[Cite as *State v. Scott*, 2011-Ohio-5527.]

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

State of Ohio — Court of Appeals No. S-10-023

Appellee — Trial Court No. 06 CR 469

v.

Miller L. Scott — **DECISION AND JUDGMENT**

Appellant — Decided: October 28, 2011

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney, and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Matthew Exton, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} On May 31, 2006, the Sandusky County Grand Jury indicted appellant, Miller L. Scott, on six counts of trafficking in crack cocaine, in violation of R.C. 2925.03(A)(1) and (C)(4)(a), all fifth degree felonies, and one count of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(c), a third degree felony. Appellant

entered a not guilty plea at his arraignment on June 9, 2006. On August 24, 2006, appellant filed a motion to suppress evidence obtained through a search of his home, which the trial court denied on December 29, 2006.

{¶ 2} On June 28, 2007, pursuant to a plea agreement, appellant pled guilty to four counts of trafficking in cocaine, and one count of possession of cocaine. That same day, a plea hearing was held at which the trial court advised appellant as to the nature and extent of his plea, and inquired as to whether appellant was under the influence of drugs or alcohol at the time of the hearing. The trial court also informed appellant that he could be sentenced to serve one year in prison for each count of trafficking in cocaine, and that he would be required to serve a mandatory one-year prison sentence for the one count of possession of cocaine. At each step of the proceedings, appellant indicated that he understood, that he was entering into the plea agreement voluntarily and knowingly, and that he was not offered anything other than the stated terms in exchange for his plea.

{¶ 3} After discussing the nature of the plea the trial court told appellant that, after serving his prison term, he could be required by the parole board to serve a period of postrelease control of up to three years. In addition appellant was told that, if he violated the terms of his postrelease control, he could be sentenced to serve up to one-half of his original prison sentence, up to two and one-half years. The trial court also told appellant that, if a violation of his postrelease control amounted to a new felony, he could receive an additional sentence. After explaining the terms of postrelease control, the trial court also informed appellant of his limited right to appeal. The trial court then accepted

appellant's guilty plea and found him guilty of four counts of trafficking in cocaine and one count of possession of cocaine. The remaining counts of the indictment were dismissed.

{¶ 4} That same day, the trial court issued a judgment entry in which it found appellant guilty and, in accordance with the plea agreement, sentenced appellant to serve a one year prison term for each of the four counts of trafficking in cocaine, and one mandatory one-year prison term for possession of cocaine. Each one-year term was made consecutive to the others, for a total of five years in prison. In addition, appellant's driver's license was suspended for five years.

{¶ 5} On July 30, 2008, through his court-appointed attorney, appellant applied for early judicial release after completing his one-year mandatory prison term. On August 1, 2008, the matter was referred to the adult probation department for a recommendation; however, on September 15, 2008, the trial court denied appellant's request without holding a hearing. On December 19, 2008, appellant, acting pro se, filed a second motion in which he asked for judicial release. The trial court denied appellant's second motion on January 15, 2009, after stating that, pursuant to the version of R.C. 2929.20 that was in effect at that time, appellant would not be eligible for judicial release until May 25, 2011.

{¶ 6} On January 26, 2009, appellant's former appointed counsel, Andrew Mayle, wrote a letter to the trial court, in which counsel challenged the trial court's conclusion

that former R.C. 2929.20(B)(1)(b)[1] prohibits appellant from applying for judicial release before serving at least four years of his five-year sentence. In support, counsel stated that, pursuant to former R.C. 2929.20(B)(1)(a), an offender who receives less than a five-year prison term is eligible to apply for judicial release "not earlier than thirty days or later than ninety days after the offender is delivered to a state correctional institution" Counsel further stated that appellant was eligible to apply for early judicial release from his remaining four-year prison term pursuant to former R.C. 2929.20(B)(5), which provided that:

{¶ 7} "If the offender's stated prison term includes a mandatory prison term, the offender shall file the motion within the time authorized under division (B)(1),(2),(3), or (4) of this section for the non-mandatory portion of the prison term, but the time for filing the motion does not begin to run until after the expiration of the mandatory portion of the prison term."

{¶ 8} Counsel argued that, because the trial court concluded that appellant is not eligible for early release until May 25, 2011, he will have essentially served his entire sentence before becoming eligible to apply for judicial release. Counsel further argued that none of the original parties to the plea agreement envisioned such an outcome, as

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[1]Former R.C. 2929.20(B)(1)(b) states:

"If the stated prison term is five years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion [for judicial release] after the eligible offender has served four years of the stated prison term."

demonstrated by a hand-written provision in the agreement itself, which states that "[Appellant] is eligible for judicial release per R.C. 2929.20." In conclusion, counsel stated that, if the trial court's interpretation of R.C. 2929.20(B) is correct, then appellant fundamentally misunderstood the nature and extent of his guilty plea, and the trial court's refusal to grant appellant's motion to withdraw the plea amounts to an abuse of discretion. On February 3, 2009, the prosecution filed a memorandum in opposition, in which it stated that, pursuant to R.C. 2929.20(B)(1)(b) and (B)(3), appellant is not eligible to apply for judicial release until after he has served four years of his five-year sentence.

{¶ 9} On February 13, 2009, appellant, acting pro se, filed a "Motion for Judicial Release and Oral Hearing Request, Revisited" in which he asked the trial court to reconsider its January 15, 2009 decision to deny his application for judicial release. In a memorandum in support, appellant stated that, if not for his attorney's representation that appellant would be eligible to apply for judicial release after serving 13 months of his prison sentence, he would not have entered a guilty plea. Appellant also recounted his efforts to attend counseling and a drug rehabilitation program while in prison. On February 18, 2009, appellant, again acting pro se, filed a motion to withdraw his guilty plea. In support of his motion, appellant stated that he was misinformed as to his eligibility for judicial release at the time of the plea. On February 19, 2009, the trial court filed a judgment entry in which it denied appellant's motion for judicial release without holding a hearing.

{¶ 10} On May 21, 2009, appellant filed a motion to establish a hearing date on the motion to withdraw his guilty plea. On September 21, 2009, appellant filed a motion for "sentencing" which the trial court treated as a motion for re-sentencing. In support of his motion, appellant argued that the trial court improperly imposed a "blanket" sentence for his five convictions, and that the postrelease control notification he received at the time of sentencing was defective. Specifically, appellant stated that the trial court misstated the sanction that could be imposed if he violated the terms of his postrelease control. In addition, appellant asserted that the trial court mistakenly imposed only one term of postrelease control to cover all five of the offenses for which he was convicted, instead of separately stating the term for each separate offense. Appellant concluded that these errors render his sentence "void" and that he is entitled to a new sentencing hearing. On November 5, 2009, appellant filed a "request for judicial notice" of a "directive and mandate," dated October 23, 2009, which was issued by the Ohio Department of Rehabilitation and Corrections regarding postrelease control.

{¶ 11} On November 9, 2009, Brock A. Kimmet, Court Administrator for the Sandusky County Court of Common Pleas, sent appellant copies of his change of plea and the trial court's sentencing judgment entry, both of which were journalized on June 28, 2007. In an attached letter, Kimmet stated: "Please note that both of these documents contain the language as required pertaining to postrelease control." At the bottom of the letter was a hand-written comment by Sandusky County Common Pleas Judge John Dewey, which stated: "Motion for re-sentencing denied. See attached."

{¶ 12} On December 1, 2009, appellant filed a notice of appeal in this court from the denial of his motion for re-sentencing. (Appellate case No. S-09-038.) At the same time, he filed a request for appointment of counsel in the trial court. On December 15, 2009, we sua sponte dismissed case No. S-09-038, after finding that the court administrator's letter and trial court's comments, taken together, did not constitute a final, appealable order. *State v. Scott* (Dec. 15, 2009), 6th Dist. No. S-09-038.

{¶ 13} On January 4, 2010, appellant, pro se, filed a "Motion for Issuance of Final, Appealable Order" in the trial court. On January 27, 2010, appellant filed a motion in which he requested a new sentencing hearing.

{¶ 14} On February 26, 2010, appellant filed a complaint in mandamus in this court, in which he asked us to order the trial court to issue a final, appealable order. On March 23, 2010, we issued a peremptory writ of mandamus ordering the trial court to "prepare and issue a judgment entry in compliance with Civ.R. 58(A) * * *." *State ex rel. Scott v. Dewey*, 6th Dist. No. S-10-014, 2010-Ohio-1362.

{¶ 15} On March 17, 2010, the trial court filed a judgment entry in which it stated that the notification of postrelease control given to appellant at his initial sentencing may have been defective; however, the trial court stated that the remedy for such an error was correction of the sentence pursuant to R.C. 2929.191, and not a voiding of the sentence as sought by appellant. Accordingly, the trial court set a date for an oral hearing and appointed counsel to represent appellant at the hearing. On March 26, 2010, the trial court appointed attorney Jeffrey Kane to represent appellant at the hearing.

{¶ 16} A resentencing hearing was held on April 14, 2010, at which appellant asserted that his sentence was "void" because he was not properly advised as to postrelease control. Appellant also argued that the trial court could only resentence him for two years, since he had already served the first three years of his five-year sentence. In addition, appellant stated that another hearing should be held on his motion to withdraw his plea. When the trial court attempted to address appellant's court-appointed attorney, appellant interrupted and indicated that he did not wish to be represented by his current appointed counsel. After a short verbal exchange with appellant, the trial court excused defense counsel and the hearing resumed with appellant representing himself.

{¶ 17} After his appointed counsel was excused, appellant argued that the trial court should not be able to re-advise him as to those portions of his sentence that were already served. The trial court replied: "Well, I'll put it on the record and if you don't like it, you can appeal it." The trial court then advised appellant that, in his case, postrelease control could be imposed for up to three years, and any violation of the terms of postrelease control could result in a new prison term of up to one-half of his original five-year sentence, or two and one-half years. The trial court further advised appellant that, if a violation constitutes a new felony, he could receive a prison sentence for the new felony, plus an additional sentence for the violation of up to twelve months, which would be served consecutively to the sentence for the new felony.

{¶ 18} After the court re-advised appellant as to postrelease control, the prosecution raised the issue of appellant's motion to withdraw his plea. In opposition to

the motion, the prosecutor argued that, although appellant states he was misinformed as to the amount of time he would have to serve before applying for judicial release, the facts to do not rise to the level of manifest injustice. At that point, the trial court explained to appellant that his one-year mandatory sentence for possession of cocaine was served concurrently with the first year of his sentence for trafficking in cocaine, which made appellant eligible to apply for judicial release after he served four years of his five-year stated prison term. Appellant then told the trial court that he would like to subpoena his defense attorney to testify at a hearing as to whether appellant was "lied to" and "tricked" into making his guilty plea.

{¶ 19} In response to appellant's request for a hearing, the trial court read from portions of the prosecutor's response to the letter sent by attorney Mayle on January 29, 2009. In his response, the prosecutor argued to the trial court that appellant's stated sentence could not be reduced from five years to four years after the mandatory one-year sentence was served, making appellant eligible for judicial release after 13 months instead of four years. In support, the prosecutor cited R.C. 2929.20(B) and R.C. 2929.01(GG), which, taken together, state that an offender with a stated sentence of five years is not eligible for judicial release until after four years of the sentence have been served. At that point, appellant questioned why the trial court accepted his plea two years earlier, based on the representation that he was eligible for judicial release in 13 months when, in fact, he would not be eligible until he served four years of his five-year prison

term. In rebuttal, the prosecutor argued that the issue of when appellant is eligible for judicial release could have been raised on appeal, after which the hearing was concluded.

{¶ 20} On April 15, 2010, the trial court issued a judgment entry in which it stated that, at the hearing, appellant's appointed counsel, Jeffrey Kane, was excused from representing appellant after appellant "suggested to the court that he didn't feel Mr. Kane had his best interest in mind, disparaged Mr. Kane's skills as a defense attorney, and refused to have Mr. Kane sit at the same table with him." Thereafter, the trial court found that appellant was not eligible for judicial release until after he served four years of his five-year prison sentence, which would occur on May 25, 2011. A timely notice of appeal was filed on May 3, 2010.

{¶ 21} On appeal, appellant sets forth the following five assignments of error:

{¶ 22} "I. The trial court erred when it failed to allow appellant to withdraw his guilty plea.

{¶ 23} "II. The trial court erred when it failed to hold a hearing regarding appellants [sic] motion to withdraw his plea in accordance with the applicable law.

{¶ 24} "III. The trial court erred when it permitted appellant to proceed pro se without conducting adequate inquiry regarding waiver of counsel.

{¶ 25} "IV. The trial court erred when it failed to impose postrelease controls as to each count that defendant was being sentenced on.

