[Cite as *State v. Adkins*, 2015-Ohio-2830.]

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

STATE OF OHIO,	:	Case No. 14CA29
Plaintiff-Appellee,	:	
v.	:	DECISION AND JUDGMENT ENTRY
ELVIS ADKINS,	:	
Defendant-Appellant.	:	**RELEASED: 7/8/2015**

APPEARANCES:

David A. Sams, West Jefferson, Ohio, for appellant.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and Robert C. Anderson, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

Per Curiam

{¶1} Elvis Adkins once again appeals his sentence, this time after our partial reversal and remand due to the trial court's failure to give the proper statutory notification under R.C. 2929.19(B) concerning the conditions of postrelease control. Now Adkins asserts that his sentence is void because the trial court failed to inform him of the potential additional sanctions he faces under R.C. 2929.141(A) for a violation of the conditions of postrelease control. Based upon our recent decision in *State v. Pippen,* 4th Dist. Scioto App. No. 14CA3595, 2014-Ohio-4454, we agree that the trial court was required to advise Adkins that under R.C. 2929.141(A), a violation of postrelease control could result in not only receiving a prison sentence for the violation of community control, but also that such a sentence would be served consecutively to

any prison sentence he received for committing a new crime. Therefore, we again reverse and remand the postrelease control sanction portion of Adkins's sentence.

{¶2} Adkins also contends the entry of sentence upon remand fails to satisfy the formal requirements for a final judgment under Crim. R. 32(C) and the "one document rule" under *State v. Baker,* 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, ¶ 18. The state agrees and so do we. Therefore, we also reverse and remand for correction of this oversight.

I. FACTS

{¶3} A jury convicted Elvis Adkins of one count of complicity to the illegal manufacture of drugs, a second degree felony, and the trial court sentenced him to seven years in prison. On appeal he raised a number of assignments of error, but we sustained only one. We found that although the record showed that the trial court notified Adkins about postrelease control in its sentencing entry, it was also statutorily required by R.C. 2929.19(B)(2)(c) and (e) to notify him at the sentencing hearing. Because it failed to do so, that portion of his sentence was void and we remanded for resentencing limited to the issue of proper imposition of postrelease control. See *State v. Adkins*, 4th Dist. Lawrence App. No. 13CA17, 2014-Ohio-3389.

{¶4} On remand the trial court held a resentencing hearing where Adkins appeared with counsel. The trial court advised him that he was subject to postrelease control for three years and that the parole board may impose a prison term of up to one half of the original imposed prison term if Adkins violated postrelease control. This appeal followed.

{¶5} The trial court appointed him counsel, who advised us that he reviewed the record and could discern no meritorious claims for appeal. Counsel moved to withdraw under *Anders v. California,* 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) and submitted a potential assignment of error. Although Adkins was served a copy of his counsel's *Anders* brief, he did not file a pro se brief raising any additional assignments of error.

{¶6} After independently reviewing the record, we disagreed with counsel's assessment. Although the transcript of the resentencing hearing showed that the trial court advised Adkins about postrelease control and some of the potential consequences for violating his postrelease control conditions, it did not issue a proper judgment of conviction under Crim.R. 32(C). Therefore, we granted counsel's motion to withdraw and appointed new counsel to argue the issue addressed our entry, as well as any other arguable issues found in the record. *State v. Adkins,* 4th Dist. Lawrence App. No. 14CA29, Entry (April 2, 2015); *Penson v. Ohio,* 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988).Adkins's counsel has responded and filed a brief in which he raises two assignments of error.

II. ASSIGNMENTS OF ERROR

{¶7} Adkins raises the following assignments of error:

1. THE TRIAL COURT ERRED IN NOT INFORMING THE DEFENDANT-APPELLANT OF POST-RELEASE-CONTROL AND ITS RAMIFICATIONS.

2. THE TRIAL COURT ERRED IN ISSUING AN 'AMENDED SENTENCING ENTRY' AFTER A HEARING UPON REMAND TO CORRECT THE IMPOSITION OF POST-RELEASE-CONTROL, WHICH ENTRY WAS NOT A FINAL, APPEALABLE ORDER.

