

[Cite as *State v. Bradford*, 2015-Ohio-1385.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102011

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**SEAN BRADFORD**

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-04-449598-A

**BEFORE:** Stewart, J., Celebrezze, A.J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** April 9, 2015

**FOR APPELLANT**

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MELODY J. STEWART, J.:

{¶1} When the court sentenced defendant-appellant, Sean Bradford, to prison terms for committing rape, felonious assault, and domestic violence, it stated in the sentencing entry that “post release control is part of this prison sentence for the maximum period allowed for the above felony(s) under R.C. 2967.28.” Bradford later filed a motion to vacate postrelease control on grounds that the court failed to specify that postrelease control was mandatory. The court’s refusal to grant the motion is the sole error raised on appeal.

{¶2} Ordinarily, there are two things to consider when reviewing the imposition of postrelease control: advisement at the time of sentencing and incorporation of the advisement into a sentencing entry. *See State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, paragraph one of the syllabus. When the court at sentencing properly advises the offender of postrelease control, errors or omissions in the sentencing entry are considered clerical mistakes that can be corrected nunc pro tunc. *See State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 15. When the court at sentencing fails to properly advise the offender of postrelease control, yet nonetheless incorporates postrelease control into the sentencing entry, the sentence is void. *Id.* at ¶ 23.

{¶3} Bradford has not included in the record on appeal a transcript of sentencing. Consistent with our obligation to presume regularity in the absence of a record demonstrating an error, we find that the court properly advised Bradford about postrelease control at the time of sentencing. *See State v. Loyed*, 8th Dist. Cuyahoga No. 101054, 2014-Ohio-5141, ¶ 10.

{¶4} The court's imposition of postrelease control in the journal entry for the "maximum period" allowed by law did not, however, comply with R.C. 2967.28. *State v. Douse*, 8th Dist. Cuyahoga No. 98249, 2013-Ohio-254, ¶ 7-8; *State v. Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-5036. Thus, this is a case where the court properly advised a defendant of postrelease control at the time of sentencing but failed to include that advisement in the sentencing entry.

{¶5} In *Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, the Ohio Supreme Court made it clear that:

[w]hen a defendant is notified about postrelease control at the sentencing hearing, but notification is inadvertently omitted from the sentencing entry, the omission can be corrected with a nunc pro tunc entry and the defendant is not entitled to a new sentencing hearing.

*Id.* at syllabus. The only caveat to this rule is that correction of the original sentencing entry must be "accomplished prior to the defendant's completion of his prison term." *Id.* at ¶ 24. We have described an offender's release from prison as "a line that a nunc pro tunc entry cannot cross." *State v. Elliot*, 8th Dist. Cuyahoga No. 100404, 2014-Ohio-2062, ¶ 6.

{¶6} It appears that Bradford was released from prison in January of this year. His release means that the court has no ability to issue a nunc pro tunc entry to correct the sentencing entry's omission of the specific term of postrelease control. We therefore sustain the assignment of error and remand to the court of common pleas with instructions to vacate the imposition of postrelease control.

{¶7} Judgment reversed and case remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellee his 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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MELODY J. STEWART, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and  
SEAN C. GALLAGHER, J., CONCUR