

[Cite as *State v. Strowder*, 2015-Ohio-5270.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103156

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DARRELL STROWDER**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**REVERSED, VACATED, AND REMANDED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-14-583940-A

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

**RELEASED AND JOURNALIZED:** December 17, 2015

## **ATTORNEYS FOR APPELLANT**

Timothy Young  
State of Ohio Public Defender

BY: Stephen A. Goldmeier  
Assistant State Public Defender  
250 East Broad Street, Suite 1400  
Columbus, Ohio 43215

## **ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

BY: Daniel T. Van  
Assistant County Prosecutor  
The Justice Center, 8th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant, Darrell Strowder, appeals the imposition of his judicial-sanction sentence imposed after the trial court found that he violated the terms of his community control sanctions. We reverse.

{¶2} In 2004, Strowder was sentenced to 20 years in prison after a jury trial in Cuyahoga C.P. No. CR-04-453994-A. This court reversed his conviction and remanded the case for a new trial. *State v. Strowder*, 8th Dist. Cuyahoga No. 85792, 2006-Ohio-442.

{¶3} On remand, Strowder pleaded guilty to robbery, two counts of aggravated robbery, felonious assault, and two counts of attempted murder. The court sentenced him to eight years in prison and informed him that he would be placed on five years of postrelease control after his release from prison. The sentencing journal entry, however, failed to state what the consequences would be if Strowder violated the terms of his postrelease control. Strowder was released from prison in October 2012 and placed on five years of postrelease control.

{¶4} In 2014, Strowder pleaded guilty to drug possession in Cuyahoga C.P. No. CR-14-583940-A. The court sentenced him to nine months in prison to be served consecutive and prior to three years for violating his postrelease control conditions in CR-04-453994-A.

{¶5} Strowder finished his sentence in CR-14-583940-A in March 2015 and began his three year sentence in CR-04-453994-A. He subsequently filed a motion to vacate his three-year judicial-sanction sentence, arguing that the sentence was void because it

was based on an improperly imposed postrelease control sentence in CR-04-453994-A. The trial court denied his motion and this appeal followed.

{¶6} In his sole assignment of error, Strowder claims that the trial court erred when it denied his motion to vacate his void judicial-sanction sentence.

{¶7} It is well settled that a sentence that does not include the statutorily mandated term of postrelease control is void, is not precluded from appellate review by principles of res judicata, and may be reviewed at any time, on direct appeal or by collateral attack. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph one of the syllabus; *see also State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶ 16.

{¶8} Trial courts are required to notify offenders about postrelease control both at the sentencing hearing and in the judgment entry of sentence. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, paragraph one of the syllabus; *State v. Pyne*, 8th Dist. Cuyahoga No. 100580, 2014-Ohio-3037. As part of that notification, the trial court must also notify the offender that if he or she violates the conditions of postrelease control, the parole board may impose a prison sentence of up to one-half of the stated prison term originally imposed upon the offender. R.C. 2929.19(B)(2)(e); *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 77. Failure to do so results in void postrelease control. *State v. Billiter*, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 960, ¶ 2-14; *State v. Love*, 8th Dist. Cuyahoga No. 102058, 2015-Ohio-1461, ¶ 7; *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.

{¶9} In *Love*, as in this case, the appellant failed to provide this court with a copy of the transcript from the sentencing hearing. In *Love*, the state urged, and likewise urges in this case, that we presume regularity. In this case, that would mean that we would presume that Strowder was properly advised at his sentencing hearing of the consequences of violating the terms of his postrelease control. We decline to do so because even if we were to presume that the court gave the proper advisement at Strowder’s sentencing hearing, the advisement is not sufficient if it is not contained in the sentencing journal entry. Thus, we reject the state’s argument.

{¶10} We agree with Strowder’s contention that he cannot be found to have violated a void term of postrelease control. The state argues that Strowder’s sentence should stand because the language contained in his sentencing entry referencing the postrelease control statute is sufficient to notify him of the consequences of violating postrelease control. The state urges us, as it did in *Love*, 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 (a sentencing entry does not need to contain a verbatim recitation of the consequences of violating postrelease control and that a citation to the postrelease control statute was sufficient), *State v. Clark*, 2d Dist. Clark 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); *State v. Ball*, 5th Dist. Licking 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); and *State v. Murray*, 2012-Ohio-4996, 979 N.E.2d 831, ¶ 24 (6th Dist.) (defendant's sentence for violating postrelease control affirmed because a reference to the applicable statutes is sufficient to give an offender the required notice that the court authorized a postrelease control sanction.) However, as we made clear in *Love*, we decline to adopt the law of our sister districts. *Id.* at ¶ 5.

{¶11} We state again that, 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 in the sentencing entry, any attempt to impose postrelease control is void. *Love* at ¶ 7. Because Strowder has already finished serving his sentence in CR-04-453994-A, he cannot be resentenced to postrelease control in that case and any postrelease control the trial court attempted to impose is void. Further, because Strowder's three-year judicial-sanction sentence was based on a void order of postrelease control, that sentence is hereby vacated.

{¶12} Strowder's sole assignment of error is sustained and the sentence he received for violating the conditions of his postrelease control is vacated. Case remanded for proceedings in accordance with this opinion and for Strowder's immediate release from prison.

It is ordered that appellant recover of appellee his 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.

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LARRY A. JONES, SR., JUDGE

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