

[Cite as *State v. White*, 2010-Ohio-3607.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93732

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DONTEZ WHITE

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-341905-B

BEFORE: Cooney, J., Blackmon, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: August 5, 2010

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Dontez White (“White”), appeals the trial court’s imposition of postrelease control. Finding no merit to the appeal, we should affirm.

{¶ 2} In August 1996, White was charged in a multi-count indictment. Count 1 charged him with aggravated burglary, Counts 2-7 charged him with aggravated robbery, Counts 8-13 charged him with kidnapping, Counts 14-15

charged him rape, and Count 16 charged him felonious assault.¹ The matter proceeded to a jury trial, at which he was found guilty of aggravated burglary, five counts of aggravated robbery, five counts of kidnapping, and felonious assault, as well as the firearm specifications on each count. In January 1997, the trial court sentenced White to three years in prison on each gun specification, which were all merged, and five years on each count, with Counts 1 and 2 to be served consecutive to each other, but concurrent to all other counts, for an aggregate of 13 years in prison.²

{¶ 3} In June 2009, the State moved to resentence White, requesting that the trial court impose five years of postrelease control. The trial court conducted a de novo sentencing hearing on July 10, 2009, which was the last day of White's sentence. At the hearing, the trial court reimposed the original sentence and imposed five years of postrelease control.

{¶ 4} It is from this order that White appeals, raising two assignments of error. In the first assignment of error, White contends that the trial court erred when it resentenced him because the State had not challenged the failure to include postrelease control in a timely direct appeal. He claims that the State is barred by res judicata from challenging the trial court's

¹Each count carried one- and three-year firearm specifications.

²This court affirmed White's convictions in *State v. White* (Apr. 16, 1998),

failure to include postrelease control. He further claims that his constitutional rights were violated when he was resentenced by the trial court.

{¶ 5} We note that the Ohio Supreme Court has rejected these arguments in *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, superseded by statute on other grounds as stated in *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958. The *Simpkins* court noted that:

“Although res judicata applies to a voidable sentence and may operate to prevent consideration of a collateral attack based on a claim that could have been raised on direct appeal from the voidable sentence, we have not applied res judicata to cases in which the sentence was void. We decline to do so now. ‘[W]here no statutory authority exists to support a judgment, res judicata does not act to bar a trial court from correcting the error.’” (Citations omitted.) *Id.* at ¶30.

{¶ 6} The supreme court further recognized “that conducting a new sentencing hearing would not offend double jeopardy or due process, because an offender could not have a legitimate expectation of finality in a void sentence.” *Singleton* at ¶18, citing *Simpkins* at ¶36-37.

{¶ 7} Based on *Simpkins*, we find that White’s argument lacks merit, and the first assignment of error is overruled.

{¶ 8} In the second assignment of error, White argues that the trial court failed to properly impose postrelease control at the de novo sentencing hearing. He claims the trial court imposed postrelease control on his original sentence and not on the “new” sentence. As a result, he now contends that he cannot be resentenced because he has completed his prison term. We disagree.

{¶ 9} Under R.C. 2929.19(B)(3), the trial court was required to notify White at sentencing that if he violated a condition of postrelease control, the parole board may impose a prison term for as much as one-half of the stated prison term originally imposed upon the defendant. *State v. Samilton*, Cuyahoga App. No. 92823, 2010-Ohio-439, ¶10, citing, *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶2; *State v. Williams*, Cuyahoga App. No. 92351, 2009-Ohio-6303, ¶21.

{¶ 10} In the instant case, the trial court reimposed White’s original sentence at the de novo hearing and stated: “[I]f you don’t report, or of you don’t meet their [the parole board] conditions, they could, first of all, they could send you back to prison for ultimately up to half of your original sentence again.” We find that this explanation was adequate. White was advised that he could be sent back to prison for up to one-half of the sentence he had served, or six and one-half years.

{¶ 11} Therefore, the second assignment of error is overruled.

Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, JUDGE

PATRICIA A. BLACKMON, P.J., and
MARY J. BOYLE, J., CONCUR