

[Cite as *State v. Hill*, 2011-Ohio-1574.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 95469

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STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

ROBERT HILL

DEFENDANT-APPELLEE

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**JUDGMENT:**  
**REVERSED AND REMANDED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-506427

**BEFORE:** Stewart, P.J., Cooney, J., and E. Gallagher, J.

**RELEASED AND JOURNALIZED:** March 31, 2011

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MELODY J. STEWART, P.J.:

{¶ 1} The state of Ohio appeals from the dismissal with prejudice of an indictment charging defendant-appellee, Robert Hill, with a single count of escape in violation of R.C. 2921.34(A)(1). Hill sought dismissal of the indictment on grounds that the escape count was predicated on his alleged

violation of postrelease control in an earlier case, CR-430947, in which the court improperly imposed the term of postrelease control, thus nullifying the basis for the escape charge. The court dismissed the case with prejudice, but without opinion. The state argues on appeal that dismissal of the indictment was unwarranted given the few facts alleged in the indictment and that the court violated Crim.R. 48(B) by failing to state a basis for dismissal with prejudice.

{¶ 2} The Rules of Criminal Procedure do not provide for a dismissal with prejudice. *State v. Johnson*, 8th Dist. No. 87348, 2006-Ohio-4772, ¶4, citing *Fairview Park v. Fleming* (Dec. 7, 2000), Cuyahoga App. Nos. 77323 and 77324. The court does have the inherent right to dismiss an indictment with prejudice, but only when “the defendant has been denied either a constitutional or statutory right, the violation of which would, in itself, bar prosecution.” *State v. Dixon* (1984), 14 Ohio App.3d 396, 471 N.E.2d 864, citing *State v. Sutton* (1979), 64 Ohio App.2d 105, 411 N.E.2d 818. If the court does dismiss an indictment, “it shall state on the record its findings of fact and reasons for the dismissal.” Crim.R. 48(B).

{¶ 3} The court did not state any reasons in support of dismissal, much less that it found any constitutional or statutory violation in the indictment. This was a clear violation of Crim.R. 48(B). *Johnson* at ¶5; *State v. Knight*, 8th Dist. No. 93649, 2010-Ohio-3873, ¶5.

{¶ 4} Hill argues that the court’s reasons for dismissing the indictment were manifest on the record — that postrelease control had been improperly imposed in CR-430947 because the court did nothing more than order postrelease control for “the maximum period allowed.”

{¶ 5} “When a defendant is convicted of or pleads guilty to one or more offenses and postrelease control is not properly included in a sentence for a particular offense, the sentence for that offense is void.” *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, syllabus. But voidness is not a self-executing proposition. Judgments are presumed valid and conclusive until reversed or vacated. See *State ex rel. Schneider v. Brewer* (1951), 155 Ohio St. 203, 205, 98 N.E.2d 2. No matter how obvious Hill might believe the alleged violation of postrelease control in CR-430947 to be, the judgment in that case is extant until expressly vacated. The sentence in CR-430947 has not been vacated or declared void on grounds that postrelease control had been improperly imposed. It follows that the court had no basis for dismissing the indictment against Hill.

{¶ 6} This cause is reversed and remanded for proceedings consistent with this opinion.

It is ordered that appellant recover of appellee its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas 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.

MELODY J. STEWART, PRESIDING JUDGE \_\_\_\_\_

COLLEEN CONWAY COONEY, J., and  
EILEEN A. GALLAGHER, J., CONCUR