[Cite as *State v. Jones*, 2010-Ohio-3850.]

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

STATE OF OHIO Appellee v. PHILLIP L. JONES Appellant	C.A. No. 25254 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 2007 04 1294

DECISION AND JOURNAL ENTRY

Dated: August 18, 2010

MOORE, Judge.

{¶1} Appellant, Phillip Jones, appeals from the decision of the Summit County Court of Common Pleas, dismissing his petition for post-conviction relief as premature. We reverse the decision and remand for proceedings consistent with this opinion.

I.

{¶2} On February 4, 2008, Jones was sentenced to death for aggravated murder. He was further sentenced to a total of 30 years of incarceration on several other felony convictions and repeat violent offender specifications. Jones' sentencing entry stated that "[p]ursuant to R.C. 2967.28, after release from prison, the Defendant is ordered subject to post-release control to the extend [sic] the parole board may determine, as provided by law."

{¶3} Jones timely appealed his conviction to the Ohio Supreme Court. The complete record was filed with the Ohio Supreme Court on September 26, 2008. Accordingly, pursuant to R.C. 2953.21, Jones' petition for post-conviction relief was due by March 25, 2009. Jones

timely filed his petition on March 23, 2009. On January 20, 2010, the trial court dismissed Jones' petition as premature, explaining that the February 4, 2008 judgment entry incorrectly imposed post-release control and was therefore void.

{¶4} On January 20, 2010, the trial court resentenced Jones via video conference. On February 11, 2010, the trial court corrected Jones' original sentencing entry, filed on February 4, 2008, by issuing a nunc pro tunc entry that properly imposed post-release control. On February 17, 2010, Jones filed his notice of appeal from the trial court's determination that his petition for post-conviction relief was premature. He has raised three assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

> "THE TRIAL COURT ERRED WHEN IT DISMISSED [JONES'] R.C. 2953.21 POSTCONVICTION PETITION ON THE GROUND THAT IT WAS PREMATURE. WHEN A DEFENDANT WHO IS SENTENCED AFTER THE ENACTMENT OF R.C. 2929.191 IS NOT PROPERLY NOTIFIED OF POSTRELEASE CONTROL, THE ORIGINAL SENTENCING ENTRY IS VOIDABLE. A VOIDABLE JUDGMENT DOES NOT PREVENT A TRIAL COURT FROM CONSIDERING A POSTCONVICTION PETITION."

ASSIGNMENT OF ERROR II

> "THE TRIAL COURT ERRED BY IMPROPERLY DISMISSING [JONES'] POSTCONVICTION PETITION ON A FLAWED PROCEDURAL GROUND, THEREBY DENYING [JONES] DUE PROCESS IN HIS POSTCONVICTION PROCEEDINGS."

{¶5} In his first and second assignments of error, Jones contends that the trial court erred when it dismissed his petition for post-conviction relief on the grounds that his original sentencing entry was void. We agree.

> "An appellate court usually applies an abuse of discretion standard when reviewing a trial court's decision to grant or deny a motion for postconviction relief. However, [b]ecause this assignment of error raises issues of law only, our review is de novo. A de novo review requires an independent review of the trial court's decision without any deference to the trial court's determination."

(Internal citations and quotations omitted). *State v. Samuels*, 9th Dist. No. 24370, 2009-Ohio-1217, at ¶3.

{¶6} In the instant case, the trial court dismissed Jones' petition for post-conviction relief as premature, without reaching the merits, explaining that the February 4, 2008 judgment entry incorrectly imposed post-release control and was therefore void. This was the sole basis for dismissing the petition. This conclusion was incorrect.

{¶7} On December 22, 2009, the Ohio Supreme Court held that for sentences imposed after July 11, 2006, the failure of the trial court to properly provide notification of post-release control does not result in a void judgment. *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, at ¶27. Instead, the trial court "may correct those sentences in accordance with the procedures set forth in [R.C. 2929.191(C)]." Id. at ¶35.

{¶8} It is clear in this case that the February 4, 2008 journal entry incorrectly imposed post-release control. Pursuant to R.C. 2967.28(B)(1), Jones was subject to a mandatory term of five years of post-release control. Therefore, his sentencing entry was voidable. See *State v. Evans*, 9th Dist. No. 09CA0102-M, 2010-Ohio-2514, at ¶7. "Accordingly, there was a judgment from which he could appeal and an event that triggered the 180-day deadline for filing a post-conviction relief petition under Section 2953.21(A)(2)." *State v. Benford*, 9th Dist. No. 24828, 2010-Ohio-54, at ¶8. Thus, the trial court erred by determining that Jones' February 24, 2008 judgment was void and therefore his petition for post-conviction relief was premature. Accordingly, Jones' first and second assignments of error are sustained.

ASSIGNMENT OF ERROR III

"THE TRIAL COURT ERRED BY DISMISSING [JONES'] POSTCONVICTION PETITION, WHERE HE PRESENTED SUFFICIENT OPERATIVE FACTS AND SUPPORTING EXHIBITS TO MERIT DISCOVERY AND AN EVIDENTIARY HEARING."

{¶9} In light of our disposition of Jones' first and second assignments of errors, his argument concerning the merits of this petition for post-conviction relief is not yet ripe for review. Accordingly, we decline to address this assignment of error at this time.

III.

{¶10} Jones' first and second assignments of error are sustained. We decline to address his third assignment of error. The judgment of the Summit County Court of Common Pleas is reversed and remanded to the trial court to consider the merits of Jones' March 23, 2009 petition for post-conviction relief.

Judgment reversed,
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.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

RUTH L. TKACZ, Assistant State Public Defender, for Appellant.

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