

[Cite as *State v. Rodriguez*, 2015-Ohio-1835.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101832

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JUAN RODRIGUEZ

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-05-471610-A

BEFORE: Jones, P.J., Kilbane, J., and McCormack, J.

RELEASED AND JOURNALIZED: May 14, 2015

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LARRY A. JONES, SR., P.J.:

{¶1} Defendant-appellant Juan Rodriguez appeals the trial court's judgment denying his motion to terminate postrelease control. We reverse and remand.

{¶2} In November 2005, Rodriguez was sentenced to six years of imprisonment on a conviction for one count of aggravated robbery with a three-year firearm specification. At sentencing, the trial court informed Rodriguez that he would be subject to five years of postrelease control and that he could face a prison term of up to three years for a violation of his postrelease control. The court's sentencing judgment entry stated the following in regard to postrelease control: "Post release control is part of this prison sentence for the maximum time allowed for the above felony(s) under R.C. 2967.28."

{¶3} On May 1, 2014, after having served his sentence, Rodriguez filed a motion to terminate postrelease control. The trial court summarily denied the motion, and Rodriguez now appeals, assigning the following as error: "Mr. Rodriguez cannot be subject to post-release control when the journal entry memorializing his sentence simply states that post-release control is imposed 'for the maximum period of time allowed * * * under R.C. 2967.28.'"

{¶4} In support of his position, Rodriguez relies on this court's en banc decision in *State v. Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-5036, *appeal dismissed*, 141 Ohio St.3d 1450, 2015-Ohio-239, 23 N.E.2d 1193. In *Mace*, the en banc court addressed the intra-district conflict of "whether a sentencing journal entry that states that the appellant is subject to post-release control for the 'maximum period allowed' for that felony is void, even if the court informed the defendant at the sentencing hearing of the

specific period of post-release control imposed.” *Id.* at ¶ 1. We held that “such a judgment entry is void. Further, the entry cannot be corrected after the appellant has completed service of his sentence.” *Id.*

{¶5} At the time of briefing in this case, *Mace* was pending in the Ohio Supreme Court on a certified conflict. The court now has determined that no conflict exists and dismissed the appeal. *Mace*, 141 Ohio St.3d 1450, 2015-Ohio-239, 23 N.E.2d 1193. Thus, *Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-5036, is the controlling authority on the issue now before us, and on that authority, we find that the trial court erred in denying Rodriguez’s motion to terminate his postrelease control. Further, because Rodriguez has served his sentence in this case, he cannot be resentenced. His assignment of error is, therefore, well taken.

{¶6} Judgment reversed; case remanded so that the trial court can put forth an entry stating that Rodriguez is not subject to postrelease control.

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.

MARY EILEEN KILBANE, J., and
TIM McCORMACK, J., CONCUR