

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-10-049

Appellee

Trial Court No. 2005CR0518

v.

Louis Turner

DECISION AND JUDGMENT

Appellant

Decided: January 14, 2011

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Gwen Howe-Gebbers, Chief Assistant Prosecuting Attorney, and David E. Romaker, Jr., Assistant Prosecuting Attorney, for appellee.

Timothy W. Longacre, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Perry Louis Turner, appeals from his sentence entered by the Wood County Court of Common Pleas in the above-captioned case. For the reasons that follow, we reverse the judgment of the trial court.

{¶ 2} On August 10, 2006, appellant entered a plea of guilty to a single count indictment charging him with unlawful sexual conduct with a minor, a violation of R.C. 2907.04(A)(B)(1). That same day, the court sentenced appellant to a term of 18 months in prison, to be served concurrently with another sentence that appellant was serving in connection with a separate case. In addition, appellant was notified that upon his release from prison in the current case, he would be subject to postrelease control. He was not notified of the specific length of the term of postrelease control that would apply to his conviction.

{¶ 3} Appellant completed the sentence in this case sometime in January 2008. More than two years later, on May 13, 2010, appellant was served with a notice to appear in the trial court for a resentencing hearing. The hearing was held on June 29, 2010. At the hearing, appellant was notified that he would be subject to five years of postrelease control. This express notification was then incorporated into the trial court's June 30, 2010 judgment entry.

{¶ 4} Appellant timely filed an appeal from the June 30, 2010 judgment entry, raising the following assignments of error:

{¶ 5} "I. The trial court committed error by re-sentencing the defendant-appellant after he had completed the original sentence.

{¶ 6} "II. The trial court committed error as its re-sentencing of defendant-appellant represents a clear violation of Ohio Revised Code Section 2929.191(A)."

{¶ 7} Because appellant's assignments of error involve overlapping issues, they will be considered together in this analysis. Regarding postrelease control notification requirements, in particular, the Supreme Court of Ohio, in *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, specifically held that a trial court must notify an offender of the length of the term of postrelease control that applies to his conviction, and then incorporate that notification into its sentencing entry. *Id.* at ¶ 69. Sentencing entries that fail to include the required notifications are void because they are contrary to law. *State v. Terry*, 2d Dist. No. 09CA0005, 2010-Ohio-5391, ¶ 16, citing *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197; see also, *State v. Fischer*, Slip Opinion No. 2010-Ohio-6238, paragraph one of the syllabus (holding that a sentence that does not include the statutorily mandated term of postrelease control is void). Inasmuch as the trial court failed to notify appellant of the length of his postrelease control obligation in August 2006, the sentence imposed at that time is clearly void.

{¶ 8} R.C. 2929.191, effective July 11, 2006, established a procedure to remedy a failure to properly impose postrelease control. *State v. Lee*, 6th Dist. No. L-09-1279, ¶ 10. By the statute's own terms, however, the remedy must be made before an offender is released from imprisonment under the subject period of incarceration. See R.C. 2929.191(A)(1) and (B)(1); see also, *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126 (holding that resentencing to impose postrelease control is not an option once the defendant has completed his prison term). Because the trial court's June 30, 2010

judgment entry was improperly entered after appellant's prison sentence had concluded, it is wholly without effect in this case.

{¶ 9} The state argues that the issue of alleged deficiencies in appellant's postrelease control notification is not properly before this court, because appellant did not file a direct appeal of these issues in connection with his original sentencing, nor did he move to file a delayed appeal. We disagree. The Ohio Supreme Court, in *Fischer*, supra, has recently held that "[a] sentence that does not include the statutorily mandated term of postrelease control * * * is not precluded from review by principles of res judicata, and may be reviewed at any time, on direct appeal or by collateral attack." *Id.* at paragraph one of the syllabus.

{¶ 10} Here, the trial court failed to timely notify appellant of the length of the term of postrelease control and, further, failed to incorporate that notification into any of its valid entries. "[I]n the absence of a proper sentencing entry imposing postrelease control, the parole board's imposition of postrelease control cannot be enforced." *Bloomer*, supra, at ¶ 71.

{¶ 11} For all of the foregoing reasons, appellant's assignments of error are both found well-taken, and the judgment of the Wood County Court of Common Pleas is reversed. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of
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