

[Cite as *State v. Johnson*, 2016-Ohio-404.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103225

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RONNIE JOHNSON

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-04-453572-B

BEFORE: Kilbane, J., E.A. Gallagher, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: February 4, 2016

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MARY EILEEN KILBANE, J.:

{¶1} Defendant-appellant, Ronnie Johnson (“Johnson”), appeals from the trial court’s order holding that the court lacked jurisdiction to terminate postrelease control. The state of Ohio concedes that Johnson’s postrelease control sanction is void in this case, but it maintains that the trial court lacks jurisdiction to terminate the sanction. Having reviewed the record and the controlling case law, we conclude that the trial court has continuing jurisdiction to terminate a void postrelease control sanction. Therefore, we reverse and remand to the trial court with instructions to release Johnson from further postrelease control supervision.

{¶2} On June 29, 2004, Johnson was indicted in a nine-count indictment in connection with the shooting of Dr. Elijah Scott. On January 31, 2005, Johnson pled guilty to attempted murder, aggravated burglary, and having weapons while under disability. The trial court imposed a nine-year prison term and ordered that “post release control is part of this prison sentence for the maximum time allowed for the above felony(s) under R.C. 2967.28.” It is undisputed that at the time of the sentencing hearing and in the sentencing journal entry, Johnson was not advised of a specific duration of postrelease control and was not advised of the consequences of violating the postrelease control sanction as required under R.C. 2929.19(B)(2)(c) and (e). It is also undisputed in the record that Johnson has completed his prison term and has been released.

{¶3} On April 23, 2015, Johnson filed a motion for a determination that defendant is not subject to postrelease control, in which he argued that the postrelease control notification was defective. As a result, he argued that this aspect of his sentence is void. The state agreed that the sanction was void, but maintained that the trial court lacked jurisdiction to terminate it. On June 7, 2015, the trial court recognized that “the defendant is not subject to postrelease control,”

but “has not demonstrated that [the court has] jurisdiction to hear a motion to terminate postrelease control sanctions.” The trial court denied the motion to terminate the postrelease control sanction for want of jurisdiction, but set forth other options for Johnson to pursue, including habeas corpus and declaratory relief.

{¶4} Johnson now appeals, assigning the following sole error for our review:

Assignment of Error One

The trial court erred by failing to either terminate postrelease control or to enter its judgment that postrelease control was invalid.

{¶5} Within this assignment of error, Johnson argues that the trial court erred in concluding that it lacked jurisdiction to terminate the void postrelease control sanction. In opposition, the state concedes that the postrelease control sanction is void in this matter, but maintains that the Ohio Adult Parole Authority, and not the trial court, has jurisdiction to terminate the postrelease control sanction. We find Johnson’s argument more persuasive.

{¶6} 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. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, paragraph one of the syllabus. Such error cannot be corrected by a nunc pro tunc entry. *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 20. If proper notification is given during the sentencing hearing, but omitted from the sentencing journal entry, a nunc pro tunc order may be issued to correct the entry. *Id.* at syllabus. However, once the defendant has been released from prison, a nunc pro tunc order cannot be issued to correct the entry and postrelease control cannot be imposed. *State v. Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-5036 (affirmed en banc), *appeal dismissed*, 141 Ohio St.3d 1450, 2015-Ohio-239, 23 N.E.2d 1193; *State v. Scott*,

8th Dist. Cuyahoga No. 102301, 2015-Ohio-2161, ¶ 8; *State v. Dines*, 8th Dist. Cuyahoga No. 100647, 2014-Ohio-3143, ¶ 12; *State v. Chung*, 8th Dist. Cuyahoga No. 102092, 2015-Ohio-1959, ¶ 6-7.

{¶7} Consistent with these principles, the en banc court in *Mace* held that where the defendant had completed his sentence, the trial court erred in denying his motion to terminate a postrelease control sanction that was defectively imposed. *Accord State v. Bonner*, 8th Dist. Cuyahoga No. 103027, 2015-Ohio-5152.

{¶8} In *Bonner*, this court concluded that where the sentencing order provided only that “the maximum period allowed,” without a specific term or the notification of consequences for a violation of postrelease control requirements, the provision was void. *Id.* at ¶ 5. The *Bonner* court additionally held that since the defendant had completed his prison term and been released, the trial court erred in denying Bonner’s motion to terminate his postrelease control. *Id.* at ¶ 8. *See also State v. Rodriguez*, 8th Dist. Cuyahoga No. 101832, 2015-Ohio-1835 (trial court erred in denying defendant’s motion to terminate void postrelease control sanction where the defendant had completed his prison term) and *Chung* (trial court erred in denying defendant’s motion to terminate void postrelease control sanction where the defendant had completed his prison term).

{¶9} In accordance with the foregoing, the trial court erred in concluding that it lacked jurisdiction to terminate the void postrelease control sanction.

{¶10} The assignment of error is well taken.

{¶11} Accordingly, judgment is reversed; the matter is remanded in order for the trial court to issue an entry stating that Johnson is not subject to postrelease control.

It is ordered that appellant recover of 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.

MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, P.J., and
TIM McCORMACK, J., CONCUR