

[Cite as *State v. LaPorta*, 2017-Ohio-1289.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105029

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

BRANDON E. LAPORTA

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-602731-A

BEFORE: Keough, A.J., E.A. Gallagher, J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: April 6, 2017

ATTORNEY FOR APPELLANT

Erin R. Flanagan
75 Public Square, Suite 1325
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
By: John D. Kirkland
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, A.J.:

{¶1} Defendant-appellant, Brandon LaPorta, appeals his sentence following a guilty plea. For the reasons that follow, we reverse the trial court's imposition of postrelease control and remand for further proceedings.

{¶2} In February 2016, LaPorta was named in a four-count indictment charging him with one count of rape, two counts of gross sexual imposition, and one count of kidnapping with specifications. Following plea negotiations, the state amended the rape charge to felonious assault, a felony of the second degree, and nolleed one count of gross sexual imposition and the kidnapping offense. LaPorta pleaded guilty to felonious assault, as amended in Count 1, and gross sexual imposition as charged in Count 2. The parties agreed that the two counts merged for sentencing and the state elected to proceed with sentencing on Count 1. The trial court sentenced LaPorta to three years in prison for the felonious assault charge, and ordered five years of postrelease control.

{¶3} LaPorta now appeals, contending that the trial court erred in ordering him to serve five years of postrelease control following his three-year prison sentence when the law only requires that he serve a mandatory three-year term of postrelease control. The state concedes the error.

{¶4} R.C. 2967.28(B)(2) provides,

Each sentence to a prison term * * * for a felony of the second degree * * * shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment. * * * Unless reduced by the parole board * * * a period of post-release control required by this division for an offender shall

be * * * [f]or a felony of the second degree that is not a felony sex offense, three years.

{¶5} Accordingly, because LaPorta was sentenced under Count 1, felonious assault, a second-degree felony, any corresponding period of postrelease control must correspond to the offense for which prison was imposed. Although the circumstances surrounding the offense may have been sexually related, felonious assault is not a felony sex offense for purposes of postrelease control. *See* R.C. 2967.28(A)(3).¹ Accordingly, LaPorta is only subject to a mandatory three-year period of postrelease control. The assignment of error is sustained.

{¶6} The trial court's judgment is hereby reversed with regard to the improper imposition of postrelease control. The matter is remanded to the trial court to conduct a notification hearing pursuant to R.C. 2929.191 and impose the requisite period of postrelease control.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

¹However, when classifying sex offenders, R.C. 2950.01(A)(4) provides that felonious assault may be a sex offense if committed with a sexual motivation.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

EILEEN A. GALLAGHER, J., and
EILEEN T. GALLAGHER, J., CONCUR