III. LAW AND ANALYSIS

{¶8} "The scope of an appeal from a resentencing hearing at which a mandatory term of postrelease control is imposed is limited to issues arising at the resentencing hearing." *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph four of syllabus. After July 11, 2006, R.C. 2929.191 provides the procedure for corrections to sentencing errors that relate to the imposition of postrelease control.

{¶9} Under R.C. 2929.191(C), a trial court must hold a hearing and give the offender notice of the date, time, place and purpose of the hearing. The offender has a right to be present in person or by video conference and may make a statement as to whether the court should issue a correction to the judgment of conviction. After the hearing the trial court prepares and issues "a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender will be supervised . . ." and, "if the offender violates that supervision or a condition of post-release control . . . the parole board may impose as part of the sentence a prison term of up to one-half of the state prison term originally imposed upon the offender." See, R.C. 2929.191(A)(1) and R.C. 2929.191.(B)(1). The entry is a nunc pro tunc judgment of conviction:

> R.C. 2929.191 provides that trial courts may, after conducting a hearing with notice to the offender, the prosecuting attorney, and the Department of Rehabilitation and Correction, correct an original judgment of conviction by placing on the journal of the court a nunc pro tunc entry that includes a statement that the offender will be supervised under R.C. 2967.28 after the offender leaves prison and that the parole board may impose a prison term of up to one-half of the stated prison term originally imposed if the offender violates postrelease control.

State v. Singleton, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, ¶23.

A. Does the Notification of Mandatory, Consecutive Prison Term Found in R.C. 2929.141(A)(1) Also Apply?

{¶10} Adkins argues that as part of the trial court's compliance with statutory notice provisions addressing violations of postrelease control supervision, the trial court should have informed him about possible sanctions under R.C. 2929.141(A)(1). In other words, if he is convicted of a felony while on postrelease control supervision, the court may impose a prison term for the postrelease control violation that shall be served consecutively to any prison term imposed for the new felony. He argues that this penalty prong of postrelease control is of heightened importance in light of the Supreme Court of Ohio's holdings in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, *State v .Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, ¶ 25-26, and our decision in *State v. Pippen*, 4th Dist. Scioto App. No. 14CA3595, 2014-Ohio-4454, ¶ 22-25.

{¶11} However, neither *Bonnell* nor *Sarkozy* concern postrelease control notification requirements of the sentencing hearing. In *Bonnell*, the Court held that, in order to impose consecutive terms of imprisonment, the trial court is required to make statutory findings to support the imposition of consecutive sentences at the sentencing hearing. In *Sarkozy*, the Court held that a defendant may dispute the knowing, intelligent, and voluntary nature of the plea where the trial court fails during the plea colloquy to advise the defendant that the sentence will include a mandatory term of postrelease control. In neither case did the Court address whether the trial court must include an admonition concerning the potential imposition of consecutive sentences under R.C. 2929.141(A)(1) if, in the future, the offender commits a new felony while on postrelease control supervision.

{¶12} But, in *State v. Pippen*, 4th Dist. Scioto App. No. 14CA3595, 2014-Ohio-4454, we held that a trial court must incorporate notice of the sanctions set forth in R.C. 2929.141(A) when giving its notification of the potential penalties for violations of post-release control. Specifically we held the court must include a notification that a prison term imposed for commission of a new felony during a term of postrelease control will be served *consecutively* to the prison term imposed by the court for the violation of postrelease control. *Pippen* at ¶ 24. Here, the trial court's amended sentencing entry includes some of that language, "In the event the violation is a new felony, the Defendant may be returned to prison for one (1) year or the remaining period of the post-release control, whichever is greater, and receive a prison term for the new felony." However the entry does not state that the prison term must be served consecutively to the term imposed for the violation of postrelease control. And, more problematic, no part of the notification under R.C. 2929.141(A) was given to Adkins at the hearing.

