

[Cite as *State v. Quinn*, 2010-Ohio-4882.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93700

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

ANDRE QUINN

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-520209

BEFORE: Sweeney, J., Stewart, P.J., and Jones, J.

RELEASED AND JOURNALIZED: October 7, 2010
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JAMES J. SWEENEY, J.:

{¶ 1} Plaintiff-appellant, State of Ohio (“State”), appeals from the trial court’s judgment that terminated the postrelease control sanction against defendant-appellee, Andre Quinn (“Quinn”), and ordered him released from county jail. For the reasons that follow, we affirm.

{¶ 2} Quinn was charged with one count of escape pursuant to R.C. 2921.34(A)(1). The record is sparse but it appears that Quinn’s escape charge arose from his violation of postrelease control (“PRC”) that was imposed following his release from prison for an aggravated robbery conviction. On June 9, 2009, Quinn pled guilty to felony escape and was sentenced to community control sanctions for nine months. Quinn was rearrested on a *capias* that was reportedly generated by the officer who was supervising his PRC term. The

capias was issued for Quinn's alleged violation of that PRC. On June 30, 2009, defense counsel moved for termination of Quinn's PRC, which the trial court granted and the State has appealed. We address both assignments of error together.

{¶ 3} "I. A trial court does not have jurisdiction under R.C. 2929.141 to terminate a prior mandatory term of postrelease control.

{¶ 4} "II. A trial court only has jurisdiction to terminate a term of postrelease control at a plea or sentencing hearing."

{¶ 5} Ordinarily, the Adult Parole Authority controls the amount of time an individual serves on PRC. *Woods v. Telb*, 89 Ohio St.3d 504, 512, 733 N.E.2d 1103. However, the legislature has vested the trial courts with certain authority and discretion over an existing term of PRC upon the releasee's guilty plea or conviction for a new felony.

{¶ 6} R.C. 2929.141 provides:

{¶ 7} "(A) Upon the conviction of or plea of guilty to a felony by a person on postrelease control at the time of the commission of the felony, the court may terminate the term of postrelease control, and the court may do either of the following *regardless of whether the sentencing court or another court of this state imposed the original prison term for which the person is on postrelease control*:

{¶ 8} "(1) In addition to any prison term for the new felony, impose a prison term for the postrelease control violation. * * *

{¶ 9} “(2) Impose a sanction under sections 2929.15 to 2929.18 of the Revised Code for the violation that shall be served concurrently or consecutively, as specified by the court, with any community control sanctions for the new felony.” (Emphasis added.)

{¶ 10} By its terms, the statute contemplates that a court, other than the court that imposed the original prison term for which the person is on PRC, can order the termination of the PRC term, among other options. Furthermore, this authority to terminate PRC is not limited by any distinction between mandatory versus discretionary PRC. The only thing required to trigger the court’s authority is the individual’s plea or conviction for a new felony (that is, a felