

[Cite as *State v. Prim*, 2010-Ohio-1580.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93955

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JESSE B. PRIM

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED
IN PART FOR RESENTENCING**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-357925

BEFORE: Jones, J., Dyke, P.J., and Boyle, J.

RELEASED: April 8, 2010

**JOURNALIZED:
FOR APPELLANT**

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ATTORNEYS FOR APPELLEE

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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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Jesse Prim ("Prim"), appeals his sentence.

Finding some merit to the appeal, we reverse in part.

{¶ 2} In 1997, Prim was charged in a four-count indictment with aggravated murder with a firearm specification; attempted aggravated murder with a firearm specification; possession of a dangerous ordnance with two firearm specifications; and having a weapon while under disability. His case proceeded to trial, at which a jury convicted him of all charges. The trial court sentenced Prim to a term of life in prison with parole eligibility after 20 years on the offense of aggravated murder, with three additional years for the firearm specification, merged Count 2 with Count 1, sentenced Prim to one year on the offense of having a weapon while under disability, and one year on the offense of unlawful possession of a dangerous ordnance. The court further ordered that all sentences were to be served consecutively.

{¶ 3} Prim appealed his conviction and sentence, which we affirmed. *State v. Prim* (1999), 134 Ohio App.3d 142, 730 N.E.2d 455, motion for delayed appeal denied by *State v. Prim* (2000), 88 Ohio St.3d 1436, 724 N.E.2d 811.

{¶ 4} In 2002, Prim filed his first petition for postconviction relief, which the trial court denied. In 2007, Prim filed a motion titled “Motion to Correct Void Sentences.” Prim argued that all of the sentences were void because the trial court failed to mention postrelease control at his sentencing hearing. The trial court denied Prim’s motion. Prim filed a motion for relief from judgment, which the trial court also denied. Prim appealed, and we dismissed his appeal. *State v. Prim*, Cuyahoga App. No. 92757, 2009-Ohio-3625.

{¶ 5} Prim then filed a motion for resentencing. The motion was denied. Prim filed the instant appeal, pro se, raising the following assignment of error for our review:

“1. The trial court’s refusal to vacate void sentences constitutes a denial of due process of law.”

{¶ 6} Prim contends that all his sentences are void because the trial court failed to inform him of postrelease control. The State concedes the error, in part, but argues that Prim should be resentenced on only those counts that required the court to inform Prim of postrelease control. We agree.

{¶ 7} In *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, the Ohio Supreme Court held that, when an offender is convicted of one or more offenses where postrelease control is required, and the trial court fails to notify the offender at the sentencing hearing that he may be subject to postrelease control regarding those offenses, the sentence is void and the offender is entitled to a new sentencing hearing for that particular offense.

{¶ 8} That being said, an individual sentenced for aggravated murder is not subject to postrelease control, because that crime is an unclassified felony to which the postrelease-control statute does not apply. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462 at ¶36; R.C. 2967.28. For that charge, Prim will be eligible for parole after serving 23 years in prison. See R.C. 2967.13. Postrelease control, however, is required with respect to his convictions for unlawful possession of a dangerous ordnance and having a weapon while under

disability. See R.C. 2929.14(F) and R.C. 2967.28. Since the trial court failed to inform Prim of postrelease control, his sentences for those counts are void.

{¶ 9} Therefore, the first assignment of error is sustained in part.

{¶ 10} Accordingly, the case is remanded for resentencing on the convictions for unlawful possession of a dangerous ordnance and having a weapon while under disability.

It is ordered that appellant and appellee split the 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.

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

LARRY A. JONES, JUDGE

ANN DYKE, P.J., and
MARY J. BOYLE, J., CONCUR