{¶13} Under the relevant sections of R.C. 2929.19(B) a trial court must:

> (B)(2)(c) Notify the offender that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentence for a felony of the first degree or second degree * * *
>
> *   *   *
>
> (B)(2)(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(2)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. * * *

The transcript of the resentencing hearing shows that the trial court gave Adkins the notification under R.C. 2929.19(B)(2)(c) and (e) by advising him that he will be supervised for a period of three years and that if he violated the terms of his postrelease control, the parole board may impose a prison term of up to one half of the original

prison term. However, the trial court did not notify Adkins that if he were convicted of a new felony while on postrelease control, then under R.C. 2929.141(A)(1)-(2), in addition to any prison term for the new felony, that for the postrelease control violation, the trial court may impose a prison term, which shall be served consecutively to any prison term imposed for the new felony. Under our holding in *Pippen*, the trial court's failure to advise Adkins of all the consequences of violating postrelease control renders that part of the sentence void and we must set it aside. *Pippen* at ¶ 25 citing *State v. Fischer,* 128 Ohio St.3d 92, 2010-Ohio-6238, ¶26. We recognize that our decision in *Pippen* was rendered in September 2014 and the re-sentencing hearing for Adkins was in August 2014, thus the trial court in this case did not have our decision in *Pippen* to guide it.

{¶14} Moreover, we are cognizant that a number of other appellate districts have considered whether the postrelease control notification of R.C. 2929.19(B)(2)(e) must include notification of the penalty provisions in R.C. 2929.141(A)(1)-(2) and have held that this notification is not required. *See State v. Bybee,* 2015-Ohio-878, 28 N.E.3d 149 (8th Dist.) (discussing *Pippen* and refusing to extend the postrelease control notification requirements set forth in *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864 and codified in R.C. 2929.19(B) to require additional notification of penalties under R.C. 2929.141 but agreeing with *Mullins, infra*, that it is a better practice to do so); *State v. Burgett,* 3rd Dist. Marion App. No. 9-10-37, 2010-Ohio-5945 ("we find no such requirement contained in the statute mandating the trial court to notify a defendant of all the possible consequences of his commission of a felony while on post release control, as set forth under R.C. 2929.141"); *State v. Lane*, 3rd Dist. Allen App. No. 1-10-10,

2010-Ohio-4819 (the possible consequences of the commission of a felony under R.C. 2929.141 are discretionary options of the trial court, and no notice to a defendant of those options is required); *State v. Witherspoon*, 8th Dist. Cuyahoga No. 90498, 2008-Ohio-4092; *State v. Mullins*, 12th Dist. Butler App. No. CA2007-01-028, 2008-Ohio-1995, ¶ 14 (holding that there is no requirement that the trial court at the sentencing hearing notify defendant of the possible penalties under R.C. 2929.141, though "we do note that the better practice would be to include notification of the potential implications of R.C. 2929.141 when notifying defendants of the other potential implications of postrelease control"); *State v. Susany*, 7th Dist. Mahoning App. No. 07MA7, 2008-Ohio-1543 (there is no requirement that the defendant must also be informed of the penalties under R.C. 2929.141 as part of the notification required under R.C. 2929.19(B)).

{¶15} One other appellate district has stated in dicta that a trial court must inform an offender at the time of sentencing that the commission of a felony during a period of postrelease control permits a trial court to impose a new prison term for the violation to be served consecutively with any prison term for the new felony. *See State v. McDowell,* 9th Dist. Summit App. No. 26697, 2014-Ohio-3900, ¶13-15 ("As a procedural protection, courts must inform the offender that this consequence [consecutive prison terms under R.C. 2929.141(A)] could result from a violation of post-release control when the offender is sentence on the original charge. *See generally State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085.").

{¶16} We acknowledge that our decision in *Pippen* could arguably be viewed as placing additional, extra-statutory notification requirements on trial courts that go beyond the requirements set forth in the plain language of R.C. 2929.19 or those

constitutionally required by *State v. Jordan, supra,* thereby causing otherwise valid sentences to be void, in part. However principles of stare decisis require that we follow our prior holding in *Pippen* unless there is a "special justification" to depart from it. *See Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256 ("Stare decisis is the bedrock of the American judicial system. Well-reasoned opinions become controlling precedent, thus creating stability and predictability in our legal system. It is only with great solemnity and with the assurance that the newly chosen course for the law is a significant improvement over the current course that we should depart from precedent."). In *State v. Certain*, 180 Ohio App.3d 457, 2009-Ohio-148, 905 N.E.2d 1259 (4th Dist.) we explained:

