

[Cite as *State v. Martin*, 2015-Ohio-2865.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102336

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ISAAC MARTIN

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-08-514039-A and CR-08-514600-A

BEFORE: E.T. Gallagher, J., Celebrezze, A.J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: July 16, 2015

ATTORNEYS FOR APPELLANT

Robert L. Tobik
Cuyahoga County Chief Public Defender

BY: Cullen Sweeney
Assistant Cuyahoga County Public Defender
310 Lakeside Avenue
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: Frank Romeo Zeleznikar
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Isaac Martin (“Martin”), appeals the trial court’s judgment denying his motion to terminate postrelease control. Martin raises one assignment of error for review:

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

{¶2} After careful review of the record and relevant case law, we reverse the trial court’s judgment.

I. Procedural History

{¶3} On November 25, 2008, Martin pleaded guilty to burglary in Cuyahoga C.P. No. CR-08-514600-A. Martin also pleaded guilty to escape in Cuyahoga C.P. No. CR-08-514039-A.

{¶4} On December 22, 2008, the trial court held a joint sentencing hearing and imposed an aggregate prison sentence of six years. The corresponding sentencing journal entry, dated December 30, 2008, contained the following provision regarding postrelease control:

POST RELEASE CONTROL IS PART OF THIS PRISON SENTENCE
FOR 3 YEARS FOR THE ABOVE FELONY(S) UNDER R.C. 2967.28.

{¶5} Martin completed his sentence and was released from prison on August 10, 2014. Upon his release, Martin was placed on postrelease control. On October 21,

2014, Martin filed a pro se motion to terminate his postrelease control, arguing that the trial court's imposition of postrelease control was void because the sentencing journal entry failed to state the consequences of violating the terms of his postrelease control. On October 30, 2014, the trial court denied his motion.

{¶6} Martin now appeals from the denial of his motion to terminate his postrelease control.

II. Law and Analysis

{¶7} In his sole assignment of error, Martin argues the postrelease control portion of his sentence is void because the trial court failed to properly notify him of the potential consequences of violating the conditions of his postrelease supervision. He further contends that because that portion of his sentence is void, and he has completed his prison term, the trial court could not retrospectively impose postrelease control. We agree.

{¶8} In response, the state concedes the law in this district but contends, in accordance with the law as stated in other districts, that Martin was properly advised of postrelease control because the reference to R.C. 2967.28 in the sentencing journal entry satisfied the notification requirements for imposing postrelease control. Therefore, the state urges this court to follow the law of other districts, as stated in *State v. Clark*, 2d Dist. Clark No. 2012 CA 16, 2013-Ohio-299 (the 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 (the journal entry that included a reference to the sentencing

statute, R.C. 2929.19(B)(3), was sufficient notice); and *State v. Murray*, 6th Dist. Lucas No. L-10-1059, 2012-Ohio-4996 (the sentencing entry that included reference to R.C. 2953.08 and 2967.28 was sufficient for purposes of notice of postrelease control sanctions). However, as this court made clear in *State v. Burroughs*, 8th Dist. Cuyahoga No. 101123, 2014-Ohio-4688, we decline to adopt the law of our sister districts.

{¶9} 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 journal 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.

{¶10} Relevant to the arguments raised in this case, sufficient notification to a defendant regarding postrelease control includes notification of the consequences for violating postrelease control. *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 18. Thus, in this district, where a trial court fails to include the consequences of violating postrelease control in the sentencing entry, that portion of the sentence is void. See *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. Furthermore, this court has held that the 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 Mills* at ¶ 7; *Elliott* at ¶ 12.

{¶11} We find the instant case falls squarely in line with our precedent. Because postrelease control sanctions were not properly included in Martin’s sentencing journal entry, any attempt to impose postrelease control is void. Moreover, “[i]t is well settled that once the sentence for the offense that carries postrelease control has been served, the court can no longer correct sentencing errors by resentencing.” *Viccaro* at ¶ 11, quoting *State v. Douse*, 8th Dist. Cuyahoga No. 98249, 2013-Ohio-254, citing *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961. Thus, this court is without recourse to correct the sentencing error because Martin has completed his prison term for the underlying charges. *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 16 (“unless a sentencing entry that did not include notification of the imposition of postrelease control is corrected before the defendant completed the prison term for the offense for which postrelease control was to be imposed, postrelease control cannot be imposed.”). *See also State v. Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-5036, ¶ 1.

{¶12} Finally, we note that Martin’s failure to submit the transcript from his sentencing hearing does not affect the outcome of our decision in this case. In *Elliott*,

2014-Ohio-2062, this court had the opportunity to review the sentencing transcript and held that even though Elliot was orally notified of the consequences of violating postrelease control at his sentencing hearing, the failure to subsequently include the notification in the sentencing journal entry rendered the imposition of his postrelease control void. *Id.* at ¶ 12. Thus, pursuant to this court's decision in *Elliot*, even if the trial court advised Martin of the consequences of violating postrelease control at his sentencing hearing, the court was not relieved of its obligation to include the notification in its December 30, 2008 sentencing entry. *See Viccaro*, 2013-Ohio-3437, ¶ 14; *Mills*, 2014-Ohio-2188, ¶ 13.

{¶13} In light of the foregoing precedent in this district, we find the trial court erred in denying Martin's motion to terminate his 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 violation of postrelease control, and Martin has served his prison term for the charges underlying the postrelease control, any attempt now to impose postrelease control is void.

{¶14} The judgment of the trial court is reversed, and the matter is remanded with instructions to release Martin 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
EILEEN A. GALLAGHER, J., CONCUR