

[Cite as *State v. Craddock*, 2010-Ohio-5782.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94387

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHARLES CRADDOCK

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-376855

BEFORE: Kilbane, P.J., Boyle, J., and Cooney, J.

RELEASED AND JOURNALIZED: November 24, 2010

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MARY EILEEN KILBANE, P.J.:

{¶ 1} Defendant-appellant, Charles Craddock (“Craddock”), appeals from the trial court’s denial of his motion for resentencing. For the reasons set forth below, we remand to the trial court for the limited purpose of the imposition of postrelease control under R.C. 2929.191.

{¶ 2} The facts of this case were previously set forth by this court in *State v. Craddock*, Cuyahoga App. No. 91766, 2009-Ohio-1616 (“*Craddock V*”):

“Craddock was charged in 1999 with four counts of rape with the use of force or threat specifications, and nine counts of gross sexual imposition. He pled guilty to two

counts of rape, which were amended to delete the use of force or threat specifications, and three counts of gross sexual imposition. He was sentenced to a 15-year prison term. Craddock filed a postsentence motion to withdraw his pleas, which was denied. Several appeals followed.

“In his first appeal, Craddock challenged the denial of his motion to withdraw his pleas, the lack of hearing on same, and his 15-year sentence. This court affirmed the pleas, but vacated the sentence and remanded for a new sentencing hearing. *State v. Craddock*, Cuyahoga App. No. 82870, 2004-Ohio-627, ¶36 (“*Craddock I*”).

“On remand, Craddock was resentenced to a 16-year term, and appealed, contending that the trial court failed to fully advise him of postrelease control. This court agreed, and on that issue only, vacated the sentence and again remanded for resentencing. *State v. Craddock*, Cuyahoga App. No. 85175, 2005-Ohio-2839, ¶2 (“*Craddock II*”).

“On remand, Craddock filed a motion to withdraw his pleas. As grounds for his motion, Craddock argued that during the plea hearing the trial court had advised him that he would be eligible for judicial release after three years, despite the fact that the rape sentences were mandatory in their entirety. He also argued that the trial court had not advised him at the plea hearing that postrelease control was a mandatory part of his sentence. The trial court denied the motion without a hearing on the grounds of res judicata. The trial court sentenced him to the same 16-year term and advised him that he would be subject to five years postrelease control. Craddock again appealed.

“This court held that the trial court was without jurisdiction upon remand (which was for the limited purpose of resentencing only) to consider Craddock’s motion to withdraw his pleas. *State v. Craddock*,

Cuyahoga App. No. 87582, 2006-Ohio-5915, ¶8 (“*Craddock III*”). Moreover, this court held that even if the trial court had jurisdiction to consider the motion, a new determination was barred by the principles of res judicata. Id. at ¶11.

“Nonetheless, in *Craddock III*, this court again vacated the sentence and remanded the case for resentencing, this time in accordance with *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. On remand, Craddock again filed a motion to withdraw his pleas for the same reasons set forth in *Craddock III*. The trial court denied the motion, resentenced him to 14 years, with 5 years of postrelease control. Craddock appealed, basically asking this court to reconsider its position in *Craddock III* and challenging the retroactive application of *Foster*. This court rejected both of Craddock’s arguments and affirmed the trial court. *State v. Craddock*, Cuyahoga App. No. 89484, 2008-Ohio-448 (“*Craddock IV*”).

“Approximately two months after this court’s opinion in *Craddock IV*, Craddock filed yet another motion to withdraw his guilty pleas, contending that the court failed to advise him at the plea of postrelease control and that a prison sentence was mandatory. The court denied the motion and [the appeal in *Craddock V*] followed.” *Craddock V* at ¶2-8.

{¶ 3} The court in *Craddock V* affirmed Craddock’s guilty plea because the trial court was without jurisdiction to consider his motion. The court reasoned that: “[t]his court’s decision in *Craddock IV* was the law of the case, and the trial court was without jurisdiction to consider Craddock’s (repetitive) arguments. * * * The mandate in *Craddock IV* was clear and

dispositive: the conviction was affirmed and the case was remanded to the trial court for execution of the sentence.” *Craddock V* at ¶14-15.

{¶ 4} In November 2009, Craddock filed a motion for resentencing pursuant to *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, 906 N.E.2d 422, arguing that his January 2007 sentence was void because the trial court’s journal entry failed to advise him of the consequences for violating postrelease control. The trial court denied his motion, and this sixth appeal follows.

{¶ 5} Craddock raises three assignments of error for our review. In the first assignment of error, Craddock relies on *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, claiming that his sentence is void because the trial court’s journal entry failed to state the consequences for violating postrelease control.

{¶ 6} We note that the Ohio Supreme Court has set forth the applicable standard of appellate review of a felony sentence in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at ¶4:

“In applying [*State v.*] *Foster* [109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470] to the existing statutes, appellate courts must apply a two-step approach. First, they must examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. *If this first prong is*

satisfied, the trial court's decision shall be reviewed under an abuse-of-discretion standard.¹ (Emphasis added.)

{¶ 7} Craddock argues that *Singleton* mandates that the trial court's journal entry include the consequences for violating postrelease control, i.e., the parole board may impose a prison term for as much as one-half of the stated prison term originally imposed.

{¶ 8} We find the instant case analogous to this court's recent decision in *State v. Holloway*, Cuyahoga App. No. 93809, 2010-Ohio-3315. In *Holloway*, the defendant appealed from a resentencing, arguing that "the court erred when it failed to impose a three-year term of postrelease control as directed by this court [and] that this error rendered his sentences void[.]" *Id.* at ¶1. We affirmed the trial court's judgment, but remanded the case pursuant to R.C. 2929.191 for the trial court to conduct a limited hearing and issue a correction of the journal entry before the defendant is released from prison. *Id.* at ¶3, 12, 27. The *Holloway* court stated:

"The hearing and corrected judgment entry are necessary to correct omissions in the journal entry in imposing postrelease control. Though we are reluctant to remand these cases again, we do so in an abundance of caution because, although the omissions do not void the sentences,

¹We recognize *Kalish* is merely persuasive and not necessarily controlling because it has no majority. The Supreme Court split over whether we review sentences under an abuse-of-discretion standard in some instances.

they must be corrected before appellant is released from prison.” Id. at ¶3.

{¶ 9} In reaching this conclusion, the *Holloway* court relied on *Singleton*. In *Singleton*, the Ohio Supreme Court addressed R.C. 2929.191, the statutory remedy to correct the trial court’s failure to properly impose postrelease control, and held, in relevant part that: “[f]or criminal sentences imposed on and after July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall apply the procedures set forth in R.C. 2929.191.” Id. at paragraph two of the syllabus. The *Singleton* court stated:

“Effective July 11, 2006, R.C. 2929.191 establishes a procedure to remedy a sentence that fails to properly impose a term of postrelease control. It applies to offenders who have not yet been released from prison and who fall into at least one of three categories: [1] those who did not receive notice at the sentencing hearing that they would be subject to postrelease control, [2] those who did not receive notice that the parole board could impose a prison term for a violation of postrelease control, or [3] those who did not have both of these statutorily mandated notices incorporated into their sentencing entries. R.C. 2929.191(A) and (B). For those offenders, R.C. 2929.191 provides that trial courts may, after conducting a hearing with notice to the offender, the prosecuting attorney, and the Department of Rehabilitation and Correction, correct an original judgment of conviction by placing on the journal of the court a nunc pro tunc entry that includes a statement that the offender will be supervised under R.C. 2967.28 after the offender leaves prison and that the parole board may impose a prison term of up to one-half of

the stated prison term originally imposed if the offender violates postrelease control.” Id. at ¶23.

{¶ 10} Similarly, in the instant case, the trial court did not include in the journal entry that the parole board could impose a prison term for up to one-half of his sentence if Craddock violates postrelease control. At the January 2007 sentencing hearing, the court advised Craddock that: “you will be on five years post-release control when you’re released from prison. There’s no reduction because this is a sex offense. During that five year period after you’re released from prison, the Adult Parole Authority will set conditions for your release. If you violate the conditions they set, they can send you back to prison to do additional time up to one-half the time this court imposes.” However, the journal entry states that: “[p]ost release control is part of this prison sentence for 5 years for the above felony(s) under R.C. 2967.28.”

