

[Cite as *State v. Abrams*, 2011-Ohio-103.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94637

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DANT_ ABRAMS

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-505155 and CR-510954

BEFORE: Gallagher, P.J., Kilbane, A.J., and Stewart, J.

RELEASED AND JOURNALIZED: January 13, 2011
FOR APPELLANT

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SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant Dant_ Abrams appeals his sentence by the Cuyahoga County Court of Common Pleas. For the reasons stated herein, we reverse and remand.

{¶ 2} On July 31, 2008, in Cuyahoga County Common Pleas Court Case No. CR-505155, Abrams pleaded guilty to drug possession, a third-degree felony, in violation of R.C. 2925.11; drug trafficking, a third-degree felony, in violation of R.C. 2925.03(A)(2); and possession of criminal tools, a fifth-degree

felony, in violation of R.C. 2923.24(A).¹ In Cuyahoga County Common Pleas Court Case No. CR-510954, Abrams pleaded guilty to drug possession, a third-degree felony, in violation of R.C. 2925.11(A); drug trafficking, a third-degree felony, in violation of R.C. 2925.03(A)(2); possession of criminal tools, a fifth-degree felony, in violation of R.C. 2923.24(A); and having a weapon while under a disability, a third-degree felony, in violation of R.C. 2941.141.²

{¶ 3} After accepting Abrams's plea, the trial court proceeded directly to sentencing. Abrams was sentenced to a total of five years in Case No. CR-505155, and a total of five years in Case No. CR-510954. The trial court ran the two aggregate sentences concurrently. On December 17, 2009, the trial court revised Abrams's sentence because the original entries were not final, appealable orders. On February 9, 2010, this court granted Abrams's motion to file a delayed appeal. Abrams appeals his revised sentence, arguing that his plea should be vacated because the trial court failed to advise him of postrelease control as required by Crim.R. 11(C)(2)(a).³

We agree.

¹ All three counts carried a forfeiture specification under R.C. 2941.1417.

² All three drug-related offenses carried forfeiture specifications under R.C. 2941.1417; the weapons offense carried a three-year firearm specification under R.C. 2941.145.

³ Abrams's first assignment of error states: "The trial court erred to the prejudice

{¶ 4} In *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, 881 N.E.2d 1224, at paragraph one of the syllabus, the supreme court held that “[i]f a trial court fails during a plea colloquy to advise a defendant that the sentence will include a mandatory term of postrelease control, the defendant may dispute the knowing, intelligent, and voluntary nature of the plea either by filing a motion to withdraw the plea or upon direct appeal.” Furthermore, “[i]f the trial court fails during the plea colloquy to advise a defendant that the sentence will include a mandatory term of postrelease control, the court fails to comply with Crim.R. 11, and the reviewing court must vacate the plea and remand the cause.” *Id.* at paragraph two of the syllabus.

{¶ 5} The state concedes that at both the plea hearing and sentencing hearing, the trial court failed to advise Abrams that postrelease control was a mandatory part of his sentence. A review of the transcript of the plea and sentencing hearings clearly demonstrates that the trial court made no mention whatsoever of postrelease control. Despite the fact that the journal entries in both cases indicate postrelease control was a part of Abrams’s sentence, this does not correct the trial court’s error in failing to advise him at the hearings. See *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶ 11-12.

of Abrams by failing to substantially comply with the maximum penalty-component of Crim.R. 11(C)(2)(a) when it did not properly inform him of postrelease control during the plea hearing prior to accepting his plea.”

{¶ 6} Accordingly, Abrams's first assignment of error is sustained, and his plea is vacated. In light of our disposition of his first assignment of error, Abrams's remaining assignments of error are moot. This matter is remanded to the trial court for further proceedings consistent with this opinion.

Judgment reversed and case remanded.

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.

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

SEAN C. GALLAGHER, PRESIDING JUDGE

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