

[Cite as *State v. Christinger*, 2011-Ohio-458.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94632**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**QUINCY CHRISTINGER**

DEFENDANT-APPELLANT

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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-498981

**BEFORE:** Boyle, J., Stewart, P.J., and Sweeney, J.

**RELEASED AND JOURNALIZED:** February 3, 2011

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MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Quincy Christinger, appeals the trial court’s denial of his motion to vacate his sentence, raising a single assignment of error:

{¶ 2} “Defendant was denied due process of law when the court imposed a period of post-release control of five years.”

{¶ 3} The crux of his appeal is that the trial court wrongly informed him that he was subject to a mandatory term of five years of postrelease control when in fact, he is only subject

to three years.

{¶ 4} Christinger was convicted of felonious assault, a second degree felony; breaking and entering, a fifth degree felony; improperly discharging a firearm into a habitation, a second degree felony; and two counts of endangering children, misdemeanors of the first degree. The felonies each carried one- and three-year firearm specifications, of which the trial court also found him guilty. The trial court subsequently imposed an aggregate sentence of 20 years in prison on all the counts and imposed a period of five years of postrelease control. But under R.C. 2967.28(B)(2), a felony of the second degree that is not a sex offense carries a mandatory period of three years postrelease control — not five years as sentenced by the trial court. The state concedes the error.

{¶ 5} In *State v. Fischer*, \_\_ Ohio St.3d \_\_, 2010-Ohio-6238, \_\_N.E.2d\_\_, the Ohio Supreme Court recently recognized that appellate courts do not have to remand a sentence that includes an improper period of postrelease control, calling remand “just one arrow in the quiver.” *Id.* at ¶29. Instead, it acknowledged that an appellate court’s discretion to correct “a defect in a sentence without a remand is an option that has been used in Ohio and elsewhere for years in cases in which the original sentencing court, as here, had no sentencing discretion.” *Id.* Indeed, the Supreme Court explained, “[c]orrecting the defect without remanding for resentencing can provide an equitable, economical, and efficient remedy for a void sentence[.]” in cases where “a trial judge does not impose postrelease control in

accordance with statutorily mandated terms.” Id. at ¶30.

{¶ 6} Accordingly, under R.C. 2953.08(G)(2), we modify and correct Christinger’s postrelease control from five years of mandatory postrelease control to three years of mandatory postrelease control on each of the second degree felonies. Likewise, we correct Christinger’s sentence to reflect that his fifth degree felony carries a discretionary period of up to three years postrelease control in accordance with R.C. 2967.28(B)(3).

{¶ 7} Judgment reversed, sentences are modified, and case remanded. Upon remand, trial court is instructed to correct the sentencing entries to reflect the proper period of postrelease control.

It is ordered that appellant recover of 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.

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MARY J. BOYLE, JUDGE

MELODY J. STEWART, P.J., and  
JAMES J. SWEENEY, J., CONCUR