{¶ 11} Therefore, based on our recent precedent, we remand for the court to conduct a hearing and correct its failure to include in its journal entry notice that the parole board could impose a prison term on Craddock for violating postrelease control. See R.C. 2929.191(B) and (C). See, also, *State v. Hairston*, Cuyahoga App. No. 94112, 2010-Ohio-4014, ¶2, 10 (where this court remanded the case for the limited purpose of the proper imposition of postrelease control pursuant to R.C. 2929.191 because the trial court’s

“journal entry failed to specify any term of incarceration that could be imposed should appellant violate the terms of postrelease control”).²

{¶ 12} In the second assignment of error, Craddock argues that he can no longer be sentenced because there has been more than a ten-year delay since he entered his guilty plea in 2000. He claims that this delay in sentencing violates Crim.R. 32(A), which provides that: “[s]entence[s] shall be imposed without unnecessary delay.”

{¶ 13} In the instant case, Craddock was originally sentenced in 2000, but he has been before this court on five prior occasions challenging his plea or sentence. This court has held that Crim.R. 32(A) does not apply in cases where an offender must be resentenced. See *State v. Huber*, Cuyahoga App. No. 85082, 2005-Ohio-2625, ¶8. See, also, *State v. Taylor* (Oct. 29, 1992), Cuyahoga App. No. 63295 (where this court held that Crim.R. 32 does not apply to resentencing).

{¶ 14} Thus, the second assignment of error is overruled.

²We also acknowledge this court’s recent decision in *State v. James*, Cuyahoga App. No. 94400, 2010-Ohio-5361. In *James*, the trial court notified defendant at the sentencing hearing that he would be subject to three years of postrelease control and that if he violated the terms and conditions of postrelease control, he could be sentenced for up to one-half of his prison term. However, the trial court did not include in its journal entry the term of incarceration that could be imposed if defendant violated the terms of postrelease control. We relied on *Singleton* and found that the trial court erred when it did not include the term of incarceration that could be imposed if defendant violated the terms of postrelease control in its

{¶ 15} In the third assignment of error, Craddock argues that the trial court should consider his motion to withdraw his guilty plea because he has yet to be sentenced. Generally, trial courts are required to treat a Crim.R. 32.1 motion as a “presentence motion” in cases where a void sentence is at issue. See *Boswell* at the syllabus.

{¶ 16} However, the *Singleton* court noted that:

“R.C. 2929.191(C) prescribes the type of hearing that must occur to make such a correction to a judgment entry ‘[o]n and after the effective date of this section.’ The hearing contemplated by R.C. 2929.191(C) and the correction contemplated by R.C. 2929.191(A) and (B) pertain only to the flawed imposition of postrelease control. R.C. 2929.191 does not address the remainder of an offender’s sentence. Thus, the General Assembly appears to have intended to leave undisturbed the sanctions imposed upon the offender that are unaffected by the court’s failure to properly impose postrelease control at the original sentencing.” Id. at ¶24.

{¶ 17} Because the omission in the instant case does not void Craddock’s sentence and this court has repeatedly affirmed the validity of his plea, we find that this argument is unpersuasive under the law of the case doctrine. See, also, *Holloway* at ¶24 (where this court also stated that the omission in the journal entry does not void defendant’s sentence, but nevertheless must be corrected before defendant was released from prison).

journal entry.

{¶ 18} Accordingly, the third assignment of error is overruled.

{¶ 19} Pursuant to R.C. 2929.191, we remand this case for the trial court to conduct a limited hearing and issue a correction of the journal entry.

It is ordered that appellant and appellee share 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. The defendant's convictions having been affirmed, 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, PRESIDING JUDGE

MARY J. BOYLE, J., and
COLLEEN CONWAY COONEY, J., CONCUR