

[Cite as *State v. Goode*, 2018-Ohio-3594.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 106795 and 107436

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHARLES GOODE, JR.

DEFENDANT-APPELLANT

JUDGMENT:
SENTENCES VACATED IN PART; REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-602961, CR-621122 and CR-620103

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

RELEASED AND JOURNALIZED: August 30, 2018

ATTORNEY FOR APPELLANT

Michael B. Telep
4438 Pearl Road
Cleveland, Ohio 44109

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
BY: Eben McNair
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN A. GALLAGHER, A.J.:

{¶1} In this consolidated, accelerated appeal, defendant-appellant Charles Goode, Jr. appeals the sentences he received in the Cuyahoga County Court of Common Pleas in three cases — CR-602961, CR-620103 and CR-621122.¹

{¶2} Appellant has set forth two assignments of error for review:

- I. The trial court erred when it imposed a nine month prison sentence for violation of conditions of community control sanctions when [it] imposed a prison term that exceeded the six month prison term specified at sentencing hearing.
- II. The trial court erred when it failed to notify appellant of post release control at the sentencing hearing.

{¶3} The state concedes these assigned errors and, after a thorough review of the record, we agree that the trial court erred in sentencing appellant in these cases.

{¶4} With respect to appellant’s first assignment of error, the application is to CR-602961. In that case, Goode entered pleas of guilty to an amended charge of attempted domestic violence, a felony of the fifth degree and attempted drug possession, a misdemeanor of the first degree. The journal entry of the trial court for sentencing states “. . . is sentenced to the Cuyahoga County Jail for a term of 6 month(s). Cts. 1 & 2, run concurrent to each other. Ct. 2; 6 mo. sentence, execution of sentence suspended. Defendant placed on 2 years probation . . .”

¹In Appeal No. 107436, appellant appeals from the sentence he received after violating community control sanctions in **CR-602961** and challenges the imposition of postrelease control after his guilty plea in CR-621122. In Appeal No. 106795, appellant challenges the imposition of postrelease control after his guilty plea in CR-620103.

{¶5} After multiple probation violation hearings, Goode was indicted and entered pleas of guilty in two other cases. At the hearing conducted to address the sentencing in CR-620103 and CR-621122 and another violation hearing in CR-602961, the trial court sentenced the appellant to prison terms for each of these cases. When addressing CR-602961, the trial court, in open court, imposed a blanket “prison term” of nine months. The sentencing journal entry, however, states that “. . . count 1; 9 months; Count 2; 6 months local incarceration . . .”

{¶6} A “blanket sentence,” such as that the trial court imposed at the sentencing hearing, is not a valid sentence. A trial court must impose a separate sentence on each count individually. *See, e.g., State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, ¶ 9 (“Instead of considering multiple offenses as a whole and imposing one, overarching sentence to encompass the entirety of the offenses . . . a judge sentencing a defendant pursuant to Ohio law must consider each offense individually and impose a separate sentence for each offense.”); *see also Cleveland v. Fano*, 8th Dist. Cuyahoga No. 106135, 2018-Ohio-1407, ¶ 4; *State v. Blair*, 8th Dist. Cuyahoga No. 102548, 2015-Ohio-5416, ¶ 11.

{¶7} Furthermore, “[a] trial court cannot impose a sentence in the sentencing entry that differs from that it imposed at the sentencing hearing.” *State v. Alvelo*, 2017-Ohio-742, 85 N.E.3d 1032, ¶ 34-36 (8th Dist.) (sua sponte recognizing that the trial court had erred in imposing sentences on counts in its sentencing journal entry that it did not impose at the sentencing hearing), quoting *State v. Vaughn*, 8th Dist. Cuyahoga No.

103330, 2016-Ohio-3320, ¶ 18; *see also State v. West*, 9th Dist. Summit No. 27485, 2015-Ohio-2936, ¶ 49-52 (matter remanded for resentencing where trial court sentenced defendant on drug paraphernalia count in sentencing journal entry after trial court failed to address that count at sentencing hearing); *State v. King*, 184 Ohio App.3d 226, 2009-Ohio-4551, 920 N.E.2d 399, ¶ 40 (8th Dist.) (trial court committed plain error where it failed to orally pronounce sentence on every count).

{¶8} Accordingly, we vacate the sentences imposed in CR-602961 and remand for resentencing in that case. Appellant's first assignment of error is sustained.

{¶9} Appellant's second assignment of error relates to CR-620103 and CR-621122. Appellant contends that the postrelease control portions of his sentences in those cases are void because the trial court failed to notify him regarding postrelease control at the sentencing hearing.

{¶10} "It is settled that 'a trial court has a statutory duty to provide notice of postrelease control at the sentencing hearing' and that 'any sentence imposed without such notification is contrary to law.'" *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, ¶ 8, quoting *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶ 23. If a trial court fails to properly notify a defendant regarding an applicable term of postrelease control as part of a defendant's sentence, that part of the sentence is void and must be set aside. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 26; *State v. Mitchell*, 8th Dist. Cuyahoga No. 103364, 2016-Ohio-4956, ¶ 16.

{¶11} Although the trial court’s sentencing journal entry in each case states that “post release control is part of this prison sentence for up to 3 years discretionary with the parole board,” the transcript from the sentencing hearing reflects that appellant was never advised of same in open court. Therefore, the postrelease control portions of appellant’s sentences are void.

{¶12} Appellant’s second assignment of error is sustained. We vacate the postrelease control portion of appellant’s sentences in CR-620103 and CR-621122 and remand for resentencing on postrelease control. *See State v. Jones*, 8th Dist. Cuyahoga No. 105282, 2017-Ohio-7722, ¶ 21 (“When the postrelease control portion of a sentence is void, a defendant is only entitled to a hearing limited to the ‘proper imposition of postrelease control[,]’ not an entirely new sentencing hearing.”), quoting *Fischer* at ¶ 29.

{¶13} Sentences vacated in part, cases remanded for resentencing consistent with this opinion.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County 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.

EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

FRANK D. CELEBREZZE, JR., J., and
KATHLEEN A. KEOUGH, J., CONCUR