

[Cite as *State v. Briscoe*, 2018-Ohio-1746.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**No. 106478**

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**KIMBERLY BRISCOE**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
REVERSED AND REMANDED

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-17-617195-A

**BEFORE:** Stewart, P.J., Laster Mays, J., and Jones, J.

**RELEASED AND JOURNALIZED:** May 3, 2018

**ATTORNEY FOR APPELLANT**

Mary Catherine Corrigan  
4403 St. Clair Avenue  
Cleveland, OH 44113

**ATTORNEYS FOR APPELLEE**

Michael C. O'Malley  
Cuyahoga County Prosecutor

Kevin E. Bringman  
Assistant County Prosecutor  
Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, OH 44113

MELODY J. STEWART, P.J.:

{¶1} Defendant-appellant Kimberly Briscoe pleaded guilty to aggravated vehicular assault and driving under the influence of alcohol or drugs. The court sentenced Briscoe to community control for each count and a jail term of 120 days. On appeal, she argues that the court erred in sentencing as to the aggravated vehicular assault. The state concedes the error and we agree.

{¶2} As relevant to this appeal, Briscoe initially pleaded guilty to aggravated vehicular assault, in violation of R.C. 2903.08(A)(2)(b), as charged in the indictment. The charge included a specification for driving under a suspended licence at the time of the incident, which elevated the offense to a third-degree felony. *See* R.C. 2903.08(C)(2). Briscoe and the state both agreed that the offense level was correct.

{¶3} Prior to sentencing, the state moved to amend the charge by deleting the specification. Briscoe and the state nevertheless erroneously confirmed to the court that the offense was still a felony of the third degree. The court accepted the amendment and sentenced Briscoe accordingly. Removing the specification, however, actually reduced the offense level to a fourth-degree felony. *See* R.C. 2903.08(C)(2). The court's journal accurately reflects that the charge was amended but it incorrectly lists the offense level as a third-degree felony. This error requires reversal. *See State v. Russell*, 8th Dist. Cuyahoga No. 87608, 2006-Ohio-6764, ¶ 29.

{¶4} In addition to this error, at sentencing the court failed to notify Briscoe that it would impose a definite penalty should she violate the terms of her community control. The court was required to “notify the offender of the ‘specific’ term the offender faces for violating community control.” *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, ¶ 19, quoting R.C. 2929.19(B)(5). The court did not do this. Instead, it informed Briscoe that in the event she violated community control, the court would “have the option of placing you in prison[,] or I can place you in county jail for up to 180 days[,] or I can send you to the community based correctional facility for up to six months \* \* \*.” (Tr. 102.)

{¶5} The court’s journal entry further compounds the error. As noted, the offense for which Briscoe was convicted is a fourth-degree felony that carries a maximum 18-month prison sentence. *See* R.C. 2929.14(A)(4). R.C. 2929.15(B)(3) provides that the prison sentence for a community control violation shall be “within the [statutory] range” of the offense, and “not exceed the prison term specified” at sentencing. The court’s journal entry states that a “[v]iolation of the terms and conditions may result in more restrictive sanctions, or a prison term of 36 month(s) as approved by law.”

{¶6} Finally, the court erred by imposing a mandatory three-year term of postrelease control. As relevant here, R.C. 2967.28(C) provides that a prison sentence for a felony of the fourth degree may include a term of postrelease control for up to three years, subject to the discretion of the parole board. Thus the court did not validly impose postrelease control. *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, ¶ 13 (“[T]o validly impose postrelease control, a minimally compliant entry must provide the [parole authority] the information it needs to execute the postrelease-control portion of the sentence.”).

{¶7} Judgment reversed and remanded for resentencing.

It is ordered that appellant recover of 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.

---

MELODY J. STEWART, PRESIDING JUDGE

ANITA LASTER MAYS, J., and  
LARRY A. JONES, SR., J., CONCUR