{¶ 26} "V. The trial court erred when it imposed postrelease control as to sentences which had already been completed by appellant."

{¶ 27} In his first assignment of error, appellant asserts that the trial court should have allowed him to withdraw his guilty plea. In support, appellant argues that his plea must be set aside to prevent manifest injustice, because he mistakenly believed he would be eligible for judicial release after serving 13 months, not four years, of his prison sentence. In his second assignment of error, appellant asserts that the trial court did not hold a hearing to give full and fair consideration to his motion to withdraw the plea. These two assignments of error must fail, for the following reasons.

{¶ 28} It is well-established that the denial of a motion to set aside a plea pursuant to Crim.R. 32.1 is a final, appealable order. *State v. Davis* (Apr. 20, 1999), 4th Dist. No. 98CA523; *State v. Kramer*, 10th Dist. No. 03AP-633, 2004-Ohio-2646, ¶ 2-5. However, in this case, there is no journal entry reflecting the trial court's denial of appellant's motion to withdraw his plea. Accordingly, there is no final, appealable order, and appellant's first two assignments of error cannot be addressed at this time. *State v. Grady*, 8th Dist. No. 93548, 2010-Ohio-4667, ¶ 7.

{¶ 29} In his third assignment of error, appellant asserts that the trial court erred by not making a determination on the record that he voluntarily, intelligently and knowingly waived his right to counsel at the resentencing hearing. In support, appellant argues that, in spite of the fact that there clearly was a "rift" between appellant and his appointed counsel, the trial court summarily dismissed counsel without making the necessary inquiry to determine whether appellant wanted to proceed pro se.

{¶ 30} The Supreme Court of Ohio has held that "[t]he Sixth Amendment * * * guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily, and knowingly and intelligently elects to do so." *State v. Gibson* (1976), 45 Ohio St.2d 366, paragraph one of the syllabus, citing *Faretta v. California* (1975), 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562. "In order to establish an effective waiver of right to counsel, the trial court must make sufficient inquiry to determine whether [the] defendant fully understands and intelligently relinquishes that right." Id. at paragraph two of the syllabus; Crim.R. 44(A). "If a trial court denies the right to self-representation when properly invoked, the denial is per se reversible error." *State v. Dean*, 127 Ohio St.3d 140, 2010-Ohio-5070, ¶ 67, citing *State v. Reed* (1996), 74 Ohio St.3d 534, 535, citing *McKaskle v. Wiggins* (1984), 465 U.S. 168, 177, 104 S.Ct. 944, 79 L.Ed.2d 122, fn. 8. In addition, the defendant's assertion of his right to counsel must be "clear and unequivocal." Id., citing *State v. Cassano*, 96 Ohio St.3d 94, 2002-Ohio-3751, ¶ 38.

{¶ 31} The record of appellant's resentencing hearing on April 14, 2010, shows that appellant repeatedly interrupted the trial court from the outset of the proceeding. When the trial court directly addressed appellant's court-appointed attorney, Jeffrey Kane, appellant interrupted with the following statements:

{¶ 32} "[Appellant]: That's another thing, Your Honor.

{¶ 33} "The Bailiff: Mr. Scott, don't interrupt the Court. You will have an opportunity to * * *.

{¶ 34} "The Court: - - who hasn't had an opportunity to speak yet because Mr. Scott wants to dominate the conversation. Pardon?

{¶ 35} "* * *

{¶ 36} "[Appellant]: There's a conflict of interest here. This man [defense counsel] stabbed me in the back in '98, served as my attorney, court-appointed attorney supposedly, and I was sent to prison for that. When he wouldn't even cross-examine the State's witness [sic]. He sit [sic] and he said just enough to keep the Appellate court off his butt. I don't want this man to represent me. I don't even want this man sitting next to me. If I have to then I'll go through the Rule 24(C) and represent myself. I would be better off than having this viper here.

{¶ 37} "The Court: All right, you're excused, Mr. Kane.

{¶ 38} "Mr. Kane: Thank you.

{¶ 39} "[Appellant]: When I filed my motion, I asked for counsel to represent me that would help me, not one that's trying to win another favor from the prosecutor's office."

