

[Cite as *State v. Smith*, 2016-Ohio-7898.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104632

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ALEX SMITH**

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-06-480552-B

**BEFORE:** Keough, P.J., E.A. Gallagher, J., and Boyle, J.

**RELEASED AND JOURNALIZED:** November 23, 2016

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. The purpose of an accelerated appeal is to allow the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983); App.R. 11.1(E).

{¶2} Defendant-appellant, Alex Smith, appeals the trial court's decision denying his motion to vacate postrelease control. For the reasons that follow, we reverse and remand with instructions.

{¶3} In 2008 and after pleading guilty to one count of drug trafficking, a first-degree felony, Smith was sentenced to five years in prison. A mandatory five-year term of postrelease control was also part of his sentence. Although the trial court advised Smith of the consequences of violating postrelease control during sentencing, the court's sentencing journal entry did not reflect the consequences of violating postrelease control.

{¶4} In March 2013, Smith was released from prison after serving his entire prison sentence. He is currently being supervised on postrelease control. On May 20, 2016, Smith filed a motion to terminate postrelease control contending that, because the sentencing journal entry failed to reflect the consequences of violating postrelease control, the term of postrelease control was improperly imposed. Additionally, because he has since served his prison sentence, the trial court cannot correct this error; leaving

the trial court no other option but to terminate the term of postrelease control. The trial court denied Smith's motion finding that it lacked jurisdiction over the motion.

{¶5} Smith appeals, raising as his sole assignment of error that the trial court erred in failing to vacate, or in the alternative, to terminate, the improperly imposed term of postrelease control. Specifically, Smith argues that his postrelease control is void because the trial court failed to advise him in the sentencing entry the consequences for violating postrelease control. He contends that because he has completed his sentence, the trial court can no longer resentence him to rectify the error. We agree.

{¶6} This court has repeatedly addressed this issue. *See State v. Bryant*, 8th Dist. Cuyahoga No. 102650, 2015-Ohio-3678, *discretionary appeal not allowed*, *State v. Bryant*, 144 Ohio St.3d 1505, 2016-Ohio-652, 45 N.E.3d 1050; *State v. Cooper*, 8th Dist. Cuyahoga No. 103066, 2015-Ohio-4505; *State v. Martin*, 8th Dist. Cuyahoga No. 102336, 2015-Ohio-2865; *State v. Love*, 8th Dist. Cuyahoga No. 102058, 2015-Ohio-1461; *State v. Burroughs*, 8th Dist. Cuyahoga No. 101123, 2014-Ohio-4688; *State v. Mills*, 8th Dist. Cuyahoga No. 100417, 2014-Ohio-2188; *State v. Elliott*, 8th Dist. Cuyahoga No. 100404, 2014-Ohio-20620.

{¶7} In the cases cited above, this court has held that in situations where the trial court failed to set forth the consequences for violating postrelease control in the sentencing entry and the defendant completed his sentence, the term of postrelease control is void and should be terminated. We specifically held that merely referring to the

statute in the sentencing entry was insufficient to advise the defendant of the consequences.

{¶8} In this case, the sentencing entry does not set forth the consequences for violating postrelease control and Smith has completed his sentence. Pursuant to the controlling precedent set forth in our district, the trial court erred by not terminating Smith's postrelease control.

{¶9} The state asks this court to stay the proceedings pending the Ohio Supreme Court's decision in *State v. Grimes*, Ohio Supreme Court Case No. 2016-0215, wherein the proposition of law under review is: "[T]o impose valid post release control, the language in the sentencing entry may incorporate the advisements given during the sentencing hearing by referencing the post release control sections of the Ohio Revised Code and do not need to repeat what was said during the sentencing hearing." While the decision in *Grimes* could be dispositive of the substantive issue in this case, oral argument before the Supreme Court in *Grimes* is not scheduled to occur until February 9, 2017. By that time, Smith will have almost completed his term of postrelease control. Accordingly, we decline to stay the proceedings in this case.

{¶10} Smith's sole assignment of error is sustained.

{¶11} Judgment reversed, and the matter is remanded to the trial court with instructions to release Smith from further postrelease control supervision.

It is ordered that appellant recover from 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

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EILEEN A. GALLAGHER, J., and  
MARY J. BOYLE, J., CONCUR