

[Cite as *State v. Scott*, 2015-Ohio-2161.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102301

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JOSEPH SCOTT**

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-08-505742-A

**BEFORE:** E.T. Gallagher, J., Celebrezze, A.J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** June 4, 2015

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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Joseph Scott (“Scott”), appeals the denial of his motion to terminate postrelease control. He raises one assignment of error for our review:

1. The trial court erred when it denied Mr. Scott’s motion to terminate his void postrelease control. *State v. Pyne*, 8th Dist. Cuyahoga No. 100580, 2014-Ohio-3037; R.C. 2929.19(B); Journal Entry, July 7, 2008; Journal Entry, Nov. 4, 2014.

{¶2} We find merit to the appeal and reverse the trial court’s judgment.

### **I. Facts and Procedural History**

{¶3} In July 2008, Scott was convicted of gross sexual imposition, in violation of R.C. 2907.05(A)(4), and attempted rape, in violation of R.C. 2923.02 and 2907.01(A)(1)(b). The court imposed five- and six-year prison terms on each of the counts, respectively, to be served concurrently. The court also advised Scott at the sentencing hearing that he would be subject to five years of mandatory postrelease control for each of his convictions and explained:

If you violate the terms, you will receive additional time, up to half the original sentence or charged with escape. Costs will be imposed. There are no fines.

(Tr. 650-651.) The sentencing entry also notified Scott that he would be subject to five years of postrelease control upon his release from prison, but it did not mention the potential consequences of violating its terms.

{¶4} Scott was released from prison and placed on postrelease control on January 1, 2014. He subsequently filed a motion to terminate postrelease control, arguing that he was never properly placed on postrelease control because the sentencing entry failed to

notify him of the potential consequences of violating its terms. The trial court denied the motion, and this appeal followed.

## **II. Law and Argument**

{¶5} In his sole assignment of error, Scott argues the postrelease control portion of his sentence is void because the court failed to properly notify him of the potential consequences of violating the conditions of his postrelease supervision.

{¶6} When a court imposes a sentence that includes postrelease control, it must notify the offender that he will be supervised pursuant to R.C. 2967.28, and that upon violating a condition of postrelease control, the parole board may impose a prison term of up to one-half of the prison term originally imposed upon the offender. R.C. 2929.19(B)(3)(c) and (e); *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 2. The failure to properly notify a defendant of postrelease control at the sentencing hearing, *and* to incorporate that notice into the court's sentencing entry, renders the sentence void. *State v. Cash*, 8th Dist. Cuyahoga No. 95159, 2011-Ohio-938, ¶ 7, citing *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, paragraph one of the syllabus.

{¶7} Where the required notification was inadvertently omitted from the sentencing entry, the court may correct the error with a nunc pro tunc entry, but the correction must be made before the defendant completes his prison term, otherwise postrelease control cannot be imposed. *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 16, citing *Hernandez v. Kelly*, 108 Ohio St.3d 395,

2006-Ohio-126, 844 N.E.2d 301. *See also State v. Holdcroft*, 137 Ohio St. 3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 11, paragraph three of the syllabus (“Once an offender has been released from prison, he cannot be subjected to another sentencing to correct the trial court’s flawed imposition of postrelease control.”).

{¶8} Simply citing the statute and stating in the sentencing entry that five years of postrelease control is a mandatory part of the sentence, does not sufficiently notify the defendant of the potential consequences of violating the conditions of postrelease control.

*State v. Elliott*, 8th Dist. Cuyahoga No. 100404, 2014-Ohio-2062, ¶ 5, 12. To be sufficient, the notification of postrelease control in the sentencing entry must notify the defendant of “the details of the postrelease control *and* the consequences of violating postrelease control.” (Emphasis added.) Qualls at ¶ 18.

{¶9} Here, the sentencing entry described the length and mandatory nature of postrelease control, but said nothing about the potential consequences Scott would face if he violated any of its conditions. The state concedes the notification language in the sentencing entry is insufficient under this court’s precedent but urges us, as it has done in previous cases, to disregard our precedent and follow the law of other districts. Specifically, the state asks us to follow *State v. Darks*, 10th Dist. Franklin No. 12AP-578, 2013-Ohio-176 (holding that citation to the postrelease control statute within the sentencing entry supplied sufficient notice); *State v. Clark*, 2d Dist. Clark No. 2012 CA 16, 2013-Ohio-299 (holding that the phrase “consequences” in conjunction with a reference to the postrelease control statute provided sufficient notice); and *State v. Ball*,

5th Dist. Licking No. 13-CA-17, 2013-Ohio-3443 (holding that citation to the postrelease control statute within the sentencing entry supplied sufficient notice).

{¶10} The state has previously asked us to follow these cases, and we have declined to do so. *See e.g., State v. Burroughs*, 8th Dist. Cuyahoga No. 101123, 2014-Ohio-4688, ¶ 9; *State v. Love*, 8th Dist. Cuyahoga No. 102058, 2015-Ohio-1461, ¶ 5. Accordingly, we will continue to follow the law and reasoning set forth in our precedent.

{¶11} The trial court erred in denying Scott's motion to terminate postrelease control. Scott's sole assignment of error is sustained.

### **III. Conclusion**

{¶12} In accordance with our Eighth District precedent, we find that Scott's postrelease control sanctions are void because the sentencing entry failed to properly notify him of the potential consequences of violating the conditions of postrelease control. Therefore, the trial court erred when it denied Scott's motion to terminate postrelease control, which he filed after his release from prison.

{¶13} The trial court's judgment is reversed, and the case is remanded to the trial court with instructions to release Scott from further postrelease control supervision.

It is ordered that appellant recover of said 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.

EILEEN T. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and  
ANITA LASTER MAYS, J., CONCUR