[Cite as *State v. Adkins*, 2014-Ohio-3389.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

STATE OF OHIO,	:	Case No. 13CA17
	:	
Plaintiff-Appellee,	:	
	:	DECISION AND
v.	:	JUDGMENT ENTRY
	:	
ELVIS ADKINS,	:	
	:	**RELEASED: 7/23/2014**
Defendant-Appellant.	:	

APPEARANCES:

Gene Meadows, Portsmouth, Ohio, for appellant.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and W. Mack Anderson, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

Harsha, J.

{¶1} Elvis Adkins appeals his conviction for complicity to illegal manufacture of drugs and argues both that his conviction is against the manifest weight of the evidence and there is insufficient evidence to support his conviction. Adkins challenges his codefendants' credibility and argues that the jury could not reasonably believe their testimony because of their participation in the crime and plea deals with the state. He also points to the inconsistencies in their testimony.

{¶2} However, the jury was free to believe all, part, or none of a witness's testimony. And when conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the jury believed the testimony presented by the state. And considering the other evidence presented at trial demonstrating Adkins's participation in the crime, we cannot say that the jury clearly lost its way or created a manifest miscarriage of justice by convicting him. Moreover, when

an appellate court concludes that the weight of the evidence supports a defendant's conviction, this conclusion necessarily also includes a finding that sufficient evidence supports the conviction. Accordingly, we also reject Adkins's arguments that his conviction was not supported by sufficient evidence.

{¶3} Adkins also contends that the trial court abused its discretion and deprived him of a fair trial by allowing his codefendant to testify about whether Adkins knew how to manufacture methamphetamine. However, the codefendant had already testified without objection that Adkins assisted him in making methamphetamine on the day in question and that Adkins used his own bottle to make the drug. Thus, his testimony was not based on pure speculation as Adkins claims, so this argument is meritless.

{¶4} Next, Adkins argues that his sentence was unreasonable, arbitrary and capricious because the trial court imposed a harsher sentence on him than his codefendants without making any findings to justify the increase. However, Adkins fails to support his argument with any legal authority in violation of App.R. 16(A)(7). And because we may disregard an appellant's assignment of error when he fails to present any citations to case law or statutes in support of his assertions, we summarily reject his argument.

{¶5} Finally, Adkins argues that his sentence is void because the trial court failed to notify him that he would be subject to postrelease control. We agree in part. Although the record shows that the trial court notified Adkins about postrelease control in its sentencing entry, it was also statutorily required to notify him at the sentencing hearing. Because it failed to do so, that portion of his sentence is void and we remand for resentencing limited to the issue of proper imposition of postrelease control.

I. FACTS

{¶6} The Lawrence County Sheriff's Office responded to a 911 call that there was smoke coming from an apartment in The Lawrence Village Apartments in South Point, Ohio. Upon arriving at the scene Deputy Randall Rogers saw smoke coming from a window on the second floor of the apartment. He and another officer knocked on the front and rear doors without response. When he entered the first floor of the apartment Deputy Rogers smelled a strong chemical odor, which got stronger as he went upstairs. On the second floor, on the night of July 20, 2013, he found Jessica Robinson, Ashley Kelly and Patrick Kelly lying on the bedroom floors unresponsive. After a few minutes the individuals woke up and were removed from the apartment. The investigation revealed that Jessica Robinson rented the apartment and it was used to manufacture methamphetamine.

{¶7} The following day the Ohio Highway Patrol stopped Adkins and took him to the Lawrence County Prosecutor's Office for questioning. During his interview Adkins admitted to using methamphetamine with Patrick Kelly at Robinson's apartment on the day in question and that he left the apartment approximately one hour before the police arrived. He also admitted to purchasing liquid drain cleaner and coffee filters, but denied making methamphetamine.

