

[Cite as *State v. Zganjer*, 2011-Ohio-606.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94724

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GEORGE ZGANJER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-428551

BEFORE: Stewart, P.J., Cooney, J., and Keough, J.

RELEASED AND JOURNALIZED: February 10, 2011

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MELODY J. STEWART, P.J.:

{¶ 1} Defendant-appellant, George Zganjer, appeals from a de novo resentencing following his 2003 guilty plea to rape. During resentencing, the court advised Zganjer that a violation of his mandatory five-year term of postrelease control could result in a prison term of up to one-half the

originally imposed sentence. Noting that he had been sentenced to a single count of rape, Zganjer argues that under R.C. 2967.28(F)(3) he could only have received a prison term of nine months for a single postrelease control violation. He maintains that the court should have advised him that each violation of postrelease control could be punished by prison terms in nine-month increments, with a maximum of “up to one-half” of his original prison term.

{¶ 2} R.C. 2967.28(F)(3) lists several options in the event a person violates the terms of postrelease control, among them the following: the court or Adult Parole Authority may impose a more restrictive sanction; increase the duration of the postrelease control; impose a prison term for a single violation that may not exceed nine months; or impose a cumulative prison term for multiple violations of up to one-half of the stated prison term originally imposed upon the offender. The nine-month option applies to single violations of postrelease control; if the offender commits more than one violation (multiple offenses), the court may order a cumulative sentence that does not exceed one-half of the originally imposed prison term.

{¶ 3} Given these options, the General Assembly apparently decided it would be cumbersome to require the courts to advise an offender of every possible option that might occur in the event of a violation of postrelease control. R.C. 2929.19(B)(3) states that “the court shall notify the offender

that if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision * * *, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed on the offender." Instead of forcing the sentencing court to delve into the myriad of possibilities that could arise in the event of a future violation of postrelease control, the statute only requires the court to advise an offender of the maximum sanction that can be imposed in the event of a violation of postrelease control.

{¶ 4} There is no question that the court complied with R.C. 2929.19(B)(3) by advising Zganjer that a violation of the term of his postrelease control could result in a prison term of up to one-half his original sentence. Having been apprised of the maximum amount of time that could be ordered as a result of a future violation of postrelease control, Zganjer cannot reasonably claim to be prejudiced if a future violation results in less time than one-half of his originally-imposed seven-year sentence.

{¶ 5} Zganjer's remaining assignments of error complain that the court erred by conducting the de novo resentencing one day before his scheduled release date from prison because he had an expectation of finality in his sentence and that the court lost jurisdiction to resentence him due to the nearly seven-year delay between his original sentence and the de novo

resentencing. These arguments have been rejected numerous times, so we summarily overrule them. See, e.g., *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, at ¶37 and *State v. Lucas*, 8th Dist. No. 90545, 2008-Ohio-4584 (no legitimate expectation of finality in a void sentence); *State v. Huber*, 8th Dist. No. 85082, 2005-Ohio-2625, at ¶8 (Crim.R. 32(A) does not apply to resentencing); *Smith v. Cuyahoga Cty. Sheriff's Dept.*, 8th Dist. No. 94626, 2010-Ohio-1763, at ¶11 (court did not lose jurisdiction to resentence for postrelease control when there was a ten-year delay between original sentence and resentencing).

Judgment affirmed.

It is ordered that appellee recover of appellant its 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 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
KATHLEEN ANN KEOUGH, J., CONCUR

