[Cite as *State v. Perezlaraos*, 2009-Ohio-4170.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. LUCAS PEREZLARAOS Appellant	C.A. No. 24474 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 08 03 0892

DECISION AND JOURNAL ENTRY

Dated: August 19, 2009

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} A jury convicted Lucas Perezlaraos of domestic violence and felonious assault. He has appealed, arguing that the trial court incorrectly failed to dismiss the jury panel after one of the prospective jurors questioned whether he (Mr. Perezlaraos) was in the United States illegally and that the trial court incorrectly allowed a forensic nurse examiner to testify about victim behavior in abusive relationships. He has also argued that his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence. Because the trial court made a mistake regarding post-release control in its sentencing entry, the sentencing entry is void. This Court, therefore, exercises its inherent power to vacate the void judgment and remands for a new sentencing entry.

POST-RELEASE CONTROL

{¶2} Mr. Perezlaraos's felonious assault conviction is a felony of the second degree. The trial court sentenced him on it to two years in the custody of the Ohio Department of Rehabilitation and Correction, to be served concurrently with a 180-day sentence for his misdemeanor domestic violence conviction.

{¶3} Under Section 2967.28(B) of the Ohio Revised Code "[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." For a felony of the second degree that is not a felony sex offense, the period is three years. R.C. 2967.28(B)(2). Under Section 2929.14(F)(1), "[i]f a court imposes a prison term . . . for a felony of the second degree, . . . it shall include in the sentence a requirement that the offender be subject to a period of post-release control after [his] release from imprisonment . . . ." In addition, Section 2929.19(B)(3)(c) provides that, "if the sentencing court determines . . . that a prison term is necessary or required, [it] shall . . . [n]otify the offender that [he] will be supervised under section 2967.28 of the Revised Code after [he] leaves prison if [he] is being sentenced for a felony of the . . . second degree . . . ."

{¶4} At the sentencing hearing, the trial court correctly told Mr. Perezlaraos that, following his release, "he will be placed on three years of what's called Post-Release Control, which is another name for parole." But in its journal entry, it incorrectly wrote that "he may be placed on post release control for a period of three years." That is, the journal entry incorrectly suggested that the imposition of post-release control was discretionary instead of mandatory under Section 2967.28(B).

{¶5} In *State v. Simpkins*, 117 Ohio St. 3d 420, 2008-Ohio-1197, the Ohio Supreme Court held that, "[i]n cases in which a defendant is convicted of, or pleads guilty to, an offense for which postrelease control is required but not properly included in the sentence, the sentence is void . . . ." *Id.* at syllabus. The Supreme Court reasoned that "no court has the authority to substitute a different sentence for that which is required by law." *Id.* at ¶20. It concluded that "a sentence that does not conform to statutory mandates requiring the imposition of postrelease control is a nullity and void [and] must be vacated." *Id.* at ¶22.

{¶6} In *State v. Bedford*, 9th Dist. No. 24431, 2009-Ohio-3972, at ¶11, this Court held that, if "[a] journal entry is void because it included a mistake regarding post-release control . . . there is no final, appealable order." Accordingly, this Court does not have jurisdiction to consider the merits of Mr. Perezlaraos's appeal. *Id.* at ¶14. It does have limited inherent authority, however, to recognize that the journal entry is a nullity and vacate the void judgment. *Id.* at ¶12 (quoting *Van DeRyt v. Van DeRyt*, 6 Ohio St. 2d 31, 36 (1966)).

CONCLUSION

{¶7} The trial court's journal entry included a mistake regarding post-release control. It, therefore, is void. This Court exercises its inherent power to vacate the journal entry and remands this matter to the trial court for a new sentencing entry.

Judgment vacated,
and cause remanded.

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.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
BELFANCE, J.
CONCUR

APPEARANCES:

MARIA TORRES CHIN, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and HEAVEN DIMARTINO, assistant prosecuting attorney, for appellee.