

[Cite as *State v. Masterson*, 2019-Ohio-711.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107622

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ERIC MASTERSON

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-07-496483-A

BEFORE: Blackmon, J., Kilbane, A.J., Celebrezze, J.

RELEASED AND JOURNALIZED: February 28, 2019

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PATRICIA A. BLACKMON, J.:

{¶1} In this appeal, defendant-appellant, Eric Masterson, challenges the five-year term of postrelease control imposed in connection with his conviction for aggravated burglary and felonious assault in Cuyahoga C.P. No. CR-07- 496483-A. For his sole assigned error, Masterson argues that the proper postrelease control advisements were not included in the sentencing journal entry and he has completed his prison term, so the postrelease control provision of his sentence is contrary to law and must be terminated. The state of Ohio concedes this error.

{¶2} Having reviewed the record and the controlling case law, we conclude that Masterson's assigned error is well taken, so we reverse and remand for vacation of postrelease control in CR-07-496483-A.

{¶3} In 2007, Masterson was indicted for aggravated burglary, burglary, theft (all with one-year and three-year firearm specifications), felonious assault, and assault on a peace officer. Masterson pled guilty to aggravated burglary, with a one-year firearm specification, and felonious assault. The trial court's August 13, 2007 sentencing entry sentenced Masterson to a total of ten years of imprisonment and five years of postrelease control but failed to contain the postrelease control advisements, including the consequences for violations of postrelease control. In 2015, Masterson was granted judicial release, but the sentencing entry again failed to set forth the postrelease control advisements.

{¶4} In 2016, while on judicial release in Case No. CR-07-496483-A, Masterson was convicted of breaking and entering in Cuyahoga C.P. No. CR-16-610667. He was sentenced to a ten-month term with three years of discretionary postrelease control in that case. As a result of this new conviction, the trial court terminated the judicial release in Case No. CR-07-496483-A, and ordered Masterson to complete the remainder of his sentence in that case (which was modified to one year), consecutive to the ten-month term in Case No. CR-16-610667. The sentencing journal entry terminating judicial release in CR-07-496483-A again failed to properly include postrelease control.

{¶5} On June 25, 2017, several months after completing his sentences in both Case Nos. CR-07-496483-A and CR-16-610667, Masterson moved to terminate the five-year term of postrelease control in Case No. CR-07-496483-A. The trial court denied the motion. Herein, Masterson asserts that because the sentencing entries in Case No. CR-07-496483-A did not contain the statutorily-required information, including advisements of the consequences of violations, and he has now completed that sentence, he is no longer subject to postrelease control. The state of Ohio concedes this error.

{¶6} A trial court has a statutory duty to provide notice of postrelease control at the sentencing hearing and 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; *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶ 23. A trial court’s failure to properly impose postrelease control at the time of sentencing “is void and must be set aside.” *State v. Loper*, 8th Dist. Cuyahoga No. 104828, 2017-Ohio-542, ¶ 10, quoting *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 26. Where a defendant has completed the sentence in which postrelease control is being challenged, the trial court no longer has jurisdiction to correct the defective imposition of postrelease control. *Id.* at ¶ 11.

{¶7} In *Grimes*, the Ohio Supreme Court recently held that in order to validly impose postrelease control, when the court orally provides all the required advisements at the sentencing hearing, the “minimally compliant” sentencing entry must contain the following information:

(1) whether postrelease control is discretionary or mandatory, (2) the duration of the postrelease-control period, and (3) a statement to the effect that the APA will administer the postrelease control pursuant to R.C. 2967.28 and that any violation by the offender of the conditions of postrelease control will subject the offender to the consequences set forth in that statute.

Id. at ¶ 1, 13. This basic information empowers the executive branch of government to exercise its discretion in administering postrelease control. *Id.*, citing *Jordan* at ¶ 22.

{¶8} As to whether a journal entry meets the mandatory/discretionary notification, this court has held that the phrase “[p]ostrelease control is part of this prison sentence for 5 years” conveys to a defendant that his supervision would be mandatory for three years. *See State v. McGee*, 8th Dist. Cuyahoga No. 101307, 2014-Ohio-5289, ¶ 15. *Accord State v. Tolbert*, 2017-Ohio-9159, 103 N.E.3d 245, ¶ 27 (8th Dist.)(sentencing entry that stated, “postrelease control is part of this prison sentence for 5 years for the above felony(s) under R.C. 2967.28,”

advised of mandatory postrelease control). In accordance with the foregoing, Masterson's sentencing entry containing the phrase "[p]ostrelease control is part of this prison sentence for 5 years" advised him of mandatory postrelease control. Therefore, this requirement has been met herein.

{¶9} As to whether a journal entry properly advises of the consequences of violating postrelease control, the *Grimes* court held that a trial court need not specifically spell out the consequences for violating postrelease control in the sentencing entry as long as it did so at the sentencing hearing, but the sentencing entry must still contain an advisement "that any violation by the offender of the conditions of postrelease control will subject the offender to the consequences set forth in the statute." *Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, at ¶ 1. Here, the sentencing entry says nothing about Masterson being subject to any consequences for violating the terms of his postrelease control. Accordingly, we hold that under *Grimes*, the trial court's sentencing entry was not sufficient to validly impose postrelease control. *Accord Tolbert* at ¶ 29.

{¶10} Finally, the challenged sentencing journal entry failed to comply with the third *Grimes* requirement that the sentencing entry contain "a statement to the effect that the [APA] will administer the post-release control pursuant to R.C. 2967.28." *Accord State v. Bell*, 10th Dist. Franklin No. 17AP-645, 2018-Ohio-3576.

{¶11} The sole assigned error is well taken.

{¶12} Judgment is reversed, and case is remanded for the trial court to vacate the postrelease control in Case No. CR-07-496483-A.

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.

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR