

[Cite as *State v. Renner*, 2011-Ohio-502.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellant	:	C.A. CASE NO. 24019
v.	:	T.C. NO. 08CR2419
	:	
WILLIAM I. RENNER	:	(Criminal appeal from Common Pleas Court)
	:	
Defendant-Appellee	:	

**OPINION**

Rendered on the 4<sup>th</sup> day of February, 2011.

.....  
CARLEY J. INGRAM, Atty. Reg. No. 0020084, Assistant Prosecuting Attorney, 301 W. Third Street, 5<sup>th</sup> Floor, Dayton, Ohio 45422  
Attorney for Plaintiff-Appellant

STEPHEN P. HARDWICK, Atty. Reg. No. 0062932, Assistant Public Defender, 250 E. Broad Street, Suite 1400, Columbus, Ohio 43215  
Attorney for Defendant-Appellee

.....  
DONOVAN, J.

{¶ 1} Plaintiff-appellant State of Ohio appeals a decision of the Montgomery County Court of Common Pleas, General Division, granting defendant-appellee William I. Renner’s motion to withdraw his guilty plea. Renner filed his motion to withdraw on January 8, 2010. The trial court issued its written decision granting Renner’s motion on

March 31, 2010. The State of Ohio filed a timely notice of appeal with this Court on April 30, 2010.

## I

{¶ 2} In early 2002, Renner was convicted of menacing by stalking, kidnapping with sexual activity, and criminal non-support of dependents in Case No. 2001 CR 768. On April 30, 2002, the trial court issued a termination entry sentencing Renner to an aggregate term of five years in prison and designating him as a sexual predator. Additionally, the termination entry stated in pertinent part:

{¶ 3} “The Court advised the defendant that following the defendant’s release from prison, *the defendant will/may serve a period of post-release control under the supervision of the parole board.*”

{¶ 4} Renner was released from prison in March of 2007, at which time he met with his parole officer who explained the conditions of his parole. Renner also signed and initialed a form entitled “Conditions of Supervision” which stated that he could be convicted for escape if he violated the terms of his supervision. On November 28, 2007, Renner was convicted of drug trafficking and sentenced to eight months in prison in Case No. 2007 CR 2991. The court also informed Renner that he was subject to three years of post-release control.

{¶ 5} Renner was released from prison on April 22, 2008, and told to report to his parole officer on April 24, 2008. Renner, however, never reported and was subsequently indicted on July 29, 2008, for escape based on his failure to report while under detention for the kidnapping charge from his 2001 conviction and sentence.

{¶ 6} On January 7, 2009, Renner pled guilty to one count of escape, and the trial court sentenced him to two years in prison. Approximately one year later on January 8, 2010, Renner filed a motion to withdraw his guilty plea. Renner argued that the Adult Parole Authority (APA) was without authority to impose post-release control because the termination entry in Case No. 2001 CR 768 did not affirmatively state that he would be subject to post-release control following his release. Accordingly, Renner was not subject to post-release control and detention in Case No. 2001 CR 768. Thus, Renner asserted that he was actually innocent of the charge of escape as set forth in the indictment. In a written decision filed on March 31, 2010, the trial court agreed with Renner and granted his motion to withdraw his guilty plea.<sup>1</sup>

{¶ 7} It is from this decision that the State now appeals.

## II

{¶ 8} The State's sole assignment of error is as follows:

{¶ 9} "THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING RENNER TO WITHDRAW HIS GUILTY PLEA TO THE CHARGE OF ESCAPE."

{¶ 10} In its sole assignment, the State contends that the trial court erred when it granted Renner's motion to withdraw his guilty plea to one count of escape from post release control. Specifically, the State argues that Renner's sentencing entry was sufficient to subject him to the supervision of the APA upon his release from prison in Case No. 2001 CR

---

<sup>1</sup>In its decision, the trial court specifically noted that "upon his release from prison on April 22, 2008, on his conviction in Case No. 2007 CR 2991, [Renner] signed paperwork that instructed him to report to the APA, which he never did. Thus, the question still remains whether [Renner] is subject to post-release control in Case No. 2007 CR 2991."

768. The State also argues that evidence of actual innocence is not a valid reason to justify the withdrawal of a guilty plea. Lastly, the State argues that pursuant to the Ohio Supreme Court's holding in *State v. Jordan*, 124 Ohio St. 3d 397, 2010-Ohio-281, it was irrelevant whether the termination entry properly imposed post-release control in order for the State to obtain a valid conviction for escape.

{¶ 11} “Crim.R. 32.1 states:

{¶ 12} ““A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.’

{¶ 13} “The distinction between pre-sentence and post-sentence motions to withdraw pleas of guilty or no contest indulges a presumption that post-sentence motions may be motivated by a desire to obtain relief from a sentence the movant believes is unduly harsh and was unexpected. The presumption is nevertheless rebuttable by showing of a manifest injustice affecting the plea. ‘A “manifest injustice” comprehends a fundamental flaw in the path of justice so extraordinary that the defendant could not have sought redress from the resulting prejudice through another form of application reasonably available to him or her.’ (citation omitted). The movant has the burden to demonstrate that a manifest injustice occurred. (Citation omitted).” *State v. Brooks*, Montgomery App. No. 23385, 2010-Ohio-1682, ¶ 6-8.

{¶ 14} In *State v. Jordan*, 124 Ohio St. 3d 397, 2010-Ohio-281, the Ohio Supreme Court held that in order “to obtain a conviction for escape under R.C. 2921.34(A)(1), the state may prove that the defendant was subject to post-release control without proving that

during a sentencing hearing the trial court orally notified the defendant that he would be subject to post-release control.” However, the Supreme Court specifically stated in *Jordan* that its holding did not control in a situation similar to the instant case with respect to whether a defendant can be proved to be under detention for purposes of R.C. 2921.34(A)(1) if the evidence affirmatively establishes that the trial court failed to meet its duties with respect to the imposition of post-release control. 124 Ohio St.3d at 399.

{¶ 15} It is undisputed that in the termination entry filed on April 30, 2002, the trial court failed to inform Renner that he was subject to a mandatory term of five years of post-release control based on his conviction for kidnapping (sexual activity), a felony of the first degree. R.C. 2967.28 provides that every prison sentence for a felony of the first degree or a felony sex offense shall include a mandatory five-year period of post release control. *State v. Shackelford*, Montgomery App. No. 22891, 2010-Ohio-845. A trial court is required to notify the offender at the sentencing hearing about post-release control, and is further required to incorporate the specifics of that notice into its judgment of conviction setting forth the sentence the court imposed. Crim.R. 32(C). *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085; *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126.

{¶ 16} As we recently stated in *State v. Terry*, Montgomery App. No. 09CA0005, 2010-Ohio-5391, among the most basic requirements of post- release control notification per R.C. 2967.28 and the Ohio Supreme Court’s existing precedent is that the court must both notify the offender of the length of the term of post-release control that applies to his conviction(s) and incorporate that notification into its journalized judgment of conviction pursuant to Crim.R. 32(C). *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, at ¶69.

Both are necessary in order to authorize the APA to exercise the authority that R.C. 2967.28 confers on that agency.

{¶ 17} In cases in which a trial judge does not impose post-release control in accordance with statutorily mandated terms, that portion of the sentence is void. *State v. Bloomer*, 122 Ohio St.3d 200, at ¶¶69, 71; *State v. Fischer*, Slip Opinion No. 2010-Ohio-6238, at ¶30; R.C. 2967.28(B). This holding only applies to defendants who were sentenced prior to July 11, 2006. *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434; R.C. 2929.191; *State v. Terry*, 2010-Ohio-5391. R.C. 2929.191 creates a special procedure to correct defects in notification at the sentencing hearing and/or in the judgment of conviction. *Id.* We also note that “[p]rinciples of res judicata, including the doctrine of the law of the case, do not preclude appellate review. The sentence may be reviewed at any time, on direct appeal *or by collateral attack.*” *State v. Fischer*, 2010-Ohio-6238, at ¶30.

{¶ 18} The State argues that the language in Renner’s sentencing entry was sufficient to subject him to the supervision of the APA upon his release from prison in Case No. 2001 CR 768. The State failed to advance this argument before the trial court, and has therefore, waived it for the purposes of this appeal. Even if the State had preserved this argument for appeal, we find that it lacks merit. Based on his conviction for kidnapping, Renner was subject to a mandatory five-year term of post-release control. The language in Renner’s 2002 termination entry failed to reflect that fact. Since the termination entry failed to contain the statutorily mandated term of five years, it was insufficient to notify Renner that he would be subject to the supervision of the APA.

{¶ 19} Upon review, we find that the termination entry in Case No. 2001 CR 768 did not affirmatively state that Renner would be subject to five years mandatory post-release control following his release in 2007, and that portion of his sentence was, therefore, void. Thus, the APA did not have the authority to enforce post-release control restrictions thereunder, and he was not legally under detention at the time the alleged escape was committed for the kidnapping charge in Case No. 2001 CR 768. A void post-release control supervision cannot support a charge of escape. In light of the foregoing, the trial court did not abuse its discretion when it granted Renner's motion to withdraw his guilty plea.

{¶ 20} The State's sole assignment of error is overruled.

### III

{¶ 21} The State of Ohio's sole assignment of error having been overruled, the judgment of the trial court is affirmed.

.....

GRADY, P.J. and FROELICH, J., concur.

Copies mailed to:

Carley J. Ingram  
Stephen P. Hardwick  
Hon. Barbara P. Gorman