

[Cite as *State v. Thompson*, 2015-Ohio-1473.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 26395
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2014-CR-473
v.	:	
	:	(Criminal Appeal from
RYAN THOMPSON	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 17th day of April, 2015.

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HALL, J.

{¶ 1} Ryan Thompson appeals from the trial court’s denial of his post-conviction

motion for resentencing based on a void judgment.

{¶ 2} In his sole assignment of error, Thompson contends the trial court erred at sentencing in failing to provide statutorily compliant notice about post-release control. Therefore, he asserts that he is entitled to a limited re-sentencing for the purpose of properly imposing post-release control. For its part, the State concedes error and agrees that a remand is necessary.

{¶ 3} The record reflects that Thompson filed a pro se motion for resentencing on August 7, 2014, raising various issues regarding the imposition of post-release control. (Doc. #24). The trial court overruled the motion on August 27, 2014. (Doc. #25). Thompson filed a pro se notice of appeal on September 22, 2014. (Doc. #29). Counsel subsequently filed an appellate brief on Thompson's behalf on December 30, 2014, focusing on two issues: (1) the trial court's failure to make clear at sentencing whether post-release control was mandatory or discretionary; and (2) the trial court's failure to notify Thompson at sentencing about the consequences of violating post-release control.

{¶ 4} On January 16, 2015, the State moved for a sixty-day extension of time to file its appellate brief. This court sustained the motion on January 29, 2015, giving the State until March 20, 2015 to file a brief. The State subsequently filed its brief, a "notice of agreed error," and a motion to expedite the appeal on March 20, 2015. In support of the motion to expedite, the State noted that "Appellant is nearing the completion of his sentence." As of that date, Thompson was about two weeks away from completing his aggregate one-year prison sentence in this case for drug trafficking and having a weapon while under disability.¹

¹ The one-year sentence in this case was ordered to be served concurrent with a

{¶ 5} On April 3, 2015, this court denied the State's motion to expedite the appeal. Thereafter, on April 6, 2015, Thomson moved to supplement his assignment of error to request a new remedy. In support of his motion, Thompson argued that he had been released from prison and that his release precluded a remand for resentencing and necessitated a remand for the trial court to vacate post-release control. Upon review, we hereby sustain Thompson's motion to supplement his assignment of error to request a new remedy.

{¶ 6} The Ohio Department of Rehabilitation and Correction's web site reflects that Thompson was released from prison on April 6, 2015. *State v. Evans*, 2d Dist. Montgomery No. 24928, 2012-Ohio-5099, ¶ 8-9 (taking judicial notice of the ODRC website). It is well established "that once an offender has been released from prison, he cannot be subjected to another sentencing to correct the trial court's flawed imposition of postrelease control." *State v. Holdcroft*, 137 Ohio St. 3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 11. Thus, as Thompson notes, we cannot now order a remand for a limited resentencing.

{¶ 7} We agree with both parties, however, that the trial court failed to provide statutorily compliant notice about post-release control at sentencing. The trial court told Thompson, "[W]hen you get released from prison, you're going to have to serve a period of three years' post release control or you may have to[.]" (Tr. at 14-15). It then reiterated, "But with these two [convictions], you're going to have to * * * serve that [post-release control], or you may have to." (*Id.* at 15). These statements by the trial court were ambiguous and equivocal with regard to whether post-release control was mandatory or

now-completed sentence from an earlier case. (Tr. at 13).

discretionary. The trial court also failed to inform Thompson at sentencing about the potential consequences of violating post-release control.

{¶ 8} The Ohio Supreme Court has cautioned that “to comply with separation-of-powers concerns and to fulfill the requirements of the postrelease-control-sentencing statutes, especially R.C. 2929.19(B) and 2967.28, a trial court must provide statutorily compliant notification to a defendant regarding postrelease control at the time of sentencing, including notifying the defendant of the details of the postrelease control and the consequences of violating postrelease control.” (Citations omitted.) *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 18. Moreover, “a sentence that does not properly impose postrelease control is void[.]” (Citations omitted.) *Id.* at ¶ 23.

{¶ 9} Based on the authority set forth above, we conclude (1) that the post-release control portion of Thompson’s sentence is void and (2) that his release from prison precludes resentencing for the proper imposition of post-release control. Consequently, we hereby reverse the trial court’s judgment with regard to the imposition of post-release control in its termination entry and remand the cause with instructions to vacate post-release control. *Holdcroft* at ¶ 19.

{¶ 10} Judgment reversed and cause remanded.

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FROELICH, P.J., and DONOVAN, J., concur.

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