

[Cite as *State v. Almashni*, 2015-Ohio-606.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101475

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

YASIN ALMASHNI

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-08-506300-A

BEFORE: Stewart, J., Celebrezze, A.J., and McCormack, J.

RELEASED AND JOURNALIZED: February 19, 2015

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MELODY J. STEWART, J.:

{¶1} Defendant-appellant, Yasin Almashni, was found guilty of aggravated menacing and felonious assault. We affirmed his convictions on direct appeal, *see State v. Almashni*, 8th Dist. Cuyahoga No. 92237, 2010-Ohio-898, and denied his subsequent application to reopen his appeal. *See State v. Almashni*, 8th Dist. Cuyahoga No. 92237, 2012-Ohio-349, *reopening disallowed* (Feb. 1, 2012), Motion No. 450413. In 2014, Almashni filed a motion for “resentencing” claiming that the court failed to give him a complete advisement regarding postrelease control. The court denied the motion despite the state’s concession that the court should conduct a limited resentencing because it failed to advise him of the prison term that could be imposed in the event Almashni violated postrelease control.

{¶2} R.C. 2929.19(B)(3)(e) requires the sentencing judge to notify a defendant for whom a period of postrelease control is imposed that if the defendant violates postrelease control, “the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender.” The court is “required to notify the offender at the sentencing hearing about postrelease control and is further required to incorporate that notice into its journal entry imposing sentence.” *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, paragraph one of the syllabus. “When a judge fails to impose statutorily mandated postrelease control as part of a defendant’s sentence, that *part* of the sentence is void and must be set aside.” (Emphasis sic.) *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 26.

{¶3} There is no transcript of the sentencing in the record on appeal, so we would ordinarily presume the regularity of the sentencing. *State v. Dedonno*, 8th Dist. Cuyahoga No. 94732, 2010-Ohio-6361, ¶ 14. However, in its response to Almashni’s motion for resentencing, the state claimed that “a review of the transcripts in this case” indicates that the court told Almashni: “Upon release you will be subject to 3 years of postrelease control supervision which, if you violate, subjects you to additional prison time.” The state’s representation is consistent with the court’s sentencing entry, which states: “[P]ost release control is part of this prison sentence for 3 years for the above felony(s) under R.C. 2967.28.”

{¶4} Advising Almashni at sentencing that a violation of postrelease control could result in “additional prison time” was insufficient to satisfy R.C. 2929.19(B)(3)(e) that he be informed that the “additional time” could be up to one-half his original sentence. *See State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, ¶ 4; *State v. Mills*, 8th Dist. Cuyahoga No. 100417, 2014-Ohio-2188; *State v. Coon*, 8th Dist. Cuyahoga No. 94505, 2011-Ohio-324, ¶ 8. In addition, the sentencing entry made no attempt to inform Almashni of the consequences of violating postrelease control. We sustain the first assignment of error and remand for the limited purpose of correctly imposing postrelease control. *See State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 29.¹

{¶5} Judgment reversed and remanded.

This cause is reversed and remanded to the trial court for further proceedings consistent with this opinion.

¹ Because the court failed to inform Almashni of the consequences of violating postrelease control at both sentencing and in the sentencing entry, we have no occasion to consider the state’s suggestion that we reconcile a split among appellate districts in this state regarding whether oral advisements coupled with journal entries referencing postrelease control sufficiently imposes postrelease control. Appellee’s Brief at 2.

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.

MELODY J. STEWART, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
TIM McCORMACK, J., CONCUR