{¶8} The Lawrence County Grand Jury returned an indictment charging Adkins with one count of complicity to illegal manufacture of drugs in violation of R.C. 2923.03 and R.C. 2925.04(A), a second degree felony.[1] Adkins pleaded not guilty and the matter proceeded to trial. The jury returned a guilty verdict and the trial court imposed a

[1] It seems the indictment incorrectly identified the Revised Code section as 2925.04(A)(3)(a), as no subsections of section (A) exist. Neither party raises the issue; likewise we do not address it.

sentence of seven years imprisonment, as well as a mandatory fine and license suspension.

II. ASSIGNMENTS OF ERROR

{¶9} Adkins raises five assignments of error for our review:

> 1. THE JUDGMENT OF CONVICTION IS CONTRARY TO LAW AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION IN THAT THERE WAS INSUFFICIENT EVIDENCE ADDUCED TO ESTABLISH EACH AND EVERY ELEMENT OF THE OFFENSE CHARGED BEYOND A REASONABLE DOUBT.
>
> 2. DEFENDANT- APPELLANT'S CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.
>
> 3. THE TRIAL COURT ABUSED ITS DISCRETION AND DEPRIVED THE DEFENDANT-APPELLANT OF A FAIR TRIAL.
>
> 4. THE TRIAL COURT ABUSED ITS DISCRETION AND IMPOSED A SENTENCE THAT IS UNREASONABLE, ARBITRARY AND UNCONSCIONABLE.
>
> 5. THE TRIAL COURT FAILED TO COMPLY WITH THE REQUIREMENTS OF RC 2929.19 BY FAILING TO IMPOSE POST RELEASE CONTROL.

III. LAW AND ANALYSIS

A. Weight & Sufficiency of the Evidence

{¶10} In his first two assignments of error Adkins argues that there was insufficient evidence to support his conviction and his conviction is against the manifest weight of the evidence. For ease of analysis we address his arguments out of order.

1. Weight of the Evidence

{¶11} When considering whether a conviction is against the manifest weight of the evidence, we must review the entire record, weigh the evidence and all reasonable

inferences and consider the credibility of witnesses. *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 119. However, we must also bear in mind that credibility generally is an issue for the trier of fact. *State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio-6046, 837 N.E.2d 315, ¶ 191; *State v. Linkous*, 4th Dist. Scioto No. 12CA3517, 2013 -Ohio- 5853, ¶ 70. Accordingly we may reverse the conviction only if it appears that, when resolving the conflicts in evidence the fact-finder, "'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541(1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). Thus we will exercise our discretionary power to grant a new trial "'only in the exceptional case in which the evidence weighs heavily against the conviction.'" *Thompkins* at 387, quoting *Martin* at 175.

{¶12} Here, the jury convicted Adkins of complicity to illegal manufacture of drugs in violation of R.C. 2923.03 and R.C. 2925.04(A). R.C. 2923.03 defines complicity as "(A) No person, acting with the kind of culpability required for the commission of an offense, shall * * * (2) Aid or abet another in committing the offense[.]" R.C. 2925.04(A) provides: "No person shall * * * knowingly manufacture or otherwise engage in any part of the production of a controlled substance." R.C. 2925.04(C)(3)(a) further states, subject to certain exceptions not relevant to this case "[i]f the drug involved in the violation of division (A) of this section is methamphetamine * * * illegal manufacture of drugs is a felony of the second degree * * *."

{¶13} "To support a conviction for complicity by aiding and abetting pursuant to R.C. 2923.03(A)(2), the evidence must show that the defendant supported, assisted,

encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal." *State v. Johnson*, 93 Ohio St.3d 240, 754 N.E.2d 796 (2001), syllabus. The defendant's intent may be inferred from the circumstances surrounding the crime, such as his presence, companionship, and conduct before and after the offense was committed. *Id*. at syllabus, 245; *State v. Inman*, 4th Dist. Ross No. 13CA3374, 2014-Ohio-786, ¶ 36.

