

[Cite as *State v. Kidd*, 2010-Ohio-4161.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2010 CA 39
v.	:	T.C. NO. 03CR44
DAVID E. KIDD	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 3<sup>rd</sup> day of September, 2010.

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DAVID E. KIDD, #448054, Chillicothe Correctional Institution, P. O. Box 5500, Chillicothe, Ohio 45601  
Defendant-Appellant

FROELICH, J.

{¶ 1} In May of 2003, appellant entered guilty pleas to two counts of trafficking in crack cocaine (felonies of the second degree).

{¶ 2} The trial court sentenced appellant to an agreed-upon mandatory five-year

prison term on each count, to be served consecutively. The conviction and sentence was affirmed. *State v. Kidd*, Clark App. No. 2003 CA 43, 2004-Ohio-6784. There have been other motions and appeals that are not relevant to the specific matter now on appeal.

{¶ 3} On February 22, 2010, appellant filed a “Motion for Resentencing” arguing that his 2003 sentence was a nullity because his judgment entry of conviction stated that “the court has further notified the defendant that post-release control is optional in this case up to a maximum of three years. . . .” The trial court denied the motion without explanation and defendant timely appealed. The trial court simultaneously denied a motion to withdraw the plea, but this has not been appealed.

{¶ 4} The Appellant’s sole assignment of error states “The Trial Court Abuses Its Discretion When it Summarily Dismisses a Jurisdictional Motion filed to it by a Defendant when a Superior Court has Previously Decided The Issue And Precedence Has Been Established” [sic]. He argues that since he was sentenced for second degree felonies, which require mandatory post-release control for three years, his sentence, which included “optional” post-release control “up to a maximum of three years” was void; he notes that “[t]his statement [concerning ‘optional. . .up to a maximum of three years. . .’] is the basis of. . .[this] appeal.” He requests that we “reverse and remand this case to the trial court for resentencing.” The State has filed a brief in which it concedes error and requests that the matter be remanded for resentencing.

{¶ 5} “A trial court is required to notify a defendant at the time of the sentencing hearing of the potential of post-release control, and must incorporate that notice into its journal entry. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085. Where a sentence

fails to contain a statutorily mandated term, such as post-release control, this sentence is void. *Id.* The remedy is to resentence [the defendant] and notify him at the hearing of his post-release control requirements. *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197; *State v. Davis*, Montgomery App. No. 22403, 2008-Ohio-6722; R.C. 2929.191.” *State v. Golson*, Montgomery App. No. 22927, 2010-Ohio-560, ¶ 10.

{¶ 6} The sentence in this case is reversed, and the matter is remanded for sentencing according to law.

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DONOVAN, P.J. and FAIN, J., concur.

Copies mailed to:

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Hon. Douglas M. Rastatter