

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       24467

Appellee

v.

JOSEPH A. MOLNAR

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CR 2008-03-1023(C)

Appellant

DECISION AND JOURNAL ENTRY

Dated: August 19, 2009

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BELFANCE, Judge.

{¶1} Defendant-Appellant, Joseph Molnar appeals his convictions from the Summit County Court of Common Pleas. We vacate the trial court’s sentencing entry and remand the matter for further proceedings.

I.

{¶2} A jury found Molnar guilty of illegal manufacture of drugs, a second-degree felony, illegal assembly or possession of chemicals for the manufacture of drugs, a third-degree felony, aggravated possession of drugs, a fifth-degree felony, and illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree. Molnar was sentenced to a total of six years. Molnar’s sentencing entry further stated that “[a]fter release from prison, [Molnar] is ordered to serve Five (5) years of post-release control.” Molnar has appealed raising four assignments of error for our review.

## II.

{¶3} Although Molnar has not raised the issue on appeal, this Court concludes that Molnar’s sentence must be vacated due to an error in the trial court’s sentencing entry with respect to post-release control. Recently, in *State v. Holcomb*, 9th Dist. No. 24287, 2009-Ohio-3187, we examined the precedent of the Supreme Court of Ohio relative to void and voidable sentences. In *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, the Supreme Court of Ohio held that “[d]espite the lack of a *motion for resentencing*, we still must vacate the sentence and remand for a resentencing hearing in the trial court. Because the original sentence is actually considered a nullity, a court cannot ignore the sentence and instead must vacate it and order resentencing.” (Emphasis added.) Id. at ¶12.

{¶4} R.C. 2967.28(B) requires that “[e]ach sentence to a prison term \* \* \* for a felony of the second degree, \* \* \* shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment.” The term of post-release control for an offender convicted of a second-degree felony is a mandatory period of three years. R.C. 2967.28(B)(2).

{¶5} In the instant matter, Molnar was convicted of, and sentenced to, one count of illegal manufacture of drugs, a felony of the second degree. Pursuant to R.C. 2967.28(B)(2), Molnar is subject to a three-year, mandatory period of post-release control. With respect to post-release control, the trial court’s judgment entry states: “[a]fter release from prison, [Molnar] is ordered to serve *Five (5) years* of post-release control.” (Emphasis added.) The trial court’s entry mistakenly states that Molnar is subject to five years of post-release control instead of notifying him that he in fact will be subject to only three years.

{¶6} The Supreme Court of Ohio stated in *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at ¶22: “Because a sentence that does not conform to statutory mandates requiring the imposition of postrelease control is a nullity and void, it must be vacated.” Thus, the error in the trial court’s sentencing entry renders it void, as it does not conform to the statutory mandates with respect to post-release control, and we must vacate and remand for resentencing. See *Simpkins* at ¶22; *Boswell* at ¶12.

### III.

{¶7} In light of our determination that Molnar’s sentence is void, we may not address the merits of his appeal. See *State v. Bedford*, 9th Dist. No. 24431, 2009-Ohio-3972, at ¶14. Instead, we vacate and remand this matter to the trial court for a new sentencing hearing. The judgment of the Summit County Court of Common Pleas is vacated and remanded for proceedings consistent with this opinion.

Judgment vacated,  
and cause remanded.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

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EVE V. BELFANCE  
FOR THE COURT

DICKINSON, P. J.  
WHITMORE, J.  
CONCUR

APPEARANCES:

DONALD R. HICKS, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.