

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

STATE OF OHIO,

Plaintiff - Appellee

-vs-

ASHTON PACKARD,

Defendant - Appellant

Case No. 26 CAA 03 0021

Opinion And Judgment Entry

Appeal from the Delaware County Court of
Common Pleas, Case No. 24 CRI 12 0762

Judgment: Remanded

Date of Judgment Entry: September 10, 2026

BEFORE: William B. Hoffman; Craig R. Baldwin; Robert G. Montgomery, Judges

APPEARANCES: MELISSA A. SCHIFFEL, Prosecuting Attorney, KATHERYN L. MUNGER, Assistant Prosecuting Attorney, for Plaintiff-Appellee; CHRISTOPHER BAZELEY, for Defendant-Appellant.

Baldwin, J.

{¶1} Appellant Ashton Packard appeals the post release control portion of his sentence following his plea of guilty to one count of Domestic Violence. Appellee is the State of Ohio. For the reasons that follow, we remand the matter to the trial court for the limited purpose of resentencing in order for the court to properly impose post release control.

STATEMENT OF FACTS AND THE CASE

{¶2} On December 25, 2024, law enforcement officials were called to the home of the appellant's victim, who came outside and met with deputies. The victim told deputies that she was watching Christmas movies with the appellant when he became upset with her and physically attacked her, placing his hands around her neck and choking her. The victim, who

presented with visible injuries to her face, a bloody mouth, and a bruised eye, told deputies that she was unsure if she lost consciousness. At the time of the December 25, 2024, attack the appellant was on post release control (“PRC”) in connection with a prior case involving two felonious assault charges.

{¶3} The appellant was indicted on December 31, 2024, on one count of Strangulation in violation of R.C. 2903.18(B)(2) and (C)(2), a felony of the third degree, and one count of Domestic Violence in violation of R.C. 2919.25(A) and (D)(3), a felony of the fourth degree. The appellant was appointed counsel and pleaded not guilty at his arraignment. Appellant’s counsel requested an examination regarding appellant’s competency; the appellant was initially found incompetent to stand trial, but was thereafter successfully restored to competency.

{¶4} On February 10, 2026, the appellant entered into a written plea agreement in which he agreed to plead guilty to the charge of Domestic Violence; the appellee agreed to dismiss the Strangulation charge, and agreed to stay silent at sentencing and defer to the trial court regarding the imposition of any PRC time in connection with the prior case. The written plea agreement, which was signed by the appellant and his counsel, contained a paragraph entitled “Post-Release Control” which stated the appellant understood that upon completion of his prison term he may be placed on PRC “for a period of up to two years;” that if he violated PRC the parole authority “may return [the appellant] to prison for up to nine months for any single violation, but not more than 1/2 of [his] total stated prison term for any combination of violations;” and, that if he committed a new felony while on PRC the sentencing judge on the new felony “can order [him] to return to prison for the longer of one

year or the balance of time that remains on [his] PRC, and that prison term must be served consecutively to any prison sentence imposed for the new felony.” (Underlining original.)

{¶5} A sentencing hearing was conducted on March 2, 2026, at which the trial court addressed the issue of PRC as follows:

THE COURT: So I’m imposing on Count Two 18 months in the Ohio Department of Rehabilitation and Corrections, plus consecutively 12 months for your post-release control violation, for a total of 30 months. You’ve got 433 days of that served.

Um, you’ll have two years of optional post-release control because this is a lower level felony 4 when you get out, but I assume PRC will pick you up and try to supervise you when you come back out of the institution.

This will give you a little more time away from [the victim.] It will give a little more time away from any circumstance where you can drink or you can skip your meds or you can do other stuff that you shouldn’t, and I’m hopeful that that will allow you to grow and stabilize and do better when you get out.

I’ll waive the fine and costs because the [sic] extended time you’ve been in the county jail.

As I say though, there’s up to two years post-release control and the PRC people, as they effectively have done in this case, can punish you if you come out and cause any more difficulty with us, um.

{¶6} The trial court issued a Judgment Entry of Prison Sentence the same day memorializing the sentence imposed upon the appellant which contained the following language:

Pursuant to R.C. 2929.19(B) and R.C. 2967.28, the Court advised the [appellant] that (1) post-release control is optional for up to two years; (2) for violating post-release control, the Parole Board may return the [appellant] to prison for up to 50% of the stated prison term; and (3) if the violation is a new felony, the [appellant] may be returned to prison for the greater of one year or the time remaining on post-release control, consecutive to any prison sentence imposed for the new felony.

{¶7} The appellant filed a timely appeal in which he sets forth the following sole assignment of error:

{¶8} “I. THE TRIAL COURT FAILED TO ADVISE PACKARD OF ALL OF THE POSSIBLE PENALITIES [SIC] HE COULD RECEIVE IF HE VIOLATED THE TERMS OF POST RELEASE CONTROL (PRC).”

STANDARD OF REVIEW

{¶9} “An appellate court may vacate or modify any sentence that is not clearly and convincingly contrary to law only if the appellate court finds by clear and convincing evidence that the record does not support the sentence.” *State v. Marcum*, 2016-Ohio-1002, ¶ 23. “Clear and convincing evidence is that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio

St. 469, paragraph three of the syllabus (1954). Thus, we may vacate or modify the appellant's sentence only if we find, by clear and convincing evidence, that the record does not support it.

{¶10} The issue of sentencing was addressed by this Court in *State v. Corbett*, 2023-Ohio-556 (5th Dist.):

We review felony sentences using the standard of review set forth in R.C. 2953.08. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 22. In *State v. Gwynne*, a plurality of the Supreme Court of Ohio held that an appellate court may only review individual felony sentences under R.C. 2929.11 and R.C. 2929.12, while R.C. 2953.08(G)(2) is the exclusive means of appellate review of consecutive felony sentences. 158 Ohio St.3d 279, 2019-Ohio-4761, 141 N.E.3d 169, ¶ 16-18.

R.C. 2953.08(G)(2) provides we may either increase, reduce, modify, or vacate a sentence and remand for resentencing where we clearly and convincingly find that *either* the record does not support the sentencing court's findings under R.C. 2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I), *or* the sentence is otherwise contrary to law. *See, also, State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.2d 659, ¶ 28; *Gwynne*, *supra*, ¶ 16.

Clear and convincing evidence is that evidence “which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. “Where the degree of proof required to sustain

an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof.” *Cross*, 161 Ohio St. at 477, 120 N.E.2d 118.

(Boldface and italics original.) *Id.* at ¶ 24-26.

ANALYSIS

{¶11} R.C. 2929.19 addresses sentencing hearings, and states in pertinent part:

(B)(2) Subject to division (B)(3) of this section¹, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

* * *

(e) Notify the offender that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(2)(d) of this section. This division applies with respect to all prison terms imposed for an offense of a type described in this division, including a term imposed for any such offense that is a risk reduction sentence, as defined in section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(2)(e) of this section and failed to notify the offender pursuant to division (B)(2)(e) of this section regarding post-release control or to include in the judgment of conviction

¹ R.C. 2929.19 (B)(3) deals with sex offenders and is not applicable herein.

entered on the journal or in the sentence a statement regarding post-release control.

(f) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(2)(d) or (e) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code, the parole board may impose a prison term, as part of the sentence, of up to one-half of the definite prison term originally imposed upon the offender as the offender's stated prison term or up to one-half of the minimum prison term originally imposed upon the offender as part of the offender's stated non-life felony indefinite prison term. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(2)(f) of this section that the parole board may impose a prison term as described in division (B)(2)(f) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of section 2967.28 of the Revised Code, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the

offender pursuant to division (B)(2)(f) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

{¶12} The Ohio Supreme Court addressed the imposition of PRC in the seminal case of *State v. Grimes*, 2017-Ohio-2927:

It is settled that "a trial court has a statutory duty to provide notice of postrelease control at the sentencing hearing" and that "any sentence imposed without such notification is contrary to law." *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶ 23. Concomitantly, because a court is generally said to speak only through its journal, *id.* at ¶ 6, the trial court is "required to incorporate that notice into its journal entry imposing sentence," *id.* at ¶ 17. In this case, the state asks us to identify what information the sentencing entry must contain to validly impose postrelease control.

We begin by reciting the statutory requirements for notice at the sentencing hearing. The court at a sentencing hearing must notify the offender that he or she "will" or "may" "be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for" a felony. R.C. 2929.19(B)(2)(c) and (d). The offender "will" be supervised if the offender has been convicted of a felony subject to mandatory postrelease control. R.C. 2929.19(B)(2)(c) and 2967.28(B). The offender "may" be supervised if the offender has been convicted of a less serious felony for which the APA has discretion to impose postrelease control. R.C. 2929.19(B)(2)(d) and 2967.28(C). The postrelease-control law also designates the term of

supervision for each degree of felony. R.C. 2967.28(B) and (C). Additionally, at the sentencing hearing, the court must notify the offender that if he or she "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 upon the offender." R.C. 2929.19(B)(2)(e).

Id. at ¶ 8-9. The *Grimes* Court went on to state:

We held that a trial court imposing postrelease control "is duty-bound to notify [the] offender at the sentencing hearing about postrelease control and to incorporate postrelease control into its sentencing entry." *Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, at ¶ 22. After *Singleton*, we made clear that "statutorily compliant notification" includes "notifying the defendant of the details of the postrelease control and the consequences of violating postrelease control," *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 18, including whether postrelease control is discretionary or mandatory, *Jordan* at ¶ 22-23, and the term of supervision, *State v. Billiter*, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 960, ¶ 12. Although we have held that in order to validly impose postrelease control the notice given at the sentencing hearing must be incorporated into the sentencing entry, *Jordan* at ¶ 17, we have not decided whether—and if so, how—notice of the consequences of violating a condition of postrelease control must also be incorporated into the sentencing entry.

Id. at ¶ 11. Thus, to validly impose PRC during sentencing a trial court must orally advise the defendant at the sentencing hearing as follows: (1) whether PRC is discretionary or

mandatory; (2) the duration of the PRC period; and, (3) a statement indicating that the Adult Parole Authority will administer PRC pursuant to R.C. 2967.28 and that any violation by the offender of the conditions of his PRC will subject him to the consequences set forth in the statute. *Id.* at ¶ 1.

{¶13} In the case sub judice, while the trial court arguably satisfied the first and second prongs set forth in *Grimes*, it failed to fully satisfy the third prong. The PRC advisements given to the appellant by the trial court during the sentencing hearing were: “[u]m, you’ll have two years of optional post-release control because this is a lower level felony 4 when you get out, but I assume PRC will pick you up and try to supervise you when you come back out of the institution,” and “[a]s I say though, there’s up to two years post-release control and the PRC people, as they effectively have done in this case, can punish you if you come out and cause any more difficulty with us, um.” Thus, the trial court’s PRC advisements informed the appellant regarding the duration of PRC and that it was discretionary (“you’ll have *two years of optional* post-release control”), as well as the first part of the third prong (“I assume *PRC* will pick you up and try to supervise you.”). However, the court did not satisfy the second part of the third *Grimes* prong, as it failed to inform the appellant that any violation of the condition of PRC will subject him to the consequences set forth in the statute. That is, the appellant was not advised during the sentencing hearing that a PRC violation could result in the Parole Board returning the appellant to prison for up to fifty percent of the stated prison term, and that if the violation is a new felony the he may be returned to prison for the greater of one year or the time remaining on post-release control, consecutive to any prison sentence imposed for the new felony.

{¶14} Accordingly, because the trial court did not fully advise the appellant as required by *Grimes* when it imposed PRC during the appellant’s March 2, 2026, Sentencing Hearing, we remand the matter to the trial court for a new sentencing hearing with the very limited purpose of re-imposing PRC as set forth above. *Accord State v. Cornwell*, 2024-Ohio-441, ¶21 (5th Dist.), citing *State v. Hibbler*, 2019-Ohio-3689, ¶ 19 (2nd Dist.) (“[i]t is well established that when post-release control is required but not properly imposed, the trial court must conduct a limited resentencing hearing to properly impose post-release control); *State v. Cook*, 2025-Ohio-5148, ¶34 (5th Dist.) (“we must remand for the extremely limited purpose of properly advising Appellant regarding PRC); and, *State v. Driver*, 2026-Ohio-3175, ¶14 (5th Dist.) (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.”)

CONCLUSION

{¶15} Based upon the foregoing, we find the trial court erred when it did not properly advise the appellant regarding PRC at his sentencing hearing. We therefore remand the matter to the trial court to conduct a new sentencing hearing for the limited purpose of properly imposing PRC consistent with this opinion.

{¶16} Costs are waived.

By: Baldwin, J.

Hoffman, P.J. and

Montgomery, J. concur.