{¶14} In the state's case-in-chief Investigator Perry Adkins of the Lawrence County Drug and Major Crimes Task Force described the process of making methamphetamine and the necessary ingredients, which include liquid drain cleaner and some type of filter, e.g. a coffee filter. He testified that he responded to the scene on the day in question and found several items in Robinson's apartment necessary to manufacture methamphetamine, including crystal Drano, liquid drain cleaner, camp fuel, a partially used cold pack, rubber gloves, stripped lithium batteries, an empty box of decongestant, pliers, empty blister packs from pseudoephedrine, and an acid gas generator. He explained that he found the liquid drain cleaner in the upstairs bathroom and coffee filters in several rooms of the residence, including one filter with an "unknown substance."

{¶15} Perry Adkins also testified that each item found in Robinson's apartment is necessary to make a methamphetamine lab and he "absolutely" believed there was an active lab in Robinson's apartment prior to law enforcement's arrival on the day in question. He did not however find any methamphetamine.

{¶16} Elvis Adkins's codefendant Patrick Kelly testified that he pleaded guilty to the manufacture of methamphetamine and the state was going to recommend a

sentence of four years based on his testimony against Adkins. He explained that in the days prior to July 20, 2013, he and Adkins had been "in and out" of Robinson's apartment and stayed there during that time. Kelly admitted he made methamphetamine in Robinson's apartment on the day in question and Adkins assisted him. Kelly testified that he and Adkins both used their own bottles to make the drug, but he did not see Adkins "do everything" because he was focused on his own bottle to "make sure it didn't blow up in [his] face * * *." Kelly put all the ingredients together "in the first pot" downstairs with Adkins and then went upstairs to "be alone" and finish the process. He also testified that he and Adkins had made methamphetamine together in the past.

{¶17} Ashley Kelly, Patrick Kelly's wife, testified that she pleaded guilty to complicity to manufacturing methamphetamine based on the events of the day in question. She was sentenced to four years and the state made "no promises" in exchange for her testimony. On the day in question, she, Adkins, Patrick Kelly, and Robinson were together in Robinson's apartment. She testified that during that time she saw Adkins and Patrick Kelly make methamphetamine and about 45 minutes before the police arrived they injected the methamphetamine Adkins made.

{¶18} David Marcum, Chief Investigator at the Lawrence County Prosecutor's Office, interviewed Adkins the day after the incident and the state played a recording of the interview for the jury. During the interview Adkins admitted to being in Robinson's apartment about an hour before the police arrived and stated he left to go to the gas station and buy cigarettes. He also admitted to using methamphetamine with Patrick Kelly at the apartment on the day in question, but denied making methamphetamine

during that time. Adkins also admitted during the interview that he went to the South Point Wal-mart on the day in question and bought coffee filters and liquid drainer cleaner. He could not remember the brand of the drain cleaner, but recalled it was a "tall black bottle" that said "drain opener."

{¶19} The defense called Ashley and Patrick Kelly as witnesses. Ashley Kelly again testified that Patrick Kelly and Adkins were both making methamphetamine on the day in question. She explained that they were "cooking" out of different bottles and she "witnessed" Adkins with his own bottle. She also testified that while having a phone conversation with her husband on the day in question, she heard Adkins name the ingredients they needed to make methamphetamine. Ashley Kelly also testified about where Patrick Kelly learned to make methamphetamine. She stated that "a man named Jerrod Sumney" taught Patrick to manufacture the drug a "couple months" ago, and Adkins was not the one who taught Patrick. However, Patrick Kelly testified that his brother taught him to make methamphetamine over a year ago.

{¶20} Adkins bases his argument that his conviction is against the manifest weight of the evidence on Patrick and Ashley Kelly's credibility and argues that the jury could not reasonably believe their testimony because of their participation in the crime and plea deals with the state. He also points to the inconsistencies in their testimony regarding who taught Patrick Kelly to make methamphetamine. However, "having heard the testimony and observed the demeanor of the witnesses, the jury may choose to believe all, part, or none of their testimony." *State v. Sizemore*, 4th Dist. Scioto No. 12CA3510, 2013-Ohio-3749, ¶ 19. When conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the jury

believed the testimony presented by the state. *State v. Tyson*, 4th Dist. Ross No. 12CA3343, 2013-Ohio-3540, ¶ 21. Determining witness credibility is the role of the fact-finder, not this court.

{¶21} Moreover, Adkins conveniently ignores the other evidence that demonstrated his participation in the crime. Adkins admitted to purchasing liquid drain cleaner and coffee filters from the South Point Wal-mart on the day in question. Although he claimed to have taken the items to a house in Huntington, he also admitted to being in Robinson's apartment about one hour before law enforcement arrived. Perry Adkins also testified that he found many ingredients in Robinson's apartment necessary to make methamphetamine, including liquid drain cleaner and coffee filters. The state also introduced into evidence photographs of the items found in the apartment, including one which showed a tall black bottle labeled "DRAIN OPENER" in large white letters. This bottle was consistent with the description Adkins gave Marcum of the bottle he purchased from Wal-mart.

{¶22} Adkins argues that the jury was "negatively impacted by the audio taped conversation" he had with the investigators because of the "crude mannerism in his speech"; we find this statement speculative at best. Moreover, there was no attempt on his part to exclude the tape on this basis, so he has forfeited that issue.

{¶23} Adkins also challenges Marcum's testimony about the date of his interview and contends that Marcum testified he interviewed Adkins on January 21, 2013, which was well before the day in question. On direct examination Marcum testified that he arrived on the scene "on January 21st, roughly midnight * * * on January 21st at approximately eight p.m. I was contacted actually by the Sheriff's Office. I was informed

that the highway patrol has some contact with Elvis Adkins * * * and they agreed to transport him down to the Lawrence County Prosecutor's Office to where I could speak with him." However, he later clarified that he "conducted [the interview] with Elvis Adkins on January . . . correction of July 21st of this year." And although Adkins claims even if the interview did take place on July 21, 2013, this "further proves [he] was not engaged in the activities charged herein," he does not explain his rationale for this statement. Because the state's evidence showed that the police responded to Robinson's apartment on the night of July 20, 2013, we find his argument meritless.

{¶24} The jury is in the best position to assess witness credibility by observing their demeanor, gestures, and voice inflections. We cannot say that this is a case where the jury clearly lost its way or created a manifest miscarriage of justice by convicting Adkins of complicity to illegal manufacture of drugs. *See State v. Grube*, 2013-Ohio-692, 987 N.E.2d 287, ¶ 31, 32 (4th Dist.). Accordingly, we reject Adkins's argument and overrule his second assignment of error.

2. Sufficiency of the Evidence

{¶25} In his first assignment of error, Adkins also argues that there was insufficient evidence for the jury to convict him. "A claim of insufficient evidence invokes a due process concern and raises the question whether the evidence is legally sufficient to support the verdict as a matter of law." *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 118. "In reviewing such a challenge, '[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.'" *Id.*, quoting *State v. Jenks*, 61 Ohio St.3d

259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, superseded by constitutional amendment on other grounds.

{¶26} "'[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.'" *Hunter* at ¶ 118, quoting *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. Accordingly, "a reviewing court is not to assess 'whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction.'" *State v. Davis*, 4th Dist. Ross No. 12CA3336, 2013-Ohio-1504, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541(1997) (Cook, J., concurring).

{¶27} When an appellate court concludes that the weight of the evidence supports a defendant's conviction, this conclusion necessarily also includes a finding that sufficient evidence supports the conviction.[2] *State v. Markins*, 4th Dist. Scioto No. 10CA3387, 2013-Ohio-602, ¶ 28. Having already determined that Adkins's conviction is not against the manifest weight of the evidence, we necessarily determined that his conviction was also supported by sufficient evidence and overrule his first assignment of error. *See id.*

B. Admission of Evidence

{¶28} In his third assignment of error, Adkins argues that the trial court abused its discretion and deprived him of a fair trial by allowing Patrick Kelly to testify over objection about whether Adkins knew how to manufacture methamphetamine. He points to the following exchange during Patrick Kelly's redirect examination:

THE STATE: Does Elvis know how to cook meth?

[2] The inverse proposition is not always true. *See State v. Thompkins*, 78 Ohio St.3d 380, 387-388, 678 N.E.2d 541 (1997).

DEFENSE COUNSEL: Objection as to what Adkins knows or doesn't know.

THE COURT: Overruled. You can answer.

PATRICK KELLY: I'm sure he, I mean I'm sure he knows as much as I do. He's been around . . .

THE STATE: Has he taught you things about cooking meth?

PATRICK KELLY: Has he taught me things?

THE STATE: Yes.

PATRICK KELLY: I'm sure we taught each other things.

THE STATE: So you've cooked meth together?

PATRICK KELLY: We've been around each other while we're cooking, yeah.

THE STATE: Specifically, on this occasion he was there in the apartment that day, on July 20th?

PATRICK KELLY: Yes.

{¶29} "'The admission or exclusion of relevant evidence rests within the sound discretion of the trial court.'" *State v. Robb*, 88 Ohio St.3d 59, 68, 723 N.E.2d 1019 (2000), quoting *State v. Sage*, 31 Ohio St.3d 173, 31 OBR 375, 510 N.E.2d 343 (1987), paragraph two of the syllabus; *Linkous*, 4th Dist. Scioto No. 12CA3517, 2013-Ohio-5853, at ¶ 22. Absent an abuse of discretion, an appellate court will not disturb a trial court's ruling regarding the admissibility of evidence. *Linkous* at ¶ 22, citing *State v. Martin*, 19 Ohio St.3d 122, 129, 483 N.E.2d 1157 (1985). "Generally, an abuse of discretion connotes more than an error of law or judgment; rather, it implies that a court's attitude is unreasonable, arbitrary, or unconscionable." *Linkous* at ¶ 22, citing *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶30} Adkins argues that "[t]here was no foundation established to determine if the witness knew or could have known [Adkins's] ability to cook meth," and Patrick Kelly's answer was "pure speculation." However, Patrick Kelly had already testified on direct examination without objection that Adkins "assisted" him in making methamphetamine on the day in question and that Adkins was using his own bottle to make the drug. In addition, Patrick Kelly's testimony on redirect established that he had "been around" Adkins while he was making methamphetamine and they had "taught each other things." Thus, his testimony that Adkins knew "as much as [he] did," about manufacturing methamphetamine was not based on pure speculation, but was founded on personal knowledge in compliance with Evid.R. 602. Thus, we reject Adkins's third assignment of error.

C. Adkins's Sentence

{¶31} In his fourth assignment of error, Adkins contends that the trial court imposed a sentence that was unreasonable, arbitrary and capricious. Specifically, Adkins contends that the trial court imposed a harsher sentence on him than his codefendants, Ashley and Patrick Kelly, without "mak[ing] any findings to justify the increase in sentence * * *."

{¶32} "Generally, when reviewing felony sentences, we apply the standard of review set forth in R.C. 2953.08(G)(2)." *State v. Baker*, Athens No. 13CA18, 2014-Ohio-1967, ¶ 25. *See also State v. Brewer*, Meigs No. 14CA1, 2014-Ohio-1903, ¶ 33 ("we join the growing number of appellate districts that have abandoned the *Kalish* plurailty's second-step abuse-of-discretion standard of review; when the General Assembly reenacted R.C. 2953.08(G)(2), it expressly stated that '[t]he appellate court's

standard of review is not whether the sentencing court abused its discretion'"). R.C. 2953.08(G)(2) specifies that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either that "the record does not support the sentencing court's findings" under the specified statutory provisions or "the sentence is otherwise contrary to law."

{¶33} Here, Adkins makes no argument that his conviction is clearly and convincingly contrary to law and instead only argues the trial court abused its discretion by imposing a longer sentence on him than his codefendents. However, under the standard of review set forth in R.C. 2953.08(G)(2) appellate courts do not determine whether the trial court abused its discretion. *Brewer* at ¶ 37.

{¶34} Moreover, other than reciting the standard for abuse of discretion Adkins fails to support his argument with any legal authority. "'If an argument exists that can support [an] assignment of error, it is not this court's duty to root it out. * * * It is not the function of this court to construct a foundation for [an appellant's] claims[.]'" *In re A.Z.*, 4th Dist. Meigs No. 11CA3, 2011-Ohio-6739, ¶ 18, quoting *Coleman v. Davis*, 4th Dist. Jackson No. 10CA5, 2011-Ohio-506, ¶ 13. "In other words, '[i]t is not * * * our duty to create an argument where none is made.'" *In re A .Z.* at ¶ 18, quoting *Deutsche Bank Natl. Trust Co. v. Taylor*, 9th Dist. Summit No. 25281, 2011-Ohio-435, ¶ 7. Therefore, "[w]e may disregard any assignment of error that fails to present any citations to case law or statutes in support of its assertions." *Fry v. Holzer Clinic, Inc*., 4th Dist. Gallia No. 07CA4, 2008-Ohio-2194, ¶ 12; App.R. 12(A)(2). In this case, we do not believe the interests of justice require us to address Adkins's argument and summarily reject his fourth assignment of error. *See Prokos v. Hines*, 4th Dist. Athens No. 10CA57, 2014-

Ohio-1415, ¶ 57 (declining to "to consider deficient assignments of error in the interests of justice").

D. Postrelease Control

{¶35} In his fifth assignment of error, Adkins argues that the trial court failed to notify him about postrelease control in violation of R.C. 2929.19(B)(2)(c) and therefore his sentence is void. The state agrees that at the sentencing hearing the trial court did not notify Adkins that he would be subject to postrelease control, but counters Adkins was "fully advised of the law" because the trial court advised him of postrelease control in its sentencing entry.

{¶36} Under R.C. 2929.19(B)(2)(c) and (e), a trial court must notify certain felony offenders at the sentencing hearing that: 1.) the offender is subject to statutorily mandated postrelease control; and 2.) the parole board may impose a prison term of up to one-half of the offender's originally-imposed prison term if the offender violates the post-release control conditions. *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, ¶ 11; *State v. Harris*, 4th Dist. Pickaway No. 11CA15, 2012-Ohio-2185, ¶ 7. Not only is a trial court "required to notify the offender about postrelease control at the sentencing hearing," it "is further required to incorporate that notice into its journal entry imposing sentence." *State v. Harris*, 132 Ohio St.3d 318, 2012-Ohio-1908, 972 N.E.2d 509, ¶ 9, citing *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶ 9. However, the "main focus" of the postrelease control sentencing statutes is "on the notification itself and not on the sentencing entry." *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 19.

{¶37} When a trial court fails to provide the required notification at either the sentencing hearing or in the sentencing entry, *that part of the sentence* is void and must be set aside. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 27-29; *Harris*, 4th Dist. Pickaway No. 11CA15, 2012-Ohio-2185, at ¶ 7. "[I]n most cases, the prison sanction is *not* void and therefore 'only the offending portion of the sentence is subject to review and correction.'" (Emphasis sic.) *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 7, quoting *Fischer* at ¶ 27.

{¶38} Here, the record shows that the trial court did not notify Adkins at his sentencing hearing about postrelease control or the potential consequences for violating his postrelease control conditions as required by R.C. 2929.19(B)(2)(c) and (e). Therefore, that portion of his sentence is void and we sustain his fifth assignment of error.

IV. CONCLUSION

{¶39} Because the trial court failed to properly notify Adkins of postrelease control, we sustain his fifth assignment of error and remand for resentencing limited to the issue of the proper imposition of postrelease control. *See State v. Triplett*, 4th Dist. Lawrence No. 10CA35, 2011-Ohio-4628, ¶ 13. We overrule his remaining assignments of error and affirm his conviction and portions of his sentence not related to postrelease control.

JUDGMENT AFFIRMED IN PART,
REVERSED IN PART,
AND CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED IN PART AND REVERSED IN PART and that the CAUSE IS REMANDED. Appellant and Appellee shall split the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J. & Hoover, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.