

STATE OF OHIO                    )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       29256

Appellee

v.

LEONARD B. TYLER

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CR-2018-04-1368

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 28, 2019

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SCHAFER, Judge.

{¶1} Defendant-Appellant Leonard Tyler appeals his sentence in the Summit County Court of Common Pleas.

I.

{¶2} The Summit County Grand Jury indicted Mr. Tyler on one count of escape in violation of R.C. 2921.34(A)(3), a felony of the fourth degree. Mr. Tyler eventually entered a plea of no contest. The trial court accepted his plea and found him guilty. The trial court thereafter sentenced Mr. Tyler to six months of non-reporting community control. The court further advised Mr. Tyler that if he violated the terms of his community control sanctions, violated any law, or left the State of Ohio without permission, the court could impose a more restrictive sanction or could impose a prison term of ten months with the possibility of three years of post-release control.

{¶3} Mr. Tyler filed this timely appeal raising one assignment of error for our review.

## II.

**Assignment of Error I**

**The trial court committed reversible and plain error when it sentenced the defendant without properly giving him all the required notifications concerning post-release control.**

{¶4} In his sole assignment of error, Mr. Tyler contends that the trial court committed plain error when it failed to give him all of the required notifications concerning post-release control. We disagree.

{¶5} Although Mr. Tyler acknowledges that he did not raise this issue in the trial court and, therefore, raises a plain error argument on appeal, we note that the Supreme Court of Ohio has held that “[a] sentence that does not include the statutorily mandated term of postrelease control is void \* \* \* and may be reviewed at any time, on direct appeal or by collateral attack.” *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, paragraph one of the syllabus. Therefore, Mr. Tyler did not forfeit his right to challenge his sentence as void. *See State v. Hairston*, 10th Dist. Franklin Nos. 07AP-160, 07AP-161, 2007-Ohio-5928, ¶ 38.

{¶6} Regardless, the trial court did not impose a prison sentence in this case. Rather, the trial court sentenced Mr. Tyler to six months of non-reporting community control. As this Court has previously stated:

The post-release control statute provides that “[a]ny sentence *to a prison term* for a felony of the \* \* \* fourth \* \* \* degree that is not [an offense of violence or a sex offense] shall include a requirement that the offender be subject to a period of post-release control of up to three years \* \* \*.” (Emphasis added.) R.C. 2967.28(C). The statute does not apply when the trial court does not sentence an offender to a prison term. *State v. Ortiz*, 9th Dist. Lorain No. 08CA009502, 2010-Ohio-38, ¶ 11. Because the trial court did not sentence Mr. [Tyler] to serve either an actual or suspended prison term, it was not required to advise him of post-release control. *See id.*

*State v. McCoy*, 9th Dist. Summit No. 28103, 2017-Ohio-4163, ¶ 34.

{¶7} Therefore, we conclude that Mr. Tyler has failed to show that the trial court erred in any way. Mr. Tyler's assignment of error is overruled.

III.

{¶8} Mr. Tyler's assignment of error is overruled.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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JULIE A. SCHAFER  
FOR THE COURT

TEODOSIO, P. J.  
CALLAHAN, J.  
CONCUR.

APPEARANCES:

NEIL P. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, JACQUENETTE S. CORGAN, Assistant Prosecuting Attorney, and for Appellee.