

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 22AP0024

Appellee

v.

RANDALL FIELDS

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 99-CR-0099

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 17, 2023

CARR, Presiding Judge.

{¶1} Appellant, Randall Fields, appeals the judgment of the Wayne County Court of Common Pleas. This Court reverses and remands.

I.

{¶2} In 1999, Fields was convicted of rape and kidnapping, both first-degree felonies. After being found guilty by a jury, the trial court sentenced Fields to a ten-year prison term on each count and ordered those sentences to be served consecutively. The trial court also found that Fields was on post-release control in a separate case at the time the offenses were committed. The trial court ordered that the prison sentence in this case was to be served consecutive to the three-year sentence imposed in the separate case. The trial court further ordered that Fields was subject to a post-release control term in the instant case to the extent the parole board may determine as provided by law. Fields’ convictions were affirmed by this Court on direct appeal. *State v. Fields*, 9th Dist. Wayne No. 99CA0062, 2000 WL 1124071 (Aug. 9, 2000).

{¶3} On December 1, 2021, the trial court sua sponte issued a nunc pro tunc sentencing entry that modified its post-release control order. Specifically, the nunc pro tunc sentencing entry inserted language indicating that Fields was subject to a mandatory five-year term of post-release control. The nunc pro tunc sentencing entry also included language explaining the consequences for violating post-release control.

{¶4} On April 27, 2022, Fields filed a motion for leave to file a delayed appeal. This Court ultimately granted his motion. Now before this Court, Fields raises one assignment of error.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN ISSUING A NUNC PRO TUNC JUDGMENT ENTRY MODIFYING APPELLANT, RANDALL FIELDS, POST-RELEASE CONTROL AND DENIED APPELLANT, RANDALL FIELDS, THE RIGHT TO A HEARING.

{¶5} In his sole assignment of error, Fields argues that the trial court erred by issuing a nunc pro tunc entry addressing post-release control without first conducting a hearing pursuant to R.C. 2929.191(C). The State has conceded error in this regard. This Court agrees.

{¶6} Due to his convictions for rape and kidnapping, Fields was subject to a mandatory five-year term of post-release control pursuant to Former R.C. 2967.28(B)(1). As noted above, the trial court failed to properly notify Fields of post-release control at the time of sentencing and instead merely stated in its sentencing entry that he was “subject to post-release control to the extent the parole board may determine as provided by law.”

{¶7} Although resolving post-release control errors was a source of consternation in Ohio courts for many years, the Ohio Supreme Court recently “realigned [its] jurisprudence with the traditional understanding of void and voidable sentences[.]” *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, ¶ 43. In *Harper*, the Supreme Court stated, “we overrule our precedent to

the extent that it holds that the failure to properly impose post[-]release control in the sentence renders that portion of a defendant's sentence void. We do this not because we reject the precept that courts lack authority to substitute a different sentence for that provided by statute but because noncompliance with requirements for imposing post[-]release control is best remedied the same way as other trial and sentencing errors-through timely objections at sentencing and an appeal of the sentence." *Id.* at ¶ 40.

{¶8} This case involves the trial court's sua sponte issuance of a nunc pro tunc entry pertaining to post-release control and necessarily mandates an application of R.C. 2929.191. R.C. 2929.191(A)(1) provides as follows:

If, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in [R.C. 2929.19(B)(2)(d)] and failed to notify the offender pursuant to that division that the offender will be supervised under [R.C. 2967.28] after the offender leaves prison or to include a statement to that effect in the judgment of conviction entered on the journal or in the sentence pursuant to [R.C. 2929.14(D)(1)], at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender will be supervised under [R.C. 2967.28] after the offender leaves prison.

R.C. 2929.191(C) concerns hearing requirements and states as follows:

On and after July 11, 2006, a court that wishes to prepare and issue a correction to a judgment of conviction of a type described in division (A)(1) or (B)(1) of this section shall not issue the correction until after the court has conducted a hearing in accordance with this division. Before a court holds a hearing pursuant to this division, the court shall provide notice of the date, time, place, and purpose of the hearing to the offender who is the subject of the hearing, the prosecuting attorney of the county, and the department of rehabilitation and correction. The offender has the right to be physically present at the hearing, except that, upon the court's own motion or the motion of the offender or the prosecuting attorney, the court may permit the offender to appear at the hearing by video conferencing equipment if available and compatible. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender were physically present at the hearing. At the hearing, the offender and the prosecuting attorney may make a statement as to whether the court should issue a correction to the judgment of conviction.

{¶9} We are compelled to sustain Fields' sole assignment of error under the circumstances of this case. A review of the record confirms that the trial court failed to conduct a hearing pursuant to R.C. 2929.191(C) prior to issuing its nunc pro tunc sentencing entry. The State has conceded error. Accordingly, this matter must be reversed and remanded because the trial court's judgment runs afoul of R.C. 2929.191.

{¶10} Fields' assignment of error is sustained.

III.

{¶11} Fields' assignment of error is sustained. The judgment of the Wayne County Court of Common Pleas is reversed and the cause remanded for further proceedings consistent with this decision.

Judgment reversed,
and cause remanded.

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 Wayne, 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(C). 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 Appellee.

DONNA J. CARR
FOR THE COURT

STEVENSON, J.
FLAGG LANZINGER, J.
CONCUR.

APPEARANCES:

KIMBERLY STOUT-SHERRER, Attorney at Law, for Appellant.

ANGELA WYPASEK, Prosecuting Attorney, and DAVID FOLK, Assistant Prosecuting Attorney, for Appellee.