> "[A]n appellate court 'not only has the right, but is entrusted with the duty to examine its former decisions and, when reconciliation is impossible, to discard its former errors.'" *State v. Burton,* Franklin App. No. 06AP–690, 2007-Ohio-1941, 2007 WL 1196579, at ¶ 22, quoting *Galatis* at ¶ 44. However, "'any departure from the doctrine of stare decisis demands special justification.'" *Galatis* at ¶ 44, quoting *Wampler v. Higgins* (2001), 93 Ohio St.3d 111, 120, 752 N.E.2d 962. The Supreme Court defined what constitutes "special justification" in its decision in *Galatis*: "[I]n Ohio, a prior decision of the Supreme Court may be overruled where (1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it." *Id.* at ¶ 48; see also *State v. Mathis,* 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, fn. 7 (noting that courts must adhere to prior precedent unless the *Galatis* elements have been satisfied); *Burton* at ¶ 22 (applying the *Galatis* test).

Id. at ¶ 10.

{¶17} Here, there is insufficient justification to overrule *Pippen.* First, although a number of appellate districts have held otherwise, we cannot definitively conclude that *Pippen* was incorrectly decided. Our analysis in *Pippen* relied on the Supreme Court of

Ohio decision in *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718. In *Qualls*, Qualls conceded that the trial court's notification regarding postrelease control at his 2002 sentencing hearing adequately informed him of postrelease control, but the notification was inadvertently omitted from the sentencing entry. The trial court refused to hold a de novo sentencing hearing and instead corrected the error with a nunc pro tunc entry that added the following two paragraphs, and included notification under R.C. 2929.141(A)(1)-(2):

> For the Kidnapping offense only, the Court notified the Defendant that upon his release from prison, if such event should ever happen, the Defendant shall be subject to a five year mandatory period of post-release control, by the Parole Board. *The Court further advised the Defendant that if he violates any condition of any post-release control sanctions by committing a new felony, the sentencing Court for that felony may terminate the period of post-release control and impose a prison term for that violation, the maximum of which shall be the greater of twelve months or the period of post-release control for the earlier felony minus any time the Defendant has spent under post-release control for the earlier felony.*
>
> The Defendant was further advised that if he should be released from prison and after his release he should violate the terms and conditions of Post Release Control, the Adult Parole Authority could send him back to prison for up to nine (9) months, and for repeated violations for a term not to exceed 50% of the original term as Ordered by this Court. *He was further advised that if the violation is a new felony, he could not only be sent to prison for the new felony, but that the sentencing Court could add [run consecutively] to that sentence the greater of one year or the balance of the time remaining on Post Release Control.*

(Emphasis and brackets added). *Id.* at ¶33. The nunc pro tunc entry corrected the prior entry to include a recitation of the oral notification given Qualls at the original sentencing hearing, which included notification of the penalties under R.C. 2929.141. The Supreme Court of Ohio held that "*where the notification was properly given at the sentencing hearing*, there is no substantive prejudice to a defendant if the sentencing entry's failure

to mention postrelease control is remedied through a nunc pro tunc entry." (Emphasis added.) *Id.* at ¶ 23. The Court also stated that the requirements of R.C. 2929.19(B) required a trial court to 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." (Emphasis added) *Id.* at ¶ 18.

{¶18} Based upon the language used in the decision in *Qualls*, we conclude that the notification the trial court gave Qualls at the sentencing hearing, which included notification concerning the penalties in R.C. 2929.141, was proper and provided the statutory "details" of postrelease control and the statutory "details" of the consequences for violation. Therefore, we cannot say that our decision in *Pippen*, which required the trial court to provide a defendant with notification of the penalties and consecutive nature of a prison term under R.C. 2929.141, was wrong.

{¶19} Nor can we say that *Pippen* "defies practical workability." As the 9th District stated in *McDowell, supra,* notification of the penalties for a new felony under R.C. 2929.141(A)(1)-(2) provides "a procedural protection" to the offender. *McDowell* at ¶ 15. A trial court can include notification language that complies with R.C. 2929.141 when it provides notification at the sentencing hearing under R.C. 2929.19(B). The problems arise not from our following *Pippen* and the principles of stare decisis, but from the split in the various appellate districts. If the 4th and 9th appellate districts require notification of penalties under R.C. 2929.141(A) to be given at the sentencing hearing to constitute a valid postrelease control sentence and the 3rd, 7th, 8th, and 12th appellate districts do not, then some portions of postrelease control and supervision sentences

may be void in some districts and valid and enforceable in others. Moreover, defendants who commit new felonies while arguably under a void postrelease control supervision, may not be subject to additional penalties under R.C. 2929.141(A) if the new felonies are committed in the 4th or 9th districts, but may be penalized if the new felony is committed in the 3rd, 7th, 8th, and 12th districts. This inconsistency in sentencing hearing requirements is problematic, but can be resolved by the Supreme Court of Ohio, not by our abandonment of *Pippen*.

{¶20} Because the trial court did not include the notification of the penalties under R.C. 2929.141(A)(1)-(2) at the re-sentencing hearing as required by *Pippen*, although it was included in the entry, Adkins's first assignment of error is meritorious. Because, the postrelease control portion of Adkins's sentence is void, we order it vacated, and remand this matter to the trial court for re-sentencing.

B. Amended Sentencing Entry

{¶21} Adkins argues that the amended sentencing entry is not a final appealable order under R.C. 2505.02 because it does not state the mode/manner of conviction along with the full sentence rendered. The state concedes that under the "one document rule" a new judgment entry should be issued by the trial court which includes all of the language that is required in a sentencing entry, not just the language correcting the postrelease control notification.

{¶22} We agree. The trial court's amended sentencing entry does not comply with R.C. 2929.191(A)(1) or (B)(1) because it is not "a judgment of conviction"; it contains only the postrelease control correction without any of the remaining elements of a judgment of conviction under Crim. R. 32(C). The specific language in R.C.

2929.191 requires the trial court to issue a corrected judgment of conviction. This statutory language implicitly adopts the one document rule as required by *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. See also, *State v. Lester,* 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶12 (when the substantive provisions of Crim.R. 32(C) are contained in the judgment of conviction, the trial court's omission of the manner of conviction does not affect the finality of the order).

> "Only one document can constitute a final appealable order." *Baker,* 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, at ¶ 17. This holding became known as *Baker* 's "one-document rule," which requires that Crim.R. 32(C)'s four elements be recorded in one document to constitute a final, appealable order under R.C. 2505.02.

State v. Stults, 195 Ohio App.3d 488, 2011-Ohio-4328, 960 N.E.2d 1015, ¶13 (3rd Dist.).

{¶23} The amended sentencing entry states that the matter came before the trial court on remand pursuant to our decision and judgment entry dated July 23, 2014, in which we determined that the trial court failed to notify Adkins at his sentencing hearing about postrelease control or the potential consequences for violating postrelease control. The trial court's entry further states that the trial court has informed Adkins about postrelease control and includes a partially detailed notification.

{¶24} Although the trial court's entry expressly provides the postrelease control notification, it does not include language of the original sentencing entry. See *State v. Hawk*, 4th Dist. Athens App. No. 10CA50, 2011-Ohio-4577, ¶13. Instead, it states:

> The Court further hereby reaffirms and incorporates herein all of the other orders set forth in the Judgment Entry sentencing defendant filed on October 9, 2013.

Amended Judgment Entry, p. 2, August 13, 2014. Thus, the amended sentencing entry does not comply with R.C. 2929.191, Crim R. 32(C) or the "one document" rule of *Baker*. See *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, ¶18

