

[Cite as *State v. Barb*, 2019-Ohio-182.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107792

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DANNY BARB

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-07-500671-A

BEFORE: Jones, J., Boyle, P.J., and Keough, J.

RELEASED AND JOURNALIZED: January 17, 2019

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LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant Danny Barb (“Barb”) appeals the trial court’s imposition of postrelease control. The state concedes there was error. We reverse and vacate Barb’s postrelease control.

{¶2} In 2007, Barb was charged with felonious assault and domestic violence. He was found guilty by a jury of the felonious assault charge and sentenced to eight years in prison. The court stated in its journal entry that postrelease control was part of Barb’s prison sentence for up to three years. The journal entry did not include the consequences of violating postrelease control. This court affirmed Barb’s convictions on appeal. *State v. Barb*, 8th Dist. Cuyahoga No. 90768, 2009-Ohio-2576.

{¶3} Barb served his prison sentence and was released from prison. In 2017, Barb filed a motion to vacate his postrelease control. The trial court denied Barb's motion and this appeal ensued. In his sole assignment of error, Barb contends that the trial court erred in failing to vacate his postrelease control.

{¶4} The failure to incorporate the proper notice of postrelease control in a sentencing entry renders the sentence void. *State v. Lawson*, 8th Dist. Cuyahoga No. 100626, 2014-Ohio-3498, ¶ 17, citing *State v. Mills*, 8th Dist. Cuyahoga No. 100417, 2014-Ohio-2188. Moreover, it is well settled that once the sentence for the offense that carries postrelease control has been served, the defendant cannot be resentenced to correct the trial court's flawed imposition of postrelease control. *State v. Jackson*, 8th Dist. Cuyahoga No. 100519, 2014-Ohio-2648, ¶ 9; *see also State v. Douse*, 8th Dist. Cuyahoga No. 98249, 2013-Ohio-254, ¶ 14, citing *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 70. The state concedes the error. The trial court erred in denying Barb's motion because the consequences of violating his postrelease control sanctions were not lawfully included in his sentence and he has already served his prison term for the charge underlying the postrelease control.

{¶5} Accordingly, we sustain Barb's sole assignment of error and vacate the trial court's imposition of postrelease control. This matter is remanded for the trial court to note on its record that Barb is not subject to postrelease control.

{¶6} Judgment vacated, and case remanded to the lower court for further proceedings consistent with this opinion.

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.

LARRY A. JONES, SR., JUDGE

MARY J. BOYLE, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR