

STATE OF OHIO                    )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No.       25370

Appellee

v.

DANTE D. GORDON

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.       CR 98 08 1896

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 22, 2010

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CARR, Judge.

{¶1} Dante Gordon appeals from the judgment of the Summit County Court of Common Pleas denying his motion for new sentencing. This Court affirms.

I.

{¶2} On August 11, 1998, Dante Gordon was indicted by the Summit County Grand Jury on one count of aggravated murder in violation of R.C. 2903.01, a special felony. The charge also included a firearm specification pursuant to R.C. 2941.145. The offense occurred on or about December 7, 1997. On December 17, 1998, Dante Gordon pleaded guilty to an amended charge of murder in violation of R.C. 2903.02. By entry dated December 22, 1998, Gordon was sentenced to a three-year term of incarceration for possession of a firearm and an indeterminate period of not less than fifteen years to life in prison for murder. The sentencing entry further stated that Gordon, upon release from prison, would be “subject to post-release control to the extent the parole board may determine as provided by law.”

{¶3} On March 17, 2010, Gordon filed a “Motion for New Sentencing.” In support of his motion, Gordon argued that his original sentence was void because the trial court erroneously sentenced him to a term of post-release control. The State responded to the motion on March 22, 2010. The trial court denied Gordon’s motion by entry dated April 5, 2010.

{¶4} Gordon appeals to this Court, raising one assignment of error.

## II.

### **ASSIGNMENT OF ERROR**

“THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED DANTE GORDON’S MOTION FOR NEW SENTENCING WHEN THE JUDGMENT WAS CLEARLY VOID UNDER OHIO LAW.”

{¶5} In his sole assignment of error, Gordon argues that the trial court erred in denying his motion for new sentencing. This Court disagrees.

{¶6} In his merit brief, Gordon argues that his sentence is void on the basis that the sentencing entry incorrectly included a discussion of post-release control. Gordon cites to the Supreme Court of Ohio’s decision in *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at ¶20-22, for the proposition that when a trial court imposes a sentence that is unauthorized by law, the sentence is void and, therefore, must be vacated. Gordon further analogizes his case to circumstances confronted by the Seventh District in *State v. Crockett*, 7th Dist. No. 07-MA-233, 2009-Ohio-2894, where the court held that the defendant was entitled to a new sentencing hearing because the trial court imposed a term of post-release control as punishment for aggravated murder.

{¶7} Neither party disputes that an individual such as Gordon who is sentenced for murder is not subject to post-release control because murder is a special felony. A review of the sentencing entry reveals the trial court did not impose a specific post-release control term.

Rather, the trial court stated that Gordon was “subject to post-release control to the extent the parole board may determine as provided by law.” Because the law does not provide for the imposition of post-release control for the special felony of murder, the sentencing entry does not impose a term of post-release control. Moreover, the Supreme Court of Ohio has stated that “the erroneous inclusion of postrelease control in [an] original sentencing entry constituted mere error for which [defendant] had an adequate remedy in the ordinary course of law by way of appeal.” *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, 127 Ohio St.3d 29, 2010-Ohio-4728, at ¶2. Thus, while the discussion of post-release control in the sentencing entry was inappropriate, it did not render Gordon’s sentence void. Gordon’s sole assignment of error is overruled.

### III.

{¶8} Gordon’s assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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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 Appellant.

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DONNA J. CARR  
FOR THE COURT

MOORE, J.  
DICKINSON, P. J.  
CONCUR

APPEARANCES:

DANTE D. GORDON, pro se, Appellant.

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