

[Cite as *State v. Jackson*, 2017-Ohio-4191.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105228

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DEREK M. JACKSON

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-594577-B

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

RELEASED AND JOURNALIZED: June 8, 2017

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Derek Jackson appeals the sentence imposed by the Cuyahoga County Court of Common Pleas following his guilty plea to one count of sexual battery in violation of R.C. 2907.03(A)(1). For the reasons that follow, we vacate the portion of his sentence imposing postrelease control.

{¶2} On April 1, 2015, a Cuyahoga County Grand Jury indicted Jackson on one count of rape, one count of complicity to commit rape, one count of attempted rape and one count of kidnapping arising out of an incident that allegedly occurred on April 12, 1995. On September 20, 2016, the parties reached a plea agreement. Jackson pled guilty to an amended count of sexual battery in violation of R.C. 2907.03(A)(1), a third-degree felony. In exchange for his guilty plea, the remaining counts against him were nolle.

{¶3} On November 2, 2016, the trial sentenced Jackson to one and one-half years in prison and imposed five years of mandatory postrelease control. Jackson was also classified as a sexually oriented offender for a period of ten years under Megan’s Law.

{¶4} Jackson appealed his sentence. In his sole assignment of error, Jackson argues that because the offense at issue occurred before July 1, 1996, i.e., prior to the effective date of S.B. 2,¹ the postrelease control provisions of S.B. 2 did not apply to him

¹Postrelease control requirements were incorporated into Ohio law with the enactment of Am.Sub.S.B. No. 2. (“S.B. 2”), effective July 1, 1996. *State v. Qunnie*, 8th Dist. Cuyahoga No. 100317, 2014-Ohio-1435, ¶ 6. Prior to S.B. 2, postrelease control ““did not exist.”” *Id.*, quoting *State v. Gavin*, 8th Dist. Cuyahoga No. 90017, 2008-Ohio-2042, ¶ 11.

and the trial court, therefore, committed plain error in imposing postrelease control. He further contends the imposition of postrelease control as part of his sentence “violates the ex post facto clause.”

{¶5} The state concedes that the imposition of postrelease control in this case constitutes plain error. Jackson’s assignment of error is sustained. The portion of Jackson’s sentence imposing five years of mandatory postrelease control is hereby vacated.

{¶6} Case remanded to the trial court to enter a nunc pro tunc entry vacating the postrelease control portion of the sentence.

It is ordered that appellant recover from appellee the 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 Cuyahoga County Court of Common Pleas 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 A. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
TIM McCORMACK, J., CONCUR