[Cite as *State v. Johns*, 2012-Ohio-864.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2011-A-0003**
- vs -	:	
WILLIAM E. JOHNS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2010 CR 001.

Judgment: Modified and affirmed as modified.

Thomas L. Sartini, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Matthew M. Nee, The Law Office Matthew M. Nee, 1956 West 25th Street, Suite 302, Cleveland, OH 44113 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, William Johns, appeals from the judgment of the Ashtabula County Court of Common Pleas finding him guilty of Aggravated Vehicular Homicide, Aggravated Vehicular Assault, and OVI, and sentencing him to a total of eight years in prison. Mr. Johns challenges whether the trial court properly considered the required sentencing statutes, asserts that his constitutional due process rights were violated as a result of sentencing, disputes the trial court's failure to merge three of his offenses as

allied offenses, argues that he was misinformed of his sentencing terms, and suggests he was provided ineffective assistance of counsel. For the following reasons, we find all but one of Mr. Johns' assignments of error without merit.

{¶2} As to his fourth assignment of error, we find that Mr. Johns was incorrectly advised that he was subject to five years of mandatory post-release control rather than three years. To the extent his assigned error has merit, we will modify the trial court's sentencing entry accordingly; otherwise this assignment of error is without merit, and we affirm the judgment and sentence of the trial court as modified.

Substantive Facts and Procedural History

{¶3} This case arises from a December 2009 accident. After having had a number of beers, Mr. Johns left his sister's home by car, ran a stop sign, and struck the victims' car in an intersection, killing the driver and severely injuring two passengers. Mr. Johns was indicted in January of 2010 on one count of Aggravated Vehicular Homicide, a second-degree felony in violation of R.C. 2903.06(A)(1); two counts of Aggravated Vehicular Assault, a third-degree felony, in violation of R.C. 2903.08(A)(1); and three counts of OVI, a first-degree misdemeanor, in violation R.C. 4511.19(A)(1)(a),(d) and (e). Mr. Johns entered a not-guilty plea to all of the charges.

{¶4} Mr. Johns later changed his plea to guilty on one count of Aggravated Vehicular Homicide, two counts of Aggravated Vehicular Assault, and one count of OVI; the state dismissed the remaining charges. After a PSI was conducted, Mr. Johns returned to court in January of 2011 for sentencing. The trial court sentenced Mr. Johns to: a six-year term of incarceration for the Aggravated Vehicular Homicide; a two-year term of incarceration on each of the Aggravated Vehicular Assaults, to run concurrently

with one another, but consecutive to the Aggravated Vehicular Homicide count; and a six-month term of incarceration on the OVI, to be served concurrently with all other counts. The trial court also imposed a $10,000 fine, and a lifetime suspension on Mr. John's driver's license.

{¶5} Mr. Johns filed a timely notice of appeal and now brings the following assignments of error:

{¶6} "[1.] The trial court erred by sentencing the defendant-appellant to more-than-the [sic] minimum term of imprisonment."

{¶7} "[2.] The trial court violated defendant-appellant's rights to equal protection and due process of the law under the Fifth and Fourteenth Amendments to the U.S. Constitution and under Sections 2, 10 and 16, Article I of the Ohio Constitution when it sentenced him contrary to R.C. 2929.11(B)."

{¶8} "[3.] The trial court erred by failing to merge Mr. Johns' offenses of aggravated vehicular assault and aggravated vehicular homicide as allied offenses of similar import."

{¶9} "[4.] The trial court erred by misinforming Mr. Johns of the terms of his sentence."

{¶10} "[5.] Mr. Johns' counsel rendered ineffective assistance of counsel."

Discretion in Sentencing

{¶11} In his first assignment of error, Mr. Johns argues that the trial court erred when it failed to sentence him to the minimum possible term of incarceration. He asserts that the trial court did not give adequate weight to several mitigating factors, including Mr. John's sincere expression of remorse, lack of prior criminal history, and

praise for his good character and general show of support by his church, family, and friends.

