[Cite as *State v. Pirovolos*, 2009-Ohio-4422.]

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

STATE OF OHIO	C. A. No. 08CA0087-M
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
ANGELO PIROVOLOS	COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO
Appellant	CASE No. 08-CR-0191

DECISION AND JOURNAL ENTRY

Dated: August 31, 2009

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Angelo Pirovolos pleaded no contest to attempted murder, a felony of the first degree, felonious assault, a felony of the second degree, and having weapons while under disability, a felony of the third degree. The trial court found him guilty of the charges and sentenced him to twelve years in prison. He has appealed his convictions, arguing that the court incorrectly denied his motion to suppress. Because the court made a mistake regarding post-release control in its journal entry, the journal entry is void. This Court, therefore, exercises its inherent power to vacate the void judgment and remands for a new sentencing hearing.

SENTENCING ERROR

{¶2} Although not addressed by the parties, this Court must first consider whether it has jurisdiction to hear the appeal. Section 2967.28(B) of the Ohio Revised Code provides that "[e]ach sentence to a prison term for a felony of the first degree, for a felony of the second

degree, . . . or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person 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 first degree, the period is five years. R.C. 2967.28(B)(1). "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). "For a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened physical harm to a person," the period is three years. R.C. 2967.28(B)(3). Under Section 2929.14(F)(1), "[i]f a court imposes a prison term for a felony of the first degree, for a felony of the second degree, . . . or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, 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 . . . ."

{¶3} At Mr. Pirovolos's sentencing hearing, the trial court correctly told him that he would be subject to five years post-release control. In its journal entry, however, it wrote that "post release control is mandatory in this case up to a maximum of 5 years [on the attempted murder count] and post release control is mandatory in this case up to a maximum of 3 years on [the felonious assault and having weapons while under disability counts]." The court, therefore, mistakenly indicated that Mr. Pirovolos could be subject to less than five years of post-release control on the attempted murder count instead of writing that he will be subject to the full term of five years. It also mistakenly wrote that he could be subject to less than three years of post-release control on the felonious assault and having a weapon under disability counts. See *State v.*

Morton, 9th Dist. No. 24531, 2009-Ohio-4168, at ¶3; *State v. Moton*, 9th Dist. No. 24262, 2009-Ohio-4169, at ¶5.

{¶4} 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.

{¶5} 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. Pirovolos'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

{¶6} 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 hearing.

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 Medina, 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:

DAVID V. GEDROCK, attorney at law, for appellant.

DEAN HOLMAN, prosecuting attorney, and RUSSELL HOPKINS, assistant prosecuting attorney, for appellee.