

[Cite as *State v. Willis*, 2003-Ohio-6329.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82313

STATE OF OHIO	:	
	:	ACCELERATED DOCKET
Plaintiff-Appellee	:	
	:	JOURNAL ENTRY
-vs-	:	
	:	and
RAYSHAWN WILLIS	:	
	:	OPINION
Defendant-Appellant	:	
	:	

DATE OF ANNOUNCEMENT OF DECISION:	<u>NOVEMBER 26, 2003</u>
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CHARACTER OF PROCEEDING:	Criminal appeal from Common Pleas Court Case No. CR-428146
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JUDGMENT:	Sentenced Vacated and Defendant Discharged.
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DATE OF JOURNALIZATION:

APPEARANCE:

For Plaintiff-Appellee:	WILLIAM D. MASON Cuyahoga County Prosecutor MICHELLE D. EARLEY Assistant County Prosecutor 8 th Floor Justice Center 1200 Ontario Street Cleveland, Ohio 44113
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For Defendant-Appellant:	ROBERT R. CLARICO 23002 Chandlers Lane Suite 343 Olmsted Falls, Ohio 44138
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PATRICIA ANN BLACKMON, P.J.

{¶1} Pursuant to App.R. 11.1, an accelerated appeal is brief and conclusory on facts and issues that are uncomplicated.¹ In this accelerated appeal, we utilize the brevity concept expounded in *Crawford* and hold that under the recent case law of this court, the trial court erred in denying Willis' motion to dismiss.²

{¶2} Willis had served his sentence and was released from jail on March 25, 2002. Two days later he met with a parole officer who informed him that he would be placed on post-release control. The record is uncontroverted that at his sentencing hearing on June 28, 2001, Willis pled guilty to one count of drug possession and was sentenced to one year of incarceration. At the sentencing hearing, he was not sentenced to post-release control nor notified by the trial court that he could be subjected to post-release control.³

¹*Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

²*State v. Quincy Smith*, Cuyahoga App. No. 81344, 2003-Ohio-3215.

³See *State v. Quincy Smith* citing the following: "When a defendant has already completed his sentence, this court has ruled 'the imposition of post-release controls thereafter is precluded due to such practice being a violation of the separation of powers doctrine.' *State v. Murphy*, Cuyahoga App. No. 80460, 2002-Ohio-3452. See, also, *State v. McAnich*, Hamilton App. No. C-010456, 2002-Ohio-2347. This court has previously discharged a post-release control order imposed after the defendant completed his prison term, even when the post-release control is statutorily mandated. *State v. Newman* (Jan. 31, 2002), Cuyahoga App. No. 80034, 2002-Ohio-328, following *State v. Hart* (May 31, 2001), Cuyahoga App. No. 78170, and *State v. Morrissey* (Dec. 18, 2000), Cuyahoga App. No. 77179. In *State v. Fitch*, supra, 2002-Ohio-4891, post-release control was also statutorily mandated, but not stated at sentencing. But see *State v. Johnson*, Cuyahoga App. No. 80459, 2002-Ohio-4581."

{¶3} This court recognizes the diversity of views in the Eighth District on the issue in this appeal and those involving post-release control and escape indictment and conviction when the escape charge is for violation of post-release controls. We note *State v. Johnson*⁴ cited in Footnote No. 3 of this opinion has been accepted for decision by the Ohio Supreme Court. See 98 Ohio St.3d 1460. Nevertheless, the most recent and most definitive word on post-release control involving an escape conviction from this district is *State v. Quincy Smith*.⁵ In *Bryant*, the defendant challenged the trial court's adding post-release control to its journal entry when it had not given post-release control at the hearing. Our position was that the journal entry constituted a resentencing in violation of Bryant's right to be present during sentencing. This case is controlled by *Quincy Smith* and not *Bryant*. Accordingly, Willis' conviction for escape is vacated.

Sentence vacated
and defendant discharged.

ANNE L. KILBANE, J., and

TIMOTHY E. McMONAGLE, J., CONCUR.

⁴Cuyahoga App. No. 80459, 2002-Ohio-4581.

⁵We note that *State v. Quincy Smith* is different from this court's decision in *State v. Bryant*, Cuyahoga App. No. 79841, 2002-Ohio-2136, and different from *State v. Leeks* (October 18, 2001), Cuyahoga App. No. 78801, wherein this court held defendant's conviction for escape would stand because defendant failed to appeal the trial court's failure to notify of post-release control. *Leeks* raised the thorny question of whether a defendant is precluded from raising at his appeal an escape conviction that he was not informed of post-release control.

PATRICIA ANN BLACKMON
PRESIDING JUDGE

KEYWORD SUMMARY

Post Release Control — Sentencing Hearing — Escape — Parole
Officer