

[Cite as *State v. Love*, 2015-Ohio-1461.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102058

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**CHE LOVE**

DEFENDANT-APPELLEE

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-12-569712-A

**BEFORE:** Celebrezze, A.J., Kilbane, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** April 16, 2015

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FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Plaintiff-appellant, the state of Ohio, appeals the trial court's grant of defendant-appellee, Che Love's, motions to vacate his escape conviction and judicial-sanction sentence. After a careful review of the relevant case law and the record, we affirm the trial court's ruling.

{¶2} On July 24, 2006, Che Love pleaded guilty to one count of voluntary manslaughter under R.C. 2903.03. The trial court sentenced Love to five years in prison and five years of postrelease control. The corresponding sentencing entry from Love's hearing on August 30, 2006, contained the following provision regarding postrelease control:

"POST RELEASE CONTROL IS PART OF THIS PRISON SENTENCE FOR 5 YEARS FOR THE ABOVE FELONY(S) UNDER R.C. 2967.28."

{¶3} Love violated the terms and conditions of his postrelease control on January 31, 2013, and was subsequently charged with one count of escape. On March 26, 2014, Love pleaded guilty to an amended charge of attempted escape under R.C. 2923.02 and 2921.34(A)(3), a felony of the fifth degree. Love was sentenced to 11 months in prison and given a judicial-sanction sentence.

{¶4} On June 3, 2014, Love filed motions to vacate his attempted escape conviction and judicial-sanction sentence. Love argued that both his conviction and the judicial-sanction sentence were void because they were based on an improperly imposed postrelease control sentence in his underlying case. The state agreed that Love's position was in accord with the current status of the law in this district, and opted to preserve its

objections for the purposes of further appeal. The trial court granted Love's motions on September 10, 2014, and the state filed this timely appeal.

{¶5} In its sole assignment of error, the state contends that the trial court erred by granting Love's motions to vacate his attempted escape conviction and associated sanctions. Within this assignment, the state argues that Love's conviction and sentence should stand because the language contained in his sentencing entry referencing the postrelease control statute is sufficient to notify Love of the consequences of violating postrelease control. The state urges us, as it did in *State v. Burroughs*, 8th Dist. Cuyahoga No. 101123, 2014-Ohio-4688, to abandon our precedent and adopt the law of other districts. Specifically, the state directs our attention to the cases of *State v. Darks*, 10th Dist. Franklin No. 12AP-578, 2013-Ohio-176 (citing the postrelease control statute within the sentencing entry supplied sufficient notice), *State v. Clark*, 2d Dist. No. 2012 CA 16, 2013-Ohio-299 (indicating that the phrase "consequences" in conjunction with a reference to the postrelease control statute provided sufficient notice); and *State v. Ball*, 5th Dist. No. 13-CA-17, 2013-Ohio-3443 (referencing the applicable postconviction control statutes in a sentencing entry provides an offender with sufficient notice of postrelease control sanctions). However, as we made clear in *Burroughs*, we decline to adopt the law of our sister districts.

{¶6} The Ohio Supreme Court requires trial courts to give offenders notice of postrelease control both at the sentencing hearing and by incorporating it into the corresponding sentencing entry. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085,

817 N.E.2d 864, paragraph one of the syllabus. “The failure to properly notify a defendant of postrelease control and to incorporate that notice into the court’s sentencing entry renders the sentence void.” *State v. Cash*, 8th Dist. Cuyahoga No. 95158, 2011-Ohio-938.

{¶7} In this district, where a trial court advises the defendant of postrelease control at the sentencing hearing, but fails to include the consequences of violating postrelease control within the sentencing entry, any attempt to impose postrelease control is void. *Burroughs*; *State v. Lawson*, 8th Dist. Cuyahoga No. 100626, 2014-Ohio-3498; *State v. Pyne*, 8th Dist. Cuyahoga No. 100580, 2014-Ohio-3037; *State v. Elliott*, 8th Dist. Cuyahoga No. 100404, 2014-Ohio-2062; *State v. Mills*, 8th Dist. Cuyahoga No. 100417, 2014-Ohio-2188; *State v. Middleton*, 8th Dist. Cuyahoga No. 99979, 2013-Ohio-5591; *State v. Viccaro*, 8th Dist. Cuyahoga No. 99816, 2013-Ohio-3437. This court has held that mere reference to the postrelease control statute in the sentencing entry does not provide the offender with adequate notice of the consequences of violating postrelease control. *See Burroughs; Elliott; Mills*. Furthermore, once the prison term for the underlying offense carrying postrelease control has been completed, the court is without recourse to correct the sentencing error. *Middleton* at ¶ 10.

{¶8} In *Elliott*, the defendant’s sentencing entry stated: “postrelease control is part of this prison sentence for 5 years for the above felony(s) under R.C. 2967.28.” *Elliott* at ¶ 5. This court ruled that, although the defendant was orally notified of the consequences

of violating postrelease control at sentencing, mere reference to the statute in the sentencing entry was insufficient to provide the same notification. *Id.* at ¶ 12.

{¶9} In *Burroughs*, the offender’s sentencing entry contained the following provision: “(Agreed and mandatory) Post release control is part of this prison sentence for 5 years for the above felony(s) under R.C. 2967.28.” *Burroughs*, 2014-Ohio-4688, at ¶ 3. This court, relying on *Elliott*, reaffirmed that sentencing entries which reference the postrelease control statute do not provide the defendant with sufficient notice of the consequences of violating postrelease control. *Id.* at ¶ 8-9.

{¶10} We find that the instant case falls squarely in line with our precedent, and hold that the trial court did not err by granting Love’s motions to vacate his attempted escape conviction and sanctions. Love’s sentencing entry, much like the entries in *Burroughs* and *Elliott*, merely referenced the postrelease control statute. As we have reaffirmed many times, mere reference to the postrelease control statute in the sentencing entry does not adequately notify the offender about the consequences of violating postrelease control. Because postrelease control sanctions were not properly included in Love’s sentencing entry, any attempt to impose postrelease control is void. Moreover, this court is without recourse to correct the sentencing error because Love already completed his prison term for the underlying charge.

{¶11} Finally, we note that the *Burroughs* and *Elliott* courts had an opportunity to verify that the defendants were orally notified about postrelease control sanctions because transcripts from the sentencing hearings were included in the record on appeal. No

transcript of Love's sentencing hearing was available for our review in this case, so we were required to presume regularity. *Middleton*, 2013-Ohio-5591, at ¶ 9, citing *State v. Brown*, 8th Dist. Cuyahoga No. 95086, 2011-Ohio-345. Regardless, the *Elliott* court specifically held that because the defendant completed his prison term, notification at the hearing without inclusion into the sentencing entry was insufficient to provide adequate notification of the consequences of violating postrelease control. *Elliott*, 2014-Ohio-2062, at ¶ 12. Thus, the *Elliott* defendant's escape charge for violating postrelease control was void. *Id.* Even if we were provided with a transcript of Love's sentencing hearing, we would still affirm the trial court's grant of Love's motions to vacate the attempted escape conviction and associated sanctions.

{¶12} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

MARY EILEEN KILBANE, J., and  
ANITA LASTER MAYS, J., CONCUR