

[Cite as *State v. Holycross*, 2022-Ohio-2312.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

STATE OF OHIO

Plaintiff-Appellee	:	Appellate Case No. 2022-CA-4
v.	:	Trial Court Case No. 2021-CR-49
DONALD E. HOLYCROSS, II	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

.....

O P I N I O N

Rendered on the 1st day of July, 2022.

.....

MEGAN A. HAMMOND, Atty. Reg. No. 0097714, Assistant Prosecuting Attorney, Greene County Prosecutor's Office, 61 Greene Street, Suite 200, Xenia, Ohio 45385
Attorney for Plaintiff-Appellee

FRANK MATTHEW BATZ, Atty. Reg. No. 0093817, 126 North Philadelphia Street, Dayton, Ohio 45403
Attorney for Defendant-Appellant

.....

TUCKER, P.J.

{¶ 1} Donald E. Holycross, II appeals from his conviction following a guilty plea to two counts of receiving stolen property and one count of forgery.

{¶ 2} Holycross contends the trial court erred in failing to inform him of the details of post-release control at sentencing. Specifically, he claims the trial court neglected to tell him that a post-release control violation may subject him to additional prison time of up to one-half of his original sentence. For its part, the State concedes the trial court's failure to advise Holycross of the consequences of violating post-release control. In light of the trial court's failure to make this required advisement at sentencing, we reverse the trial court's judgment with respect to its imposition of post-release control and remand for resentencing to impose post-release control properly. In all other respects, the judgment is affirmed.

I. Background

{¶ 3} Holycross pled guilty to the above-referenced charges as part of a negotiated plea agreement. The case proceeded to sentencing on May 19, 2021. The trial court imposed consecutive prison sentences resulting in an aggregate 36-month term. It also imposed up to three years of discretionary post-release control. Amended Sentencing Tr. at 14. The trial court did not orally advise Holycross at sentencing that a post-release control violation could result in the parole board's imposing an additional prison term of up to one-half of the stated prison term. The trial court's written judgment entry did include language stating that a post-release control violation may result in Holycross's being returned to prison for up to one-half of his original sentence. May 19, 2021 Judgment Entry at 6.

II. Analysis

{¶ 4} We very recently addressed the issue before us in *State v. Heinzen*, 2d Dist. Clark No. 2019-CA-65, 2022-Ohio-1341. In discussing a trial court's statutory obligation to notify a defendant about post-release control, we explained:

* * * "It is settled that 'a trial court has a statutory duty to provide notice of post[-]release control at the sentencing hearing' and that 'any sentence imposed without such notification is contrary to law.' " *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, ¶ 8, quoting *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶ 23, overruled on other grounds, *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248. Accord *State v. Bates*, Ohio Slip Opinion No. 2022-Ohio-475, ___ N.E.3d ___, ¶ 11.

Per its statutory duty, "[t]he trial court must advise the offender at the sentencing hearing of the term of [post-release control] supervision, whether postrelease control is discretionary or mandatory, and the consequences of violating postrelease control." *Bates* at ¶ 11, citing *Grimes* at ¶ 11. Accord *State v. Hall*, 2d Dist. Montgomery No. 28882, 2021-Ohio-1894, ¶ 13. "Among other consequences, an offender's violation of a postrelease-control sanction or condition may result in the [Adult Parole Authority's] imposing a prison term on the offender." *Bates* at ¶ 11, citing R.C. 2967.28(F)(3). "However, the maximum cumulative prison term for all violations under R.C. 2967.28(F)(3) 'shall not exceed one-half' of the stated

prison term originally imposed." *Id.* Therefore, "at the sentencing hearing, the court must notify the offender that if he or she 'violates [post-release control] * * *, 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.' " *Grimes* at ¶ 9, quoting former R.C. 2929.19(B)(2)(e); R.C. 2929.19(B)(2)(f); *State v. Fields*, 2d Dist. Clark No. 2020-CA-19, 2021-Ohio-3845, ¶ 10-11.

Id. at ¶ 24-25.

{¶ 5} In *Heinzen*, the trial court failed to advise the defendant at sentencing that if she violated post-release control she could receive an additional prison term of up to one-half of her stated term. Although that information was included in the sentencing entry, "it was not discussed at the sentencing hearing as required by R.C. 2929.19(B)(2)(f)." *Id.* at ¶ 27. As a result, we found the post-release control portion of the defendant's sentence contrary to law, reversed the trial court's judgment with respect to its imposition of post-release control, and remanded for a new sentencing hearing limited to the proper imposition of post-release control. *Id.* at ¶ 28-30.

{¶ 6} Based on *Heinzen* and the authority cited therein, the trial court erred in failing to advise Holycross at sentencing that the parole board could impose a prison term of up to one-half of his stated prison term if he violated post-release control. Accordingly, his assignment of error is sustained.

III. Conclusion

{¶ 7} The trial court's judgment is reversed with respect to its imposition of post-release control, and the matter is remanded for the sole purpose of resentencing to

impose post-release control in a manner consistent with this opinion. In all other respects, the trial court's judgment is affirmed.

.....

DONOVAN, J. and EPLEY, J., concur.

Copies sent to:

Megan A. Hammond
Frank Matthew Batz
Hon. Michael A. Buckwalter