as modified by *State v. Lester,* 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶12. The trial court's amended sentencing entry requires that we review two separate documents to determine Adkins's judgment of conviction. Under R.C. 2505.02(B)(1), "Only one document can constitute a final appealable order." *Id.* We cannot combine two documents to create a final, appealable order because in a noncapital criminal case '[o]nly one document can constitute a final appealable order.'' *State v. Thompson,* 4th Dist. No. 10CA3177, 2011–Ohio–1564, ¶ 11, quoting *State v. Baker,* 119 Ohio St.3d 197, 2008–Ohio–3330, 893 N.E.2d 163, ¶ 17. The trial court's August 13, 2014 amended resentencing entry does not satisfy the requirements of Crim.R. 32(C) for a final, appealable judgment of conviction under R.C. 2505.02 (B)(1). See *State v. Swanson,* 8th Dist. Cuyahoga App. No. 89351, 2008-Ohio-2929; *State v. Bashlor,* 9th Dist. Lorain App. No. 06CA009009, 2007-Ohio-2039, ¶10 ("We note that this rule, [Crim. R. 32(C)], also applies to resentencing entries, entered pursuant to R.C. 2929.191, as is the Judgment Entry here, as there is nothing in R.C. 2929.191, or elsewhere, to indicate that resentencing entries do not need to comply with Crim.R. 32(C)."); *contra State v. Williams*, 9th Dist. Summit No.27101, 2014-Ohio-1608 (holding that although R.C. 2929.191 anticipates the trial court issuing the corrective entry via a nunc pro tunc, it does not need "to reissue the original sentencing entry along with the post-release control notification" such that a resentencing entry does not need to comply with Crim.R. 32(C)).

{¶25} Although the trial court's amended sentencing entry fails to constitute a proper judgment of conviction under R.C. 2505.02(B)(1), unlike *Thompson*, supra, it is a final appealable order for purposes of this appeal under R.C. 2505.02(B)(2) because it

was entered in a "special proceeding" created under R.C. 2929.191, and affected Adkins "substantial right" to have the trial court issue a judgment entry of conviction in his criminal case. See *State v. Terry*, 2nd Dist. Darke App. No. 09CA0005, 2010-Ohio-5391 (holding a trial court's entry denying defendant's request for a resentencing hearing under R.C. 2929.191 was a final, appealable order under R.C. 2505.02(B)(2)). Because it is a final appealable order under R.C. 2505.02(B)(2), we have jurisdiction to review the trial court's entry issued pursuant to a R.C. 2929.191 hearing.

{¶26} Accordingly, we sustain Adkins's second assignment of error to the extent he argues that a new entry should be issued to comply with the requirements of R.C. 2929.191, but overrule his assignment of error to the extent he argues that the amended sentencing entry is not a "final appealable order."

III. CONCLUSION

{¶27} The trial court failed to notify Adkins of the possible consequences of violating postrelease control under R.C. 2929.141(A)(1)-(2) when it limited his postrelease control notice to R.C. 2929.19(B)(2)(e). Additionally, the trial court's amended sentencing entry does not comply with R.C. 2929.191(A)(1) or (B)(1) because it is not a "judgment of conviction." Therefore, the postrelease control portion of Adkins's sentence is void and must be vacated and this matter remanded to the trial court for re-sentencing and the issuance of a proper nunc pro tunc judgment of conviction that includes the appropriate postrelease control notifications.

JUDGMENT REVERSED
AND CAUSE REMANDED.

Harsha, J., concurring in part and dissenting in part:

{¶28} I did not participate in *Pippen*, and had I done so, I would have dissented. Moreover, I conclude the 8th District's position in *State v. Bybee,* 2015-Ohio-878, 28 N.E.3d 149 (8th Dist.) is correct and therefore dissent here on the first assignment of error.

{¶29} In reading R.C. 2929.141(A) it is clear there is no provision in that statute requiring the trial court in the original sentencing context to notify a defendant that a court sentencing the defendant for a subsequent crime can impose additional sanctions for the violation of post-conviction relief. Unlike R.C. 2929.19(B), which expressly requires notifications concerning the parole board's authority to impose sanctions for violations, R.C. 2929.141(A) addresses the trial court's authority to do so, and is silent about notification in the original sentencing context. Because there is no statutory or due process requirement for the appellant's contention, I dissent from the disposition of the first assignment of error. But I agree with the remainder of the court's opinion.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS REVERSED and that the CAUSE IS REMANDED. Appellee shall pay 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. Exceptions.

Hoover, P.J. & McFarland, A.J.: Concur in Judgment and Opinion.
Harsha, J.: Concurs in part and Dissents in part with Opinion.

For the Court

BY: ___________________________
Marie Hoover, Presiding Judge

BY: ___________________________
Matthew W. McFarland, Judge

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.