[Cite as *State v. Williams*, 2011-Ohio-804.]

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

State of Ohio	Court of Appeals Nos. L-10-1144 L-10-1145 L-10-1146
Appellee	
v.	Trial Court Nos. CR 2008-2802 CR 2008-3062
Tyreece C. Williams	CR 2008-1239
Appellant	**DECISION AND JUDGMENT**
	Decided: February 18, 2011

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Julia R. Bates, Lucas County Prosecuting Attorney, and
Kevin A. Pituch, Assistant Prosecuting Attorney, for appellee.

Eric Allen Marks, for appellant.

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SINGER, J.

{¶ 1} Appellant appeals from the sentencing portion of a judgment of conviction for drug possession entered on a no contest plea in the Lucas County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} Appellant, Tyreece C. Williams, was named in three separate 2008 indictments charging a total of eight counts of cocaine possession and trafficking. He initially pled not guilty to all counts, but following negotiations agreed to enter a no contest plea to one count in each of the indictments. On November 3, 2008, the trial court accepted the plea and found appellant guilty of three counts of cocaine possession. Two counts were as fifth degree felonies and one count was a fourth degree felony. The remaining charges were dismissed.

{¶ 3} At the plea colloquy, the court advised appellant that, if he received a prison sentence, he could subsequently be placed on postrelease control under supervision of the parole authority for a period of three years. The court also advised appellant of the consequences if he violated the terms of his postrelease control.

{¶ 4} At the sentencing hearing, the court imposed concurrent ten month periods of imprisonment for the fifth degree felonies to be served consecutively to a 17 month sentence for the fourth degree felony. The court made no verbal notification of the conditions of postrelease control, but provided appellant with a written notice of postrelease control which, in open court, was signed by appellant, attesting that he had received the notice and understood its terms. The notice also contained a certification from appellant's counsel that counsel had explained the terms of postrelease control and answered any questions appellant may have had. The judgment of conviction entries in each case state: "[d]efendant given notice of post release control under R.C. 2919.19(B)(2) and R.C. 2967.28."

{¶ 5} On April 1, 2010, in each case, appellant filed a pro se "Motion for 'Sentencing'" with the trial court. Appellant argued that, pursuant to *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, and its progeny, the court inadequately advised him of the tenure and conditions of his postrelease control. Appellant insisted that the court's failure to so inform resulted in his sentence being void and entitled him to a sentencing hearing de novo, as a matter of law.

{¶ 6} The trial court construed appellant's motions as petitions for postconviction relief, and concluded that the written notices and the reference to them in the judgment of conviction provided adequate notice under R.C. 2929.19(B)(3)(d). On this conclusion the court denied appellant's motions.

{¶ 7} Appellant appealed this decision in each of the trial court cases. We consolidated these appeals. Appellant sets forth the following single assignment of error:

{¶ 8} "The trial court erred denying appellant a de novo sentencing hearing."

{¶ 9} Every sentence of imprisonment for a felony in Ohio contains, in some form, the possibility of a period of supervised postrelease control. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, ¶ 20. Postrelease control is mandatory for first and second degree felonies, felony sex offenses and certain third degree felonies involving violence. R.C. 2967.28(B)(1)-(3). For felony offenses of the third, fourth and fifth degree that are not violent or felony sex offenses, the statute requires, "* * * the offender be subject to a period of post-release control of up to three years after the offender's

release from imprisonment, if the parole board * * * determines that a period of post-release control is necessary for that offender." R.C. 2967.28(C).

{¶ 10} Even where the Adult Parole Authority is vested by statute with the discretion to determine whether and by what terms postconviction control is to be imposed, to satisfy the doctrine of separation of powers a sentencing court must incorporate the imposition of postconviction control in its original sentencing entry. Such an entry provides Adult Parole with the authority to impose postconviction control. *Jordan* at ¶ 19, citing *Woods v. Telb* (2000), 89 Ohio St.3d 504, 512-513. Moreover, the sentencing court must notify the offender at the sentencing hearing about postrelease control. Id. at ¶ 22; R.C. 2929.19(B)(3)(c); R.C. 2967.28(B).

{¶ 11} *Jordan,* supra, at paragraph two of the syllabus, held that when a trial court fails to notify an offender about postrelease control at the sentencing hearing, even though postrelease control is included in its judgment entry, the court has failed to comply with statutorily mandated provisions. In such a case, the sentence must be vacated and remanded to the trial court for resentencing. Subsequently, the court held, in *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, syllabus, that when postrelease control is not properly included in a sentence, the sentence for that offense is void and the offender is entitled to a new sentencing hearing.

{¶ 12} *Bezak* has recently been modified to clarify that the new sentencing hearing referenced in the case is a hearing limited to the "proper imposition of postrelease control," rather than a global review of sentencing. *State v. Fischer*, ___ Ohio St.3d ___,

Slip Opinion No. 2010-Ohio-6238, paragraph two of the syllabus. Before we consider the remedy, however, we must determine whether appellant is entitled to any remedy.

{¶ 13} The threshold issue is whether the written notice of postrelease control provided to appellant at his sentencing hearing was sufficient to satisfy *Jordan.* "When sentencing a felony offender to a term of imprisonment, a trial court is required to notify the offender at the sentencing hearing about postrelease control and is further required to incorporate that notice into its journal entry imposing sentence." *Jordan,* at paragraph one of the syllabus. Appellant asserts that, because the court did not directly address him verbally on this issue during sentencing, this was insufficient.

{¶ 14} Both *Jordan* and *Bezak* mention *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, and its requirement that "certain findings * * * must be spoken on the record at the sentencing hearing * * *. *Bezak* at ¶ 7. Even so, the texts of these cases do not require that postrelease control information be spoken and the syllabus rule of *Jordan* requires only that the court "notify" the offender about postrelease control at the sentencing hearing. The form of the notification is not specified. Moreover, *Jordan* and *Bezak* and *Fischer* all positively reference *Wood v. Telb*, supra, a case in which the postrelease control information was provided to the offender at the sentencing hearing in writing in a form nearly identical to the one found here.

{¶ 15} While we view the better practice as being to inform an offender of postconviction control orally, we cannot find that the method employed here constitutes insufficient notice. Indeed, the court assured itself of appellant's ability to read and

comprehend and provided a detailed written statement of the manner in which postrelease control might affect him. The court even required his trial counsel to go over the notice with appellant, answer any questions and certify that he had done so.

{¶ 16} With respect to the judgment entries on conviction, although somewhat truncated, the statutory references and the statement that notice of postrelease control had been issued in conformity with those statutes is sufficient to satisfy *Jordan.*

{¶ 17} Accordingly, we conclude that the notice of postconviction control afforded appellant in this matter was in conformity with the law and the trial court properly denied appellant's motion for a new sentencing hearing.

{¶ 18} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court 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.

Peter M. Handwork, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Thomas J. Osowik, P.J.
CONCUR.

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JUDGE