{¶ 40} On consideration of the foregoing, we find that appellant unequivocally stated that he did not wish to be represented by his court-appointed attorney, preferring instead to represent himself. Accordingly, the record adequately demonstrates that appellant knowingly, intelligently and voluntarily asserted his right to self-representation at the resentencing hearing, and the trial court did not err by dismissing appellant's

appointed counsel and allowing appellant to represent himself without further inquiry. Appellant's third assignment of error is not well-taken.

{¶ 41} In his fourth assignment of error, appellant asserts that the trial court erred by advising him as to a "blanket" three-year term of postrelease control, instead of advising him as to a separate term of postrelease control for each sentence. In response, the state argues that appellant was properly notified as to one three-year term of postrelease control; therefore, it was not necessary to inform him that he could be subject to five separate three-year terms of postrelease control, because they would all be served concurrently.

{¶ 42} R.C. 2967.28(F)(4)(c) states:

{¶ 43} "If an offender is subject to more than one period of postrelease control, the period of postrelease control for all of the sentences shall be the period of postrelease control that expires last, as determined by the parole board. Periods of postrelease control shall be served concurrently and shall not be imposed consecutively to each other."

{¶ 44} Ohio courts have held that the trial court's duty to impose the correct postrelease control pursuant to R.C. 2967.28(F)(4)(c) is mandatory, even if it will not change the overall length of time that the offender serves for postrelease control. *State v. Moon*, 8th Dist. No. 93673, 2010-Ohio-4483, ¶ 32. The remedy for a violation of the trial court's mandatory duty is to recognize the void sentence, vacate it, and order

resentencing. *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, ¶ 12; *State v. Moon*, supra, at ¶ 32.

{¶ 45} In support of his assignment of error appellant sites to *State v. Scott*, 6th Dist. No. E-09-048, 2010-Ohio-297, in which the defendant, Desmond Scott,[2] was found the defendant guilty in 2006 of burglary, disrupting public services and theft. For the following reasons, we find that appellant's reliance *State v. Scott* in this instance is misplaced.

{¶ 46} In considering Desmond Scott's appeal, we noted that "failure to provide notice of *possible or required* postrelease control will support a reversal for re-sentencing. Griffin & Katz, Ohio Felony Sentencing Law (2008), 715, Section 2:256." *Scott*, supra, at ¶ 13. We further noted that R.C. 2919.19(B)(3)(d), states in pertinent part:

{¶ 47} "'* * * if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

{¶ 48} "' * * *

{¶ 49} "'[N]otify the offender that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree * * *.'" Id. at ¶ 13-16.

{¶ 50} Based on the above, we concluded that the trial court erred when it specifically notified Desmond Scott of the mandatory three-year term pursuant to his

[2]Throughout this portion of our decision, we will refer to Desmond Scott by his full name, to avoid confusion with the appellant in this case.

burglary conviction, but failed to state that he could be subjected to two additional discretionary terms of postrelease control of up to three years in length pursuant to his convictions for disruption of public services and theft. *State v. Scott*, supra, ¶ 20.

{¶ 51} However, "[w]hen identical postrelease control requirements apply to multiple prison terms, the same notification may apply to each of the offenses concerned." *State v. Sulek*, 2d Dist. No. 09CA75, 2010-Ohio-3919, ¶ 23. See, also, *State v. Deskins*, 9th Dist. No. 10CA009875, 2011-Ohio-2605. (The trial court did not err by failing to state a separate period of postrelease control for each felony conviction where the defendant was convicted of multiple felonies, and identical postrelease control periods potentially applied to each prison term. Id. at ¶ 22.

{¶ 52} In this case, although one of appellant's five one-year prison terms was mandatory, none of the five possible three-year terms of postrelease control was mandatory[3]. In addition, the record shows that the trial court informed appellant at his sentencing hearing on June 28, 2007, as follows:

{¶ 53} "The Court: Do you understand that upon completion of your prison term, at the option of the Adult Parole Board, you could be required to serve time on postrelease control? This would be at [the parole board's] option; it's not mandatory. If they would elect to require you to serve it, it would be for a three-year term."

[3]As stated above, four of appellant's five convictions were fifth degree felonies, and one was a third degree felony. As such, all five terms of possible post-release control are discretionary, pursuant to R.C. 2967.28(C).

