

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
DELAWARE COUNTY, OHIO

STATE OF OHIO,

Plaintiff - Appellee

-vs-

KEVIN DRIVER,

Defendant - Appellant

Case No. 26 CAA 03 0028

Opinion & Judgment Entry

Appeal from the Court of Common Pleas
of Delaware County,
Case No. 25 CRI 11 0748

Judgment: Reversed and Remanded

Date of Judgment: August 17, 2026

BEFORE: Craig R. Baldwin, Andrew J. King, and David M. Gormley, Judges

APPEARANCES: Melissa A. Schiffel (Delaware County Prosecuting Attorney) and
Katheryn L. Munger (Assistant Prosecuting Attorney), Delaware, Ohio, for Plaintiff-
Appellee; Christopher C. Bazeley, Cincinnati, Ohio, for Defendant-Appellant.

Gormley, J.

{¶1} Defendant Kevin Driver pled guilty to five fourth-degree-felony identity-fraud charges, and then the trial judge at sentencing ordered Driver to serve prison terms on each of those F4 charges. In accordance with R.C. 2929.19(B)(2)(e) and R.C. 2967.28(C), the judge at the sentencing hearing also told Driver that he faced, at the conclusion of his prison terms, up to two years of post-release-control (PRC) supervision at the discretion of the Ohio Adult Parole Authority.

{¶2} What the judge at the sentencing hearing failed to say, though, was what might happen to Driver under R.C. 2967.28(F)(3) if Driver violated any supervision requirements imposed by the Adult Parole Authority during any PRC period: the extension of that period to perhaps the full two-year maximum length, more restrictive supervision conditions, and perhaps some additional prison time. Driver claims here that the trial judge, at the sentencing

hearing, should have told him about the last of those: the possible additional prison time and its maximum length. We agree, and we now remand the case to the trial court so that Driver can be told, in accordance with R.C. 2929.19(B)(2)(f), about the possible additional prison time that he faces if he violates any PRC conditions imposed on him after his prison terms are done.

The Key Facts

{¶3} When Driver pled guilty to the five F4 charges in this case, he signed a written plea agreement that noted, if he were sent to prison in the case, that the Ohio Adult Parole Authority could place him under PRC supervision for up to two years, that the Parole Authority could return him to prison for up to nine months for any one violation of any PRC conditions, and that the Parole Authority could impose prison time equal to one-half of his entire prison sentence in the case for repeated violations by him of his PRC conditions. That same plea agreement spelled out, too, that if Driver were to commit a new felony offense during any PRC period, he could not only be sent to prison for that new felony but could also be sentenced to additional consecutive prison time in this case, with that additional time in prison in this case being perhaps as long as the greater of one year or a period of time equal to the number of days still left on his PRC period at that point.

{¶4} And after Driver's sentence was announced by the trial judge at a sentencing hearing held several weeks after the plea-change hearing, the trial judge signed and filed a sentencing entry that again spelled out those possible PRC-related consequences in accordance with R.C. 2929.141, R.C. 2929.19(B)(2)(f), and R.C. 2967.28(F).

{¶5} Yet at the sentencing hearing itself, the trial judge imposed prison terms on the five F4 charges and then said only this about PRC: "There's two years of optional post-release

control with the option at the Adult Parole Authority when Mr. Driver gets done with his sentence.”

{¶6} Driver now appeals.

The Trial Judge’s Post-Release Control Advisement at the Sentencing Hearing Was Incomplete

{¶7} R.C. 2953.08(G)(2) governs our review of felony sentences, and that provision empowers us to modify or vacate a sentence only if we clearly and convincingly find that the record does not support the trial court’s findings or that the sentence is otherwise contrary to law. *State v. Cornwell*, 2024-Ohio-441, ¶ 14 (5th Dist.). A sentence is not clearly and convincingly contrary to law where the trial court has considered the principles and purposes of sentencing listed in R.C. 2929.11 as well as the recidivism and seriousness factors in R.C. 2929.12, and if the trial court has properly imposed post-release control and has imposed a sentence within the permissible statutory range for each crime in the case. *Id.* at ¶ 16.

{¶8} Today we focus on the trial court’s sentencing-hearing explanation of post-release control. A trial court “‘has a statutory duty to provide notice of post[-]release control at the sentencing hearing, and . . . any sentence imposed without such notification is contrary to law.’” *State v. Grimes*, 2017-Ohio-2927, ¶ 8, quoting *State v. Jordan*, 2004-Ohio-6085, ¶ 23, overruled on other grounds by *State v. Harper*, 2020-Ohio-2913.

{¶9} A statutorily compliant imposition of post-release control requires the judge to tell the defendant three things at the sentencing hearing: whether post-release control is discretionary or mandatory, how long the supervision period will last, and that the Adult Parole Authority will administer the supervision under R.C. 2967.28 and that any violation by the defendant of the Parole Authority’s conditions could subject the defendant to the consequences set forth in that statutory provision. *Grimes* at ¶ 1. *See also State v. Bates*, 2022-

Ohio-475, ¶ 11 (“The trial court must advise the offender at the sentencing hearing of the term of supervision, whether postrelease control is discretionary or mandatory, and the consequences of violating postrelease control”). The foremost of those consequences is listed in R.C. 2929.19(B)(2)(f) and R.C. 2967.28(F)(3): the Parole Authority can return the defendant to prison for as much as half of his or her original prison term (or as much as half of the original minimum prison term if the prison term was an indefinite one).

{¶10} The trial judge gave Driver the first two advisements — telling him that PRC was optional rather than mandatory in his case and that any PRC period would last for up to two years — but the judge neglected to mention the third key piece of information, saying nothing about any possible consequences that Driver would face if he violated any PRC requirements. Because the advisement was incomplete, the post-release control portion of Driver’s sentence was contrary to law. *See State v. Evans*, 2026-Ohio-1237, ¶ 77–80 (12th Dist.) (where the trial court “said nothing at the [sentencing] hearing about whether postrelease control is mandatory or discretionary, the duration of the postrelease-control period, or the consequences Evans would face for violating its condition,” the trial court committed an “error of law,” and the proper remedy was a “remand for the limited purpose of conducting a hearing at which the trial court properly advises Evans of postrelease control”); *State v. Heinzen*, 2022-Ohio-1341, ¶ 27 (2d Dist.) (the post-release-control portion of a felony sentence was contrary to law where the trial judge “never advised Heinzen that if she violated post-release control[,] . . . she could receive a prison term of up to one-half of the stated prison term originally imposed upon her”).

{¶11} The State’s answer to all of this is that Driver’s written plea form supplied what the trial judge left out, and the State points to our decision in *State v. Brown*, 2013-Ohio-5515

(5th Dist.). That decision, though, addressed a different issue. In *Brown*, a defendant attacked the validity of his guilty pleas, and the governing rule was Crim.R. 11(C), under which a written plea form and the totality of the circumstances can show that a plea was knowing, intelligent, and voluntary. In resolving that case, we wrote that “where the written plea form fills in information regarding post-release control missing from the plea colloquy, the trial court has substantially complied with Crim.R. 11 for PRC purposes.” *Id.* at ¶ 30.

{¶12} Driver does not challenge his guilty plea in this appeal but instead argues that the information he received at his sentencing hearing weeks later fell short of what R.C. 2929.19(B)(2)(f) requires. A plea-hearing advisement about PRC is no substitute for the advisements that must be given at any sentencing hearing (at least, as in our case, where the plea change and the sentencing hearing take place on different days). *See State v. Bryars*, 2024-Ohio-2765, ¶ 31 (12th Dist.) (“notice of postrelease control at the plea hearing . . . does not correct the trial court’s failure to impose a term of postrelease control at the sentencing hearing”) (brackets and quotations omitted); *State v. Leugers*, 2018-Ohio-2808, ¶ 8 (3d Dist.) (post-release control was improperly imposed where it was addressed at the change-of-plea hearing but never mentioned at sentencing).

{¶13} Nor can the sentencing entry cure the problem. Though the entry in this case spelled out the key consequences of any PRC violations, an entry cannot compensate for shortcomings at the sentencing hearing itself. *See State v. Nascembeni*, 2022-Ohio-1662, ¶ 12 (8th Dist.) (“Notice of postrelease control . . . in the sentencing entry does not correct the trial court’s failure to impose a term of postrelease control at the sentencing hearing”); *State v. Hill*, 2017-Ohio-4006, ¶ 13 (7th Dist.) (“even if the postrelease control advisement is given in the

judgment entry, a new sentencing hearing is required when the advisement was not given at the sentencing hearing”).

{¶14} Driver is therefore entitled to a new sentencing hearing, though it should focus solely on the oral delivery of the advisements required by R.C. 2929.19(B)(2)(f). The remainder of his sentence stands undisturbed. *See State v. Cornwell*, 2024-Ohio-441, ¶ 21 (5th Dist.).

{¶15} We note two other related points about trial courts’ duties when explaining the consequences of PRC violations: When a defendant who is under PRC supervision violates his or her supervision obligations, R.C. 2967.28(F)(3) permits the Adult Parole Authority to extend the length of that defendant’s PRC period and also allows the Adult Parole Authority to impose more restrictive supervision conditions on him or her. We have held, though, that trial courts are “not required” at sentencing hearings to provide any notice about those possible PRC-related consequences. *State v. Haudenschild*, 2024-Ohio-407, ¶ 39 (5th Dist.).

{¶16} Likewise, trial courts are “not statutorily or constitutionally required to notify an offender who is being sentenced at the initial sentencing hearing in the original case that a post-release control violation could [under R.C. 2919.141(A)(1)] be served consecutively to a prison term for a new [felony].” *State v. Collins*, 2025-Ohio-1230, ¶ 21 (4th Dist.). We have said as much ourselves. *See State v. Wolfe*, 2024-Ohio-1911, ¶ 17 (5th Dist.) (“R.C. 2929.141(A) does not require the trial court in the original sentencing context to notify a defendant that a court sentencing the defendant for a subsequent crime can impose additional sanctions for the violation of post-release control”) (brackets and quotations omitted).

{¶17} Of course, diligent and thorough general-division trial judges will inform felony defendants about those possible PRC-related consequences in the two paragraphs just above,

but nothing in the Revised Code or in the Criminal Rules requires judges to mention that information during plea-change colloquies or at sentencing hearings.

{¶18} And one final point about the procedural posture of this case: The Supreme Court of Ohio held four years ago that it is the State — rather than the affected defendant — who “should . . . file[] a direct appeal” when a trial court has failed to validly impose post-release control. *Bates*, 2022-Ohio-475, at ¶ 23 (describing as “ridiculous” any suggestion that the defendant has an obligation to alert the court of appeals that his or her post-release control was not imposed correctly). Whether the Supreme Court would decide *Bates* the same way today is perhaps debatable, but its holding remains in effect for now.

{¶19} Even so, defendant Driver is the party who has asked us to correct the trial court’s failure to properly advise him at sentencing about the consequences of any post-prison PRC violations, and so we have appropriately acted on that request by ruling as we have in this appeal. Perhaps in the future, though, barring a change in the Supreme Court’s views about the issue, the State would be wise to consider filing an appeal if and when trial courts fail to advise defendants at sentencing hearings about the consequences of any PRC violations (and surely wise as well to point out the error to the trial judge before the sentencing hearing concludes so that ideally any error can be corrected right then).

{¶20} We note, of course, that language in the latter half of R.C. 2929.19(B)(2)(f) allows the Ohio Parole Board — a division within the Ohio Adult Parole Authority — to remedy a trial court’s failure to give the kind of sentencing-hearing advisement that is at issue in this case, so perhaps trial-court missteps like the one that we address today are not of any great concern to the State.

{¶21} For the reasons explained above, the judgment of the Court of Common Pleas of Delaware County is reversed. The case is remanded for a new sentencing hearing where Driver can be told about the possible additional prison term — lasting for, in the words of R.C. 2929.19(B)(2)(f), “up to one-half of the definite prison term originally imposed” — that he faces if he violates any PRC conditions that the Adult Parole Authority imposes on him during any post-prison PRC period in this case.

{¶22} Costs are waived.

By: Gormley, J.;

King, P.J. and

Baldwin, J. concur.