

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94216

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

MELVIN JONES

DEFENDANT-APPELLANT

**JUDGMENT:
SENTENCE VACATED AND REMANDED FOR
RESENTENCING**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-396309

BEFORE: Kilbane, J., Gallagher, A.J., and Jones, J.

RELEASED AND JOURNALIZED: September 2, 2010
APPELLANT

Melvin Jones
Inmate No. 399-495
Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio 44901

ATTORNEYS FOR APPELLEE

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Cuyahoga County Prosecutor
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MARY EILEEN KILBANE, J.:

{¶ 1} Appellant, Melvin Jones (“Jones”), pro se, appeals his sentence, alleging that the trial court committed reversible error in failing to impose a mandatory five-year period of postrelease control as a part of his sentence. The State concedes this error based upon the Supreme Court’s recent opinion in *State v. Singleton*, 129 Ohio St.3d 73, 2009-Ohio-6434, 90 N.E.2d 958. After review of the law and facts we agree with the appellant and the State and remand this matter for a de novo sentencing hearing on the authority of *Singleton*.

{¶ 2} On February 1, 2001, in the midst of his jury trial for aggravated murder and having a weapon while under disability, Jones pled guilty to an amended charge of involuntary manslaughter, a first degree felony, in violation of R.C. 2903.04(A), with an accompanying three-year firearm specification. That same day, the trial court sentenced Jones to an agreed term of 13 years of imprisonment: ten years of incarceration for involuntary manslaughter with a mandatory, consecutive three-year term of incarceration for the firearm specification.

{¶ 3} On March 21, 2002, Jones’s conviction was affirmed in *State v. Jones*, 8th Dist. No. 79811, 2002-Ohio-1271.

{¶ 4} On October 5, 2009, Jones filed a motion with the trial court arguing that his sentence was void and requesting that he be resentenced

pursuant to Crim.R. 47 and *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961. Jones argued that the trial court did not properly sentence him because it failed to advise him of the mandatory five-year period of postrelease control accompanying his prison sentence.

{¶ 5} A review of the sentencing transcript in this matter reveals that the trial court advised Jones that he would be subject to “up to” five years of postrelease control. R.C. 2967.28(B)(1) requires a mandatory five-year period of postrelease control for first degree felonies. The trial court did not impose the mandatory five-year period of postrelease control in this case. The State concedes this error and requests that Jones be resentenced on the authority of *Singleton*, which states:

“For criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose post-release control, trial courts shall conduct a de novo sentencing hearing in accordance with decisions of the Ohio Supreme court.” Id. at syllabus.

{¶ 6} Accordingly, we vacate Jones’s sentence and remand this case for resentencing in accordance with *Singleton*.

It is ordered that appellant recover from appellee 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. Any bail pending appeal is terminated.

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

MARY EILEEN KILBANE, JUDGE

SEAN C. GALLAGHER, A.J., and
LARRY A. JONES, J., CONCUR