

[Cite as *State v. Coon*, 2011-Ohio-324.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94505**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ROGER COON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**REVERSED AND VACATED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-492825

**BEFORE:** Gallagher, P.J., Kilbane, A.J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** January 27, 2011  
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SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant, Roger Coon, appeals the order of the Cuyahoga County Court of Common Pleas that added a five-year term of postrelease control to his sentence. For the reasons stated herein, we reverse the order of the trial court and vacate the imposition of postrelease control on Coon's sentence.

{¶ 2} In 2007, Coon was convicted of four counts of gross sexual imposition and was sentenced to three years of community control sanctions. On December 3, 2009, the trial court found Coon to be in violation of his community control sanctions and imposed a six-month prison term with three years of postrelease control.

{¶ 3} Because the postrelease control term should have been five years, the state requested the imposition of postrelease control pursuant to R.C. 2929.191 in light of *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958. The trial court held a hearing on December 23, 2009. At the hearing, the court imposed a five-year term of postrelease control. Coon has appealed this decision and has raised two assignments of error for our review.

{¶ 4} Coon's first assignment of error provides as follows: "The trial court failed to adequately advise appellant about the consequences of violating postrelease control."

{¶ 5} Coon asserts that when the trial court imposed the five-year term of postrelease control, the court failed to inform him that the consequence of violating postrelease control would be a term of imprisonment for up to one-half of his original prison sentence.

{¶ 6} The state claims that Coon was on notice of this consequence because he was informed of it at the December 3, 2009 hearing, where the trial court had erroneously imposed a postrelease control term of three years. The state essentially attempts to apply the earlier advisement to the subsequent

sentence correction, thereby making two improper notifications of postrelease control into a proper advisement. We are not persuaded by the state's argument.

{¶ 7} 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: "[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. R.C. 2929.191 applies to qualifying offenders who have not yet been released from prison. The statute provides that the court may, after conducting a hearing, "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; R.C. 2929.191.

{¶ 8} The hearing contemplated by R.C. 2929.191 is for the proper imposition of postrelease control, which would include the requisite advisements. Therefore, we find that a trial court must notify the offender, both at the hearing and in its journal entry, that the parole board can impose a prison term of up to one-half of the stated prison term if the offender violates postrelease control. R.C. 2929.191(B)(1).

{¶ 9} At the hearing held on December 23, 2009, the trial court failed to inform Coon of the consequences for violating postrelease control. Because Coon was not properly notified of postrelease control, we must vacate this portion of his sentence. Furthermore, because Coon has completed his prison sentence, he can no longer be subjected to postrelease control. *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶ 18. Coon's first assignment of error is sustained.

{¶ 10} Coon's second assignment of error provides as follows: "The trial court erred in adding postrelease control to appellant's original sentence as the addition was precluded by the doctrines of waiver and res judicata when the state failed to appeal the omission of postrelease control from appellant's original sentence."

{¶ 11} We reject this argument pursuant to *State v. Fischer*, \_\_\_Ohio St.3d\_\_\_, 2010-Ohio-6238, \_\_\_N.E.2d\_\_\_. Consistent therewith, Coon's second assignment of error is overruled.

{¶ 12} For the reasons stated under the first assignment of error, the order of the trial court is reversed and the imposition of postrelease control is vacated.

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  
FRANK D. CELEBREZZE, JR., J., CONCUR