

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 108777
	:	
v.	:	
	:	
MICHAEL G. BARRON,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED AND REMANDED
RELEASED AND JOURNALIZED: October 31, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-17-614793-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Mary M. Frey, Assistant Prosecuting Attorney, *for appellee*.

Mark A. Stanton, Cuyahoga County Public Defender, and Paul Kuzmins, Assistant Public Defender, *for appellant*.

SEAN C. GALLAGHER, J.:

{¶ 1} Michael Barron appeals the trial court's sua sponte decision to impose a nine-month term of imprisonment following this court's unambiguous decision to modify Barron's sentence to the statutorily mandated, 90-day term as provided

under R.C. 2929.15(B)(1)(c). *State v. Barron*, 8th Dist. Cuyahoga No. 107775, 2019-Ohio-1447, ¶ 15 (“*Barron I*”) (“In accordance with the foregoing, we sustain Barron’s assignment of error, reverse his sentence, and modify it to 90 days of prison.”). The state concedes the error.

{¶ 2} Barron has a history of drug use. Following his convictions for a fifth-degree felony drug possession and a misdemeanor criminal damaging, Barron was placed into the supervision of the county probation department’s intervention-in-lieu-of-conviction program for one year. He violated the terms of the program by testing positive for marijuana. In *Barron I*, it was recognized that the resulting 11-month prison sentence was not statutorily authorized because the violation was a “technical violation.” Accordingly, the *Barron I* court modified Barron’s sentence to a 90-day term and ordered the trial court to carry the judgment into execution:

Case remanded to the trial court for execution of sentence. The trial court is hereby directed to vacate its prior sentencing order journalized September 17, 2018, and issue a journal entry consistent with this opinion. The trial court is further directed to take all necessary administrative steps to inform the prison system of appellant’s modified sentence.

Thus, the scope of the remand order was limited to issuing a judgment entry to impose the 90-day term of imprisonment as mandated in *Barron I*. The state did not appeal that decision to the Ohio Supreme Court.

{¶ 3} Upon remand, the trial court issued the following judgment entry:

Pursuant to court of appeals decision the defendant’s sentence is modified. Defedant [sic] is sentenced to a term of 9 months. Clerk ordered to send a copy of this order to: defendant, Michael G Barron; *
* *, Warden, and; Ohio Bureau of Corrections.

The trial court was unambiguously without jurisdiction to impose the nine-month term of imprisonment that was contrary to the sentence as modified in *Barron I*. The nine-month term of imprisonment is void and hereby vacated. This case is remanded with an order for the trial court to immediately issue a final sentencing entry reflecting the 90-day term of imprisonment.

{¶ 4} In light of the foregoing, the final sentencing entry entered on June 10, 2019, is hereby vacated, and this matter is remanded for the immediate correction of the final sentencing entry to reflect the 90-day term of imprisonment as previously modified in *Barron I*. The trial court is further ordered to calculate any time Barron has served to date and include such calculation in the final entry of conviction.

{¶ 5} Vacated and remanded.

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.**

SEAN C. GALLAGHER, JUDGE

**EILEEN T. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR**