

including R.C. 2905.02(A)(1) and (B), abduction committed with a sexual motivation. The trial court imposed an aggregate prison term of four and one-half years for Defendant's three convictions and a five year period of post-release control based on Defendant's abduction conviction. Defendant filed a notice of appeal.

FIRST ASSIGNMENT OF ERROR

{¶ 2} "THE TRIAL COURT ERRED IN SENTENCING MR. FERGUSON TO A MANDATORY 5 YEARS OF POST-RELEASE CONTROL."

{¶ 3} R.C. 2967.28(B) provides in relevant part:

{¶ 4} "(B) Each sentence to a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment. * * * Unless reduced by the parole board pursuant to division (D) of this section when authorized under that division, a period of post-release control required by this division for an offender shall be of one of the following periods:

{¶ 5} "(1) For a felony of the first degree or for a felony sex offense, five years;

{¶ 6} "(2) For a felony of the second degree that is not a felony sex offense, three years;

{¶ 7} "(3) For a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened physical harm to a person, three years."

{¶ 8} The post-release control provisions of R.C. 2967.28(B) are mandatory. The trial court imposed a five year term of post-release control on its understanding that abduction committed with a sexual motivation in violation of R.C. 2905.02(A)(1) and (B) is a felony sex offense. R.C. 2967.28(A)(3) provides: "'Felony sex offense' means a violation of a section contained in Chapter 2907. of the Revised Code that is a felony." Not being a violation of a section of Chapter 2907 of the Revised Code, abduction committed with a sexual motivation in violation of R.C. 2905.02(A)(1) and (B) is not a felony sex offense. Neither is the abduction offense a first degree felony, but is instead a third degree felony. R.C. 2905.02(C). Therefore, the court was authorized and required to impose a three year period of post-release control. R.C. 2967.28(B)(3).

{¶ 9} The State concedes that the trial court erred when it instead imposed a five-year term of post-release control authorized and required by R.C. 2967.28(B)(1).

{¶ 10} The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

{¶ 11} "THE COURT ERRED IN SENTENCING MR. FERGUSON CONTRARY TO LAW BY IMPOSING CONSECUTIVE SENTENCES WITHOUT MAKING THE FINDINGS SET FORTH IN R.C. 2929.14(E)(4)."

{¶ 12} The findings requirement for imposing consecutive sentences in R.C. 2929.14(E)(4) was severed from that section by *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. Defendant argues that *Foster's* holding in that respect was effectively overruled by *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517, and that as a result the findings requirements of R.C. 2929.14(E)(4) have been revived. That view was more recently rejected by The Supreme Court of Ohio in *State v. Hodge*, _____ Ohio St.3d ____, 2010-Ohio-6320.

{¶ 13} Defendant's second assignment of error is overruled

{¶ 14} Having sustained Defendant's first assignment of error, we will modify the judgment of conviction pursuant to R.C. 2953.08(G)(2) to instead impose the three year period of post-release control mandated by R.C. 2967.28(B)(3). *State v. Fisher*, _____ Ohio St.3d _____, 2010-Ohio-6238, ¶29. As modified, the judgment will be affirmed.

DONOVAN, J. and FROELICH, J. concur.

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