

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-10-015

Appellee

Trial Court No. 2007CR0212

v.

Jose Rodriguez

DECISION AND JUDGMENT

Appellant

Decided: November 12, 2010

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Gwen
Howe-Gebers, Chief Assistant Prosecuting Attorney, and
David E. Romaker, Jr., Assistant Prosecuting Attorney, for appellee.

Jose Rodriguez, pro se.

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HANDWORK, J.

{¶ 1} This case is before the court on appeal from a judgment of the Wood
County Court of Common Pleas.

{¶ 2} On June 6, 2007, appellant, Jose A. Rodriguez, was indicted on one count of trafficking in marijuana in an amount exceeding 20,000 grams, a violation of R.C. 2925.03(A)(2) and (C)(3)(f), and a felony of the second degree. A jury trial was held on January 28 and 29, 2008. The jury returned a verdict of guilty. Due to the fact that the trial court was required to impose a mandatory eight year prison term, appellant waived his right to a presentence investigation report. The trial judge immediately sentenced Rodriguez to eight years in prison and imposed a mandatory three years of postrelease control, a mandatory five year suspension of his driver's license, plus a mandatory fine of \$7,500 and costs. Appellant was also informed that if he violated any of the terms of postrelease control, he could be remanded to prison for a period of up to one-half of his original sentence.

{¶ 3} In its judgment entry on sentencing, the court made the following relevant statements with regard to postrelease control:

{¶ 4} "The Defendant shall be subject to a mandatory three (3) year term of Postrelease Control as well as the consequences for violating the conditions of postrelease control imposed by the Parole Board pursuant to R.C. 2967.28. If the Defendant violates a postrelease control sanction, the Adult Parole authority, or the Parole Board may impose a more restrictive sanction, may increase the duration of the postrelease control or may impose a prison term, which may not exceed nine (9) months. The maximum cumulative prison term imposed for violations during postrelease control may not exceed one-half of the stated prison term. Further, if the violation of the

sanction is a felony, the Defendant may be prosecuted for the felony and, in addition, the Court may impose a prison term for the violation. The Defendant is ordered to serve as part of this sentence any term of postrelease control imposed by the Parole Board and any prison term for violation of the postrelease control conditions."

{¶ 5} Appellant appealed his conviction to this court raising two assignments of error. See *State v. Rodriguez*, 6th Dist. No. WD-08-013, 2009-Ohio-4280. We affirmed the judgment of the trial court. *Id.* On March 1, 2010, appellant filed a motion in the common pleas court in which he asked the judge to resentence him in order to correct a void sentence pursuant to R.C. 2929.191 and *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462. Specifically, he asserted that, at his sentencing hearing, the trial court failed to notify him of the potential consequences of violating postrelease control as required by R.C. 2929.19(B)(3)(e) and 2967.28. The trial court denied appellant's motion to correct judgment, finding that Rodriguez was advised of the three years of mandatory postrelease control and any sanctions that would be imposed if he violated the conditions of postrelease control.

{¶ 6} Rodriguez appeals the judgment of the court below and asserts the following assignment of error:

{¶ 7} "The trial court abused its discretion when it denied appellant's motion for re-sentencing to correct a void sentence because the sentencing transcript indicates mistakes by the judge when advising the appellant about postrelease control as part of his

sentence and the consequences he would receive for violating conditions of postrelease control after his release from prison."

{¶ 8} Appellant asserts that the trial court "abused its discretion" in sentencing him because the judge did not mention, at the sentencing hearing, the consequences that would be imposed, pursuant to R.C. 2967.28, by the Parole Board for violating the conditions of postrelease control. Specifically, he contends that the lower court was required to mention, at the sentencing hearing, that the Adult Parole Authority, or the Parole Board could: (1) impose a more restrictive sanction; (2) increase the duration of the postrelease control; and (3) impose a prison term, which may not exceed nine months, or that the Parole Board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender for the violation of a condition of postrelease control.

{¶ 9} R.C. 2929.19(B)(3)(c) requires a trial court to notify, at the sentencing hearing, criminal offenders who commit second degree felonies, and who are sentenced on or after July 2006, that they shall be subject to a mandatory period of postrelease control pursuant to R.C. 2967.28. In this case, the court below did comply with this section at appellant's sentencing hearing, as well as in its sentencing entry.

{¶ 10} R.C. 2929.19(B)(3)(e) provides that when the trial court is imposing a prison term for a second degree felony at the sentencing hearing, "the court shall notify the offender that if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender

violates that supervision * * * , the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed on the offender."

{¶ 11} In the case before us, the trial court complied with R.C. 2929.19(B)(3)(e) at the sentencing hearing. With regard to the remaining allegations made by appellant, there is no mandate in R.C. 2967.28 or any other section of the sentencing statute that require a trial court to inform a defendant, at a sentencing hearing, of the penalties that could be imposed by the parole board for a violation of the conditions of parole set by the board.

{¶ 12} Based on the foregoing, appellant's sole assignment of error is found not well-taken. The judgment of the Wood County Court of Common Pleas on sentencing is affirmed. Appellant, Jose Rodriguez, is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/</p>
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