{¶ 54} On consideration, we determine that the trial court's notification of a possible three-year term of postrelease control was sufficient to satisfy the statutory notification requirements, as each conviction in this instance carried with it a discretionary three-year term of postrelease control. Appellant's fourth assignment is not well-taken.

{¶ 55} In his fifth assignment of error, appellant asserts that the trial court lost jurisdiction to advise him as to postrelease control for the prison terms he completed as of the date the re-sentencing took place.[4] We disagree, for the following reasons.

{¶ 56} The Ohio Supreme Court has held that:

{¶ 57} "In cases in which a defendant is convicted of, or pleads guilty to, an offense for which postrelease control is required but not properly included in the sentence, the sentence is void, and the state is entitled to a new sentencing hearing to have postrelease control imposed on the defendant *unless the defendant has completed his sentence*." *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at the syllabus. (Emphasis added.)

{¶ 58} Similarly, in *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, the Ohio Supreme Court held that a defendant cannot be re-sentenced after he "has completed the prison term imposed in his original sentence." Id. at ¶ 70. See, also, *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, at ¶ 18 (A defendant cannot be re-

[4]At the time of the re-sentencing hearing on April 14, 2010, appellant had almost completed his third one-year sentence. As of May 25, 2011, appellant has served four of his original one-year sentences.

sentenced after he has "already served the prison term ordered by the trial court[.]"). However, in cases where a defendant's aggregate sentence is made up of multiple consecutive prison terms Ohio courts have held that, for purposes of advising an offender as to postrelease control, the offender's sentence "does not expire until the aggregate time of the consecutive sentences expires." *State v. Deskins*, supra, at ¶ 19, citing *State v. Tharp*, 5th Dist. No. 07-CA-0-2208-Ohio-3995, ¶ 14.

{¶ 59} On June 28, 2007, appellant pled guilty to four counts of trafficking in cocaine and one count of possession of cocaine. The remaining counts of the indictment were dismissed.

{¶ 60} That same day, the trial court issued a judgment entry in which it found appellant guilty and, in accordance with the plea agreement, sentenced appellant to serve a one-year prison term for possession of cocaine. Each one-year term was made consecutive to the others, for a total of five years in prison. In addition, appellant's driver's license was suspended for five years.

{¶ 61} Specifically, the two-page judgment entry dated and journalized on June 28, 2007 states:

{¶ 62} "The court finds that the Defendant is not amenable to Community Control, and it is therefore ordered, adjudged and decreed that the Defendant be, and hereby is, sentenced to the control, care and custody of the Ohio Department of Rehabilitation and Correction for an agreed upon term of TWELVE (12) MONTHS EACH on Counts One, Two, Three and Four of the Indictment, said sentences to be served CONSECUTIVELY;

and the Defendant is also sentenced to an agreed upon MANDATORY TERM of ONE (1) YEAR on Count Seven of the Indictment, said sentence to be served CONSECUTIVELY to the sentences imposed under Counts One, Two, Three and Four, and he shall pay the costs of prosecution. THE SENTENCE IMPOSED IS A TOTAL OF FIVE (5) YEARS."

{¶ 63} Further, it has been held that a court can proceed to resentence an appellant to postrelease control when the "aggregate sentence" is contained within a single judgment entry and the judgment entry indicated which of the consecutive sentences were to be served first. See *State v. Arnold*, 189 Ohio App.3d 238, 2009-Ohio-3636. A trial court may correct a postrelease control notice sentencing error only when the error is within an unexpired aggregate of sentences imposed in one judgment entry. See *State v. Rollins*, 5th Dist. No. 10CA74, 2011-Ohio-2652, ¶ 9. See, also, *State v. Arnold*, supra (Expiration of the prisoner's journalized sentence, rather than offender's ultimate release from prison, determines the trial court's authority to resentence to impose an erroneously omitted postrelease control term.).

{¶ 64} Appellant's aggregate sentence of five years was contained within the original judgment entry of June 28, 2007.

{¶ 65} On consideration, since the record reflects that appellant was properly notified of his postrelease possibilities and his original sentencing occurred in a single judgment entry, it was not necessary for the trial court to re-advise appellant of his postrelease control. Appellant's fifth assignment of error is not well-taken.

{¶ 66} The judgment of the Sandusky Court of Common Pleas is hereby affirmed. Appellee and appellant are ordered to share equally in the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen J. Yarbrough, J. _____
CONCUR.
JUDGE