Standard of Review

{¶12} Pursuant to *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, appellate courts, post *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, must apply a two-step approach in reviewing a sentence. First, the courts must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. *Kalish* at ¶4. The first prong of the analysis instructs that "the appellate court must ensure that the trial court has adhered to all applicable rules and statutes in imposing the sentence. As a purely legal question, this is subject to review only to determine whether it is clearly and convincingly contrary to law, the standard found in R.C. 2953.08(G)." *Id*.

{¶13} The court explained that the applicable statutes to be applied by a trial court include the felony sentencing statutes, R.C. 2929.11 and R.C. 2929.12, which are not fact-finding statutes like R.C. 2929.14. *Id*. at ¶17. Therefore, as part of its analysis of whether the sentence is "clearly and convincingly contrary to law," an appellate court must ensure that the trial court considered the purposes and principles of R.C. 2929.11 and the factors listed in R.C. 2929.12.

{¶14} If the first prong is satisfied, that is, the sentence is not "clearly and convincingly contrary to law," the appellate court must then engage in the second prong of the analysis, which requires an appellate court to determine whether the trial court abused its discretion in selecting a sentence within the permissible statutory range. *Id.*

{¶15} An abuse of discretion is the trial court's "failure to exercise sound, reasonable, and legal decision-making." *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11.

{¶16} Mr. Johns does not assert that the trial court's sentence is clearly and convincingly contrary to the law; rather, he suggests that the trial court abused its discretion by imposing a term of imprisonment greater than the two-year mandatory minimum applicable to his case. Therefore, we need only consider the second prong of the *Kalish* analysis.

{¶17} The trial record clearly reflects the court's careful consideration of the circumstances of this case when imposing the sentence. Although the trial judge was presented evidence of Mr. Johns' lack of criminal history, expression of remorse, and community involvement, he specifically noted the high-speed nature of the impact, the substantial physical harm caused to the two surviving passengers, and the death of the driver. The court further noted that he considered the rationale behind sentencing, sentences he had imposed in similar cases, and Mr. Johns' lack of criminal history. All of this suggests the court gave careful consideration to both aggravating and mitigating factors in meting out Mr. Johns' sentence, and in determining that the circumstances warranted a term of incarceration greater than the mandated minimum.

{¶18} It is within the sound discretion of the trial court to mete out a sentence as provided for by law and, after a review of the record, we do not find an abuse of that discretion by the trial court in this case. Therefore, Mr. John's first assignment of error is without merit.

Due Process Violation in Sentencing

{¶19} In his second assignment of error, Mr. Johns argues that the trial court violated his constitutional rights when it sentenced him contrary to R.C. 2929.11. Mr. Johns suggests the trial court is required to engage in a consistency analysis under R.C. 2929.11, and failed to do so. In support of his argument, Mr. Johns offers several cases in which he suggests offenders received shorter sentences for similar crimes. It should be noted that in all of the cases Mr. Johns describes, defendants received terms of incarceration for the vehicular homicide charge of four, five, or six years, but the lesser charges were run concurrently with the homicide charge. In this case, Mr. Johns received a term of six years on the homicide charge (two less than the statutory maximum), but what extended his term of incarceration was the consecutive running of the assault charges. On its face, this does not appear to present any significant deviation from the types of sentences previously handed down for similar crimes.

{¶20} This court has stated that "a proper circumspect application of the sentencing guidelines acts to ensure proportionality and consistency under R.C. 2929.11(B)." *State v. Marker*, 11th Dist. No. 2006-P-0014, 2007-Ohio-3379, ¶34, citing *State v. Swiderski*, 11th Dist. No. 2004-L-112, 2005-Ohio-6705, ¶58. "Therefore, to the extent the trial court considered and applied the necessary statutory provisions, a sentence shall be deemed consistent and proportionate to those imposed for similar crimes." *Id*.

{¶21} We have determined that the trial court properly considered the required statutory provisions when it imposed Mr. Johns' sentence. Necessarily then, we find that the required consideration of proportionality and consistency was met. Furthermore, we note that the trial judge stated on the record, quite explicitly, that "I've

gone back in my mind and reviewed some of the sentences that I've given previously and the reason that I did or gave the sentence and whether I felt the same way about it now as I did when I imposed the sentence. * * * I think there's a rationale that make sense to me and should apply to this case." We therefore defer to the trial court's determination that Mr. Johns' sentence is proportionate to the severity of his offenses and consistent with sentences imposed in other similar cases. Assignment of error two is without merit.

Merging of Allied Offenses

{¶22} In his third assignment of error, Mr. Johns argues that the trial court erred when it did not merge his Aggravated Vehicular Homicide and Aggravated Vehicular Assault charges as allied offenses for purposes of sentencing. He suggests that because no separate animus exists for each of the crimes they should be merged.

The Law of Merger

{¶23} "The concept of merger originates in the prohibition against cumulative punishments as established by the Double Jeopardy clauses of the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution." *State v. Miller*, 11th Dist. No. 2009-P-0090, 2011-Ohio-1161, ¶35, citing *State v. Williams*, 124 Ohio St.3d 381, 2010-Ohio-147, ¶12. The constitutional prohibition against multiple punishments for the same offense is codified in R.C. 2941.25, which states: "(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

{¶24} "(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them."

{¶25} As an initial matter, we note that merger is the process of combining multiple *offenses* for sentencing purposes. Allied offenses of similar import "must be merged for purposes of sentencing, and the defendant may be convicted of only one of the offenses**,** even though the defendant has been properly charged with and found guilty of both." *State v. Chaffer*, 1st Dist. No. C-090602, 2010-Ohio-4471, syllabus. For purposes of R.C. 2941.25, a "conviction" consists of a guilty verdict and the imposition of a sentence or penalty. *State v. Gapen*, 104 Ohio St.3d 358, 2004-Ohio-6548, ¶135, citing *State v. Poindexter*, 36 Ohio St.3d 1 (1988) ("a defendant may be charged with multiple counts based on the same conduct but may be convicted of only one, and the trial court effects the merger at sentencing"). "[A]llied offenses must be merged for purposes of sentencing following the state's election of which offense should survive." *State v. Jackson*, 1st Dist. No. C-090414, 2010-Ohio-4312, ¶20, citing *State v. Whitfield*, 124 Ohio St.3d 319, 2010-Ohio-2.

{¶26} The Supreme Court of Ohio has struggled with the proper analysis of allied offenses of similar import since its landmark decision on this issue in *State v. Rance*, 85 Ohio St.3d 632 (1999). Recognizing that the law of allied offenses post *Rance* has become an unworkable and unpredictable quagmire of exceptions and near

absurdity, the Supreme Court of Ohio revisited the allied offenses analysis yet again in 2010, and overruled *Rance* in *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314.

{¶27} In *Johnson*, the court remarked on the difficulties of the application of Rance: "Our cases currently (1) require that a trial court align the elements of the offenses in the abstract — but not too exactly [*State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625], (2) permit trial courts to make subjective determinations about the probability that two crimes will occur from the same conduct [*State v. Winn*, 121 Ohio St.3d 413, 2009-Ohio-1059], (3) instruct trial courts to determine preemptively the intent of the General Assembly outside the method provided by R.C. 2941.25 [*State v. Brown*, 119 Ohio St.3d 447, 2008-Ohio-4569], and (4) require that courts ignore the commonsense mandate of the statute to determine whether the same conduct of the defendant can be construed to constitute two or more offenses (*Rance*). The current allied-offense standard is so subjective and divorced from the language of R.C. 2941.25 that it provides virtually no guidance to trial courts and requires constant ad hoc review by this court." *Johnson* at ¶40.

{¶28} Under the new analysis, "[w]hen determining whether two offenses are allied offenses of similar import subject to merger under R.C. 2941.25, the conduct of the accused must be considered." *Johnson* at the syllabus. The *Johnson* court provided the new analysis as follows: "In determining whether offenses are allied offenses of similar import under R.C. 2941.25(A), the question is whether it is possible to commit one offense and commit the other with the same conduct, not whether it is possible to commit one without committing the other. * * * If the offenses correspond to such a degree that the conduct of the defendant constituting the commission of one

offense constitutes [the] commission of the other, then the offenses are of similar import.

{¶29} "If the multiple offenses can be committed by the same conduct, the court must determine whether the offenses were committed by the same conduct, i.e. 'a single act, committed with a single state of mind.' * * *

{¶30} "If the answer to both questions is yes, then the offenses are allied offenses of similar import and will be merged.

{¶31} "Conversely if the court determines that the commission of one offense will never result in the commission of the other, or if the offenses are committed separately, or if the defendant has a separate animus for each offense, then according to R.C. 2941.25(B), the offenses will not merge." *Johnson* at ¶48-51.

{¶32} "In departing from the former test, the court developed a new, more context-based test for analyzing whether two offenses are allied thereby necessitating a merger. In doing so, the court focused upon the unambiguous language of R.C. 2941.25, requiring the allied-offense analysis to center upon the defendant's conduct, rather than the elements of the crimes which are charged as a result of the defendant's conduct." *Miller* at ¶47, citing *Johnson* at ¶48-52. "The [*Johnson*] court acknowledged the results of the above analysis will vary on a case-by-case basis. Hence, while two crimes in one case may merge, the same crimes in another may not. Given the statutory language, however, this is not a problem. The court observed that inconsistencies in outcome are both necessary and permissible '* * * given that the statute instructs courts to examine a defendant's conduct — an inherently subjective

determination.'" *Miller* at ¶52, quoting *Johnson* at ¶52. *See also State v. May*, 11th Dist. No. 2010-L-131, 2011-Ohio-5233.

{¶33} Despite this development in merger analysis, it still remains that a person may be convicted and sentenced independently for a single act that constitutes a separate crime against each victim. *See, e.g., State v. Hutchison,* 11th Dist. No. 99-P-0054, 2000 Ohio App. LEXIS 5366 (Nov. 17, 2000); *State v. Harvey*, 11th Dist. No. 95-L-192, 1997 Ohio App. LEXIS 1791 (May 2, 1997). "When an offense is defined in terms of conduct towards another, then there is a dissimilar import for each person affected by the conduct." *State v. Snuffer,* 8th Dist. Nos. 96480, 96481, 96482, and 96483, 2011-Ohio-6430, ¶4, quoting *State v. Phillips*, 75 Ohio App.3d 785, 790 (2d Dist.1991), citing *State v. Jones*, 18 Ohio St.3d 116, 118 (1985).

{¶34} Although Mr. Johns caused but one accident, he inflicted substantial injury upon two separate victims and caused the death of another. Thus, his actions constitute three separate acts and the offenses are not allied; he was properly punished for each of the offenses. Assignment of error number three is without merit.

Advisement of Sentencing Terms

{¶35} In his fourth assignment of error, Mr. Johns argues that the trial court failed to properly notify him of the mandatory nature of his post-release control. Mr. Johns asserts that such a mistake is in violation of R.C. 2967.28, and thus his sentence is void.

{¶36} R.C. 2967.28 lays out the terms of post-release control for certain offenders, and requires a mandatory post-release control term of three years for offenders who commit a second degree felony, such as Mr. Johns, to be imposed by the

parole board. Further, it requires that a trial court advise the offender that he will be supervised under post-release control upon release from incarceration.

{¶37} The General Assembly enacted R.C. 2929.191, effective July 11, 2006, in which the legislature sought to establish a simple procedure to correct a trial court's judgment of conviction that omitted proper notification regarding post-release control. We note that an error in sentencing made after the effective date of R.C. 2929.191 does not render a sentence void. *See State v. McKinney*, 11th Dist. No. 2010-T-0011, 2010-Ohio-6445, ¶30.

{¶38} Mr. Johns suggests he was not properly notified of the mandatory nature of post-release control in his case. A review of the trial record demonstrates that the trial court alluded to post-release control being discretionary during the plea hearing, but clearly stated at both the sentencing hearing and in its is sentencing entry that post-release control would be mandatory. A trial court is only required to inform an offender of post-release control at sentencing; therefore the court's misstatement during the plea hearing is of no import. *See, e.g.,* 2929.19(B); *State v. O'Neil,* 11th Dist. No. 2008-P-0090, 2009-Ohio-7000; *Jordan*, *supra*. The trial court properly advised Mr. Johns of the mandatory nature of post-release control both orally and through its written entry, thus no error occurred as Mr. Johns alleges.

{¶39} We do note, however, that both during sentencing and in the sentencing entry, the trial court correctly informs Mr. Johns of the mandatory nature of post-release control, but it incorrectly states the duration. At both times, the trial court states that Mr. Johns will be subject to five years of post-release control, instead of three (as is the mandatory duration for offenders of second degree felonies). However, a review of the

written plea agreement, signed by Mr. Johns, reveals that he was advised of the fact that he would be subject to three years of mandatory post-release control.

{¶40} When confronted with cases where the trial court fails to properly inform the defendant of whether post-release control will be mandatory or discretionary, or of the requirement of post-release control altogether, we are normally required to remand cases to the trial court for the limited purpose of preparing and issuing a correction of the sentence in accordance with R.C. 2929.191. *See, e.g., State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434; *State v. Young*, 11th Dist. No. 2009-T-0130, 2011-Ohio-4018. This case is distinguishable from those cases in which the defendant was not advised as to the mandatory nature of post-release control or was advised that he would be subject to a lesser term of post-release control than the statute actually requires. *See, e.g., Young*, *supra.*; *State v. Gaut*, 11th Dist. No. 2011-T-0059, 2011-Ohio-1300.

{¶41} We are presented here with a unique situation in which Mr. Johns was made fully aware that post-release control would be imposed and that it would be mandatory; the court simply misspoke as to the duration, stating five years instead of three.

{¶42} "Section 3(B)(2), Article IV of the Ohio Constitution establishes that courts of appeals 'shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district.'" *State ex rel. Bates v. Court of Appeals for the Sixth Appellate Dist.*, 130 Ohio St.3d 326, 2011-Ohio-5456, ¶14. *See also* R.C. 2953.07. While most cases concerning the proper advisement of the terms of postrelease control

would warrant a limited remand, pursuant to *Singleton, supra*, due to the potential for prejudice, this case presents a narrow set of facts upon which an appellate modification is justifiable. Mr. Johns faces no prejudice from the modification of his sentencing entry without a hearing, as we are *decreasing* the years of post-release control indicated by the trial court at sentencing. Thus, pursuant to Section 3(B)(2) and R.C. 2953.07, we modify the trial court's sentencing entry to properly reflect that Mr. Johns is subject to three years of mandatory post-release control, not five.

{¶43} Assignment of error four is otherwise without merit.

Ineffective Assistance of Counsel

{¶44} In his final assignment of error, Mr. Johns argues that he was provided ineffective assistance of counsel because his trial attorney: (1) failed to object to the court's misstatement regarding the mandatory nature of post-release control; (2) failed to object when the court "imposed" a five-year term of post-release control instead of three; and (3) failed to object when the trial court imposed a lifetime driver's license suspension, instead of a three-year to life suspension.

Standard of Review

{¶45} To establish a claim a claim of ineffective assistance of counsel, an appellant must demonstrate that (1) his counsel was deficient in some aspect of his representation, and (2) there is a reasonable probability that, were it not for counsel's errors, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

{¶46} A threshold issue in a claim of ineffective assistance of counsel is whether there was actual error on the part of appellant's trial counsel. *State v. McCaleb*, 11th

Dist. No. 2002-L-157, 2004-Ohio-5940, ¶92. In Ohio, every properly licensed attorney is presumed to be competent, and therefore a defendant bears the burden of proof. *State v. Smith*, 17 Ohio St.3d 98, 100 (1985). Counsel's performance will not be deemed ineffective unless and until the performance is proven to have fallen below an objective standard of reasonable representation and, in addition, prejudice arises from counsel's performance. *State v. Iacona*, 93 Ohio St.3d 83, 105 (2001). Furthermore, decisions on strategy and trial tactics are generally granted wide latitude of professional judgment, and it is not the duty of a reviewing court to analyze the trial counsel's legal tactics and maneuvers. *State v. Gau*, 11th Dist. No. 2005-A-0082, 2006-Ohio-6531, ¶35, citing *Strickland* at 689. Debatable trial tactics and strategies generally do not constitute ineffective assistance of counsel. *State v. Phillips*, 74 Ohio St.3d 72 (1995).

Whether Trial Counsel Was Deficient

{¶47} Mr. Johns first argues that his counsel was deficient for failing to object to the trial court's misstatement that Mr. Johns would be subject to post-release control *up to* three years, when he really was subject to a mandatory term of post-release control. As discussed above, the trial court did not err in failing to inform Mr. Johns of the mandatory nature of his post-release control, as it was made clear to him in the written plea agreement, at the sentencing hearing, and in the written sentencing entry. Therefore, Mr. Johns attorney was not deficient in failing to object, because no error occurred.

{¶48} Mr. Johns next argues that his counsel was deficient for failing to object when the court misstated the duration of post-release control at the sentencing hearing. This was a mistake by the court, and counsel should have raised the issue at that time.

{¶49} Lastly, Mr. Johns argues that his counsel was deficient for failing to object when the trial court imposed a lifetime suspension of his driver's license. He asserts that the suspension should be three years to life. Mr. Johns was convicted under R.C. 2903.06(A)(1), and "[i]n addition to any other sanctions imposed pursuant to division (B)(2)(a), (b), or (c) of this section for aggravated vehicular homicide committed in violation of division (A)(1) of this section, the court shall impose upon the offender a class one suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(1) of section 4510.02 of the Revised Code." R.C. 2903.06(B)(2)(d). According to R.C. 4510.02(A)(1), a class one driver's license suspension is "a definite period for the life of the person subject to the suspension." Therefore, Mr. Johns was definitively subject to a lifetime driver's license suspension and his counsel was not deficient for failing to object.

Whether Mr. Johns Was Prejudiced

{¶50} Mr. Johns' counsel was only deficient in failing to object when the court misstated the duration of post-release control at the sentencing hearing. Mr. Johns has failed to demonstrate any prejudice he may have suffered as a result of this mistake, and our review of the record reveals none, as we find that his conviction and sentence would have remained the same regardless of counsel's failure to object. We further note that Mr. Johns signed a written plea agreement in which the correct mandatory term of post-release control was stated; thus we find he was on notice of the correct mandtory term and could suffer no prejudice from the subsequent misstatement at sentencing.

{¶51} Assignment of error five is without merit. We affirm the judgment and sentence of the Ashtabula County Court of Common Pleas as modified.

TIMOTHY P. CANNON, P.J., concurs,

DIANE V. GRENDELL, J., concurs with a Concurring Opinion.

DIANE V. GRENDELL, J., concurs with a Concurring Opinion.

{¶52} I concur in the judgment reached by the majority, affirming Johns' sentence and, in particular, modifying the term of postrelease control from five to three years. I write separately to cite additional authority supporting the remedy adopted by this court.

{¶53} Typically, appellate courts confronted with a defect in the imposition of a term of postrelease control would remand for a limited resentencing hearing to correct the error. In *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, however, the Ohio Supreme Court described remanding a case for resentencing as "just one arrow in the quiver" of possible means for curing a defect in the imposition of postrelease control. "Correcting a defect in a sentence without a remand is an option that has been used in Ohio and elsewhere for years in cases in which the original sentencing court, as here, had no sentencing discretion." *Id.* at ¶ 29, citing R.C. 2953.08(G)(2) ("an appellate court may 'increase, reduce *or* otherwise modify a sentence * * * *or* may vacate the sentence and remand the matter to the sentencing court for resentencing'"). "Correcting the defect without remanding for resentencing can provide an equitable, economical, and efficient remedy for a void sentence." *Id.* at ¶ 30.

{¶54} Correcting such a defect in the imposition of postrelease control on appeal and without remanding also has precedent in our own court. *See State v. McKenna*, 11th Dist. No. 2009-T-0034, 2009-Ohio-6154, ¶ 85 (where the trial court imposed a three-year period of postrelease control, "the sentence is modified with respect to postrelease control so that McKenna is now subject to a five-year period of postrelease control as provided for in R.C. 2967.28(B)(1)").

{¶55} For the reasons stated herein, I concur with the decision to modify Johns' sentence with respect to postrelease control.