

[Cite as *State v. Chung*, 2015-Ohio-1959.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102092

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GARY LUE CHUNG

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-07-496335-A

BEFORE: E.A. Gallagher, P.J., S. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: May 21, 2015

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Gary Lue Chung appeals the denial of his motion to terminate postrelease control in the Cuyahoga County Court of Common Pleas. For the following reasons, we reverse and remand.

{¶2} On October 30, 2007, Lue Chung plead guilty to aggravated arson and felonious assault. At the sentencing hearing the trial court imposed two-year prison terms for both offenses to be served concurrently. The transcript from Lue Chung's sentencing hearing reflects that the trial court properly advised Lue Chung that he was subject to postrelease control for a period of three years after incarceration. The court also advised Lue Chung of the consequences of violating the terms of postrelease control, stating that he may be returned to prison for up to half of his original sentence or charged with the felony of escape. However, with respect to postrelease control, Lue Chung's sentencing entry stated:

“Post release control is part of this prison sentence of 3 years for the above felony(s) under R.C. 2967.28.”

{¶3} On August 13, 2014 Lue Chung filed a motion to vacate and/or terminate postrelease control arguing that the trial court failed to properly impose postrelease control in his sentencing entry and that because he had completed his prison sentence the trial court lacked jurisdiction to correct the error. The trial court denied Lue Chung's motion to vacate on September 19, 2014 and he now appeals asserting the following sole assignment of error:

The trial court erred in failing to vacate and/or terminate appellant's improperly imposed term of postrelease control.

{¶4} Lue Chung argues that the trial court erred when it refused to terminate his postrelease control because his sentencing entry failed to include the consequences for violation of postrelease control which rendered that portion of his sentence void and, because he has completed his prison sentence, the trial court could no longer correct the defect.

{¶5} In *State v. Cash*, 8th Dist. Cuyahoga No. 95158, 2011-Ohio-938, this court stated that “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.” *Id.* at ¶ 7, citing *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864. Where, as here, a trial court properly advises a defendant of postrelease control at the sentencing hearing but the corresponding journal entry fails to include the consequences for violating postrelease control, that portion of the sentence is void. *State v. Mills*, 8th Dist. Cuyahoga No. 100417, 2014-Ohio-2188, ¶ 13; *State v. Burroughs*, 8th Dist. Cuyahoga No. 101123, 2014-Ohio-4688, ¶ 8; *State v. Lawson*, 8th Dist. Cuyahoga No. 100626, 2014-Ohio-3498, ¶ 17; *State v. Viccaro*, 8th Dist. Cuyahoga No. 99816, 2013-Ohio-3437.

{¶6} Examining language nearly identical to that of the sentencing entry presently before us, this court has repeatedly held that the mere reference to the postrelease control statute, R.C. 2967.28, in the sentencing entry is not adequate notice of the consequences of violating postrelease control. *State v. Elliott*, 8th Dist. Cuyahoga No. 100404,

2014-Ohio-2062; *State v. Negron*, 8th Dist. Cuyahoga No. 100966, 2014-Ohio-5427; *Mills*; *Lawson*; *State v. Che Love*, 8th Dist. Cuyahoga No. 102058, 2015-Ohio-1461.

{¶7} Where the defendant has already served his prison term for the charges underlying the postrelease control, the court is barred from taking any action to reimpose postrelease control, correct any sentencing errors by resentencing, or correct its sentencing entry nunc pro tunc. *State v. Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-5036, ¶ 1; *Mills* at ¶ 14; *Elliott* at ¶ 12.¹

{¶8} In light of the foregoing precedent in this district, we find that the trial court erred in denying Lue Chung's motion to terminate postrelease control. Because postrelease control sanctions were not properly included in his sentencing entry, particularly with respect to the failure to state the consequences for a violation of postrelease control, and Lue Chung has served his prison term for the charges underlying the postrelease control, any attempt to impose postrelease control was void.

{¶9} Lue Chung's sole assignment of error is sustained.

¹The state urges this court to follow the law of other districts that conflict with our authority. *See, e.g., State v. Clark*, 2d Dist. Clark No. 2012 CA 16, 2013-Ohio-299 (sentencing entry that noted the term "consequences" in connection with R.C. 2967.28 was sufficient notice of the consequences for violation of postrelease control); *State v. Darks*, 10th Dist. Franklin No. 12AP-578, 2013-Ohio-176 (journal entry that included a reference to the sentencing statute, R.C. 2929.19(B)(3), was sufficient notice); *State v. Murray*, 6th Dist. Lucas No. L-10-1059, 2012-Ohio-4996 (journal entry's reference to R.C. 2967.19(B)(3) and 2967.28 was sufficient to give the offender the required notice that the court authorized a postrelease control sanction). We decline to do so.

{¶10} The judgment of the trial court is reversed and the case is remanded to the trial court with instructions to release Lue Chung from further postrelease control supervision.

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 trial 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.

EILEEN A. GALLAGHER, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR