified of post-release control in that previous case. We disagree.

{¶7} The Supreme Court of Ohio held that when a trial court sentences a felony offender to prison, it is required to notify the offender at the sentencing hearing about post-release control, and incorporate the notice into the sentencing entry. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, paragraph one of the syllabus. If a trial court fails to notify an offender that he may be subject to post-release control at his sentencing hearing, the sentence must be vacated and the matter remanded to the trial court for a new sentencing hearing. *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, paragraph one of the syllabus.

{¶8} Assuming without deciding that *res judicata* does not bar appellant's claim, appellant's argument fails for the same reason it failed in his previous appeal; appellant presented no evidence to the trial court demonstrating that he was not properly advised of the period of post-release control imposed by the trial courts in the earlier cases.

Appellant did not present the trial court with the sentencing entries and/or sentencing transcripts from the previous cases. Absent such evidence, appellant has not demonstrated that the trial court erred. Absent evidence of error, we must presume the regularity in the proceedings, i.e., that appellant was properly notified of the period of post-release control in the previous cases. *State v. Frost*, 6th Dist. No. L-06-1142, 2007-Ohio-3469, ¶63 (rejecting similar claim of improper post-release control notification where defendant failed to provide sentencing transcript or judgment entry of previous case).

{¶9} Accordingly, the trial court did not err by denying appellant's motion to vacate. Appellant's assignment of error is overruled and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and McGRATH, JJ., concur.
