

[Cite as *State v. Rayburn*, 2018-Ohio-2019.]

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 17CA6
 :
 vs. :
 :
 STEPHEN I. RAYBURN, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

Timothy Young, Ohio Public Defender, and Terrence K. Scott, Assistant Public Defender,
Columbus, Ohio, for appellant.

Joel King, Special Prosecutor and Assistant Attorney General, Cincinnati, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT

DATE JOURNALIZED: 5-14-18

ABELE, J.

{¶ 1} This is an appeal from a Jackson County Common Pleas Court post-release control sanction. Stephen I. Rayburn, defendant below and appellant herein, assigns the following error for review:

“THE TRIAL COURT ERRED BY FAILING TO VACATE
STEPHEN I. RAYBURN’S POST-RELEASE CONTROL. *State v.*
Billiter, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 960.

{¶ 2} On March 28, 2008, after appellant’s convictions for two counts of sexual battery, the trial court (1) sentenced appellant to serve eight years in prison, and (2) informed appellant that, after the completion of his prison sentence, he would be subject to three years of post-release control. On

November 18, 2010, we considered appellant's pro se delayed appeal and acknowledged that (1) the trial court incorrectly imposed a three year post-release control term, rather than a five year term (R.C. 2967.28(B)(1)); and (2) the trial court could use the R.C. 2929.191 procedure to correct the post-release control term. See *State v. Rayburn*, 4th Dist. Jackson No. 09CA6, 2010-Ohio-5693.

{¶ 3} On January 30, 2015, appellant was released from prison, but without being resentenced. Appellant subsequently filed a motion for resentencing based upon a void judgment. The trial court denied appellant's motion and this appeal followed.

{¶ 4} In his sole assignment of error, appellant asserts that the trial court should have vacated his post-release control sanction. Appellant argues that, although the court correctly orally advised appellant of the five year post-release control sanction, the court's sentencing order incorrectly included a three year post-release control sanction. Furthermore, the court did not order the R.C. 2967.28(B)(1) statutorily mandated five year post-release control sanction prior to appellant's release from custody. Consequently, appellant claims that the post-release control portion of his sentence is void. See *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927; see also *State v. Billiter*, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 960; *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-514, 1 N.E.3d 382.

{¶ 5} In its brief, the appellee concedes that the trial court erred when it failed to vacate appellant's post-release control sanction. Appellee states that (1) appellant's sentencing entry did not include the correct post-release control sanction, and (2) the court did not correct its order prior to appellant's release from prison. Thus, citing *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-111, appellee agrees that the post-release control portion of appellant's sentence is void and no longer correctable.

{¶ 6} We reluctantly agree with both parties that the post-release control portion of appellant's sentence is void and no longer correctable. Although we may disagree with the Ohio Supreme Court's concept of void sentences, we, as an intermediate appellate court, are obligated to follow supreme court decisions. We also wish to emphasize that this case serves as yet another example of Ohio's overly complex and convoluted felony sentencing scheme. Ohio's tangled web of sentencing statutes continues to undermine the public's understanding and confidence in our system. Issuing a sentence for a felony violation should not be an intricate, inscrutable exercise that fails to promote the basic concepts of finality of judgments and judicial economy.

{¶ 7} Additionally, we wish to point out that we appreciate appellee's candid and forthright concession in this matter. The ends of justice are best served when a party appropriately acknowledges the validity of an opponent's claim.

{¶ 8} Accordingly, based upon the foregoing reasons, we hereby reverse the trial court's judgment.

JUDGMENT REVERSED.

JUDGMENT ENTRY

It is ordered that the judgment be reversed and that appellant recover of appellee the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

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

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

Harsha, J.: Concurr in Judgment & Opinion
McFarland, J.: Concurr in Judgment Only

For the Court

BY: _____

Peter B. Abele, 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.