

[Cite as *State v. Austin*, 2009-Ohio-6108.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93028**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**KEVIN AUSTIN**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-445932

**BEFORE:** Boyle, J., Kilbane, P.J., and Stewart, J.

**RELEASED:** November 19, 2009

**JOURNALIZED:**

## **FOR APPELLANT**

Kevin Austin, pro se  
Inmate No. 481-187  
Grafton Correctional Institution  
2500 South Avon Belden Road  
Grafton, Ohio 44044

## **ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor  
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Kevin Austin, appeals his sentence as being contrary to law. Finding no merit to the appeal, we affirm.

{¶ 2} In February 2005, Austin pled guilty to aggravated murder with a one-year firearm specification and was sentenced to mandatory life in prison with the possibility of parole after 20 years, to be served consecutively to one year for the firearm specification. Austin filed a direct appeal, and this court upheld his conviction and found that his guilty plea was knowingly, intelligently, and voluntarily made. See *State v. Austin*, 8th Dist. No. 87169, 2006-Ohio-4120. Following the affirmance of his conviction and sentence, Austin filed, pro se, a “motion for leave to withdraw guilty plea and for resentencing.” The trial court denied the motion and Austin appeals, raising two assignments of error.<sup>1</sup>

{¶ 3} In his first assignment of error, Austin attacks his sentence as being void because the trial court unlawfully imposed a mandatory period of postrelease control. We disagree.

{¶ 4} Initially, we note that a conviction for aggravated murder is not subject to postrelease control. See R.C. 2967.28; *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748. When a trial court imposes postrelease control without

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<sup>1</sup> Notably, Austin assigns no error related to the trial court’s denial of his motion to withdraw his guilty plea, which would be barred under the doctrine of res judicata. See *State v. McGee*, 8th Dist. No. 91638, 2009-Ohio-3374. His appeal is limited to the trial court’s denial of his motion for resentencing.

the statutory authority to do so, the sentence is rendered void and the case must be remanded for a new sentencing hearing. See *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197; *State v. Crockett*, 7th Dist. No. 07-MA-233, 2009-Ohio-2894. Had the trial court simply ordered postrelease control in this case, we would be constrained to vacate the sentence and remand for a new sentencing hearing. *Id.* In this case, however, we find that the sentencing order did not actually impose any time of postrelease control because the order limited postrelease control to what is authorized under the statute.

{¶ 5} The sentencing journal entry states the following:

{¶ 6} “The court considered all required factors of the law. The court finds that prison is consistent with the purpose of R.C. 2929.11. The court imposes a prison sentence at the Lorain Correctional Institution of life. Defendant sentenced without possibility of parole for 20 years and 1 year firearm specification is consecutive. Postrelease control is part of this prison sentence *for the maximum time allowed for the above felony(s) under R.C. 2967.28.* Defendant to receive jail time credit for 428 day(s), to date. Defendant to pay court costs.” (Emphasis added.)

{¶ 7} While this court has recently held that such broad language is insufficient to satisfy the statutory notification requirements when the defendant faces mandatory postrelease control, we find the instant case distinguishable because Austin does not face any term of postrelease control. See generally *State v. Siwik*, 8th Dist. No. 92341, 2009-Ohio-3896. Accordingly, we do not find

that the sentencing entry is void because it limits postrelease control to what is authorized under R.C. 2967.28 and, therefore, does not actually impose any term of postrelease control. The first assignment of error is overruled.

{¶ 8} In his second assignment of error, Austin argues that his sentence must be vacated because the sentencing order does not contain a “time-stamp showing journalization by the clerk of courts.” Our review of the record indicates, however, that the entry was stamped and properly filed by the clerk of courts. We find no error and overrule the second assignment of error.

Judgment affirmed.

It is ordered that appellee recover of appellant 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 common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

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

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MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and  
MELODY J. STEWART, J., CONCUR