[Cite as *State v. Ingram*, 2009-Ohio-6371.]

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

STATE OF OHIO	C. A. No. 09CA0020-M
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
RAYMOND R. INGRAM	COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO
Appellant	CASE No. 08-CR-0476

DECISION AND JOURNAL ENTRY

Dated: December 7, 2009

Per Curiam.

{¶1} Appellant, Raymond Ingram, appeals his conviction out of the Medina County Court of Common Pleas. This Court exercises its inherent power to vacate a void judgment and remands this case for a new sentencing hearing.

I.

{¶2} On November 6, 2008, Raymond Ingram was indicted on one count of possession of drugs (crack cocaine), in violation of R.C. 2925.11(A)(C)(4)(e), a felony of the first degree. Included in the charge was a forfeiture specification. After numerous pre-trial proceedings, Ingram pled no contest to the possession of drugs with a forfeiture specification charge. On February 23, 2009, the trial court sentenced Ingram to a mandatory five-year prison term. The journal entry of conviction states that the trial court "notified the defendant that post release control is mandatory in this case up to a maximum of 5 years[.]"

{¶3} Ingram appeals his conviction to this Court, raising one assignment of error.

II.

ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION TO SUPPRESS AS THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A FINDING THAT THE ARRESTING OFFICER HAD A REASONABLE AND ARTICULABLE SUSPICION TO MAKE A TRAFFIC STOP OF THE APPELLANT'S VEHICLE."

{¶4} In his sole assignment of error, Ingram argues that the trial court erred in denying his motion to suppress evidence obtained pursuant to the traffic stop. This Court declines to address Ingram's argument on the merits as the journal entry is void.

{¶5} Ingram's conviction for possession of crack cocaine is a felony of the first degree. Pursuant to R.C. 2967.28(B), "[e]ach sentence to a prison term for a felony of the first 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 first degree, the period is five years. R.C. 2967.28(B)(1). Under R.C. 2929.14(F)(1), "[i]f a court imposes a prison term for a felony of the first degree *** it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment[.]" In addition, R.C. 2929.19(B)(3)(c) provides that, "if the sentencing court determines at the sentencing hearing 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 *** first degree[.]"

{¶6} Pursuant to R.C. 2967.28(B), an offender convicted of a felony of the first degree is subject to a mandatory term of five years post-release control. In this case, the trial court's journal entry stated Ingram had been notified that "post release control is mandatory in this case

up to a maximum of 5 years[.]" (Emphasis added.) Because the trial court did not inform Ingram that the five-year period of post-release control is mandatory, pursuant to R.C. 2967.28(B), Ingram was not properly notified of post-release control.

{¶7} The Supreme Court of Ohio has held that a trial court's failure to properly impose a mandatory term of post-release control renders a sentence void. *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at syllabus. The Supreme Court's reasoning emanates from "the fundamental understanding that no court has the authority to substitute a different sentence for that which is required by law." Id. at ¶20, citing *Colegrove v. Burns* (1964), 175 Ohio St. 437, 438. "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." *Simpkins* at ¶22. The Supreme Court has recognized that if an offender's sentence is void, a reviewing court must vacate the sentence even if neither party has moved for resentencing. *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, at ¶12; *State v. Bedford*, 9th Dist. No. 24431, 2009-Ohio-3972, at ¶12. "[T]he effect of vacating the trial court's original sentence is to place the parties in the same place as if there had been no sentence." *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, at ¶13.

{¶8} In this case, the trial court's journal entry erroneously states that Ingram is subject to a period of post-release control of up to five years. It follows that the judgment entry is void and must be vacated.

III.

{¶9} Because Ingram's sentence is void, this Court cannot address his assignments of error. 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.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
MOORE, P. J.
CONCUR

CARR, J.
DISSENTS, SAYING:

{¶10} I respectfully dissent for the reasons I articulated in *State v. King*, 9th Dist. No. 24675, 2009-Ohio-5158 (Carr, J., dissenting).

APPEARANCES:

LOUIS M. DEFABIO, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and RUSSELL HOPKINS, Assistant Prosecuting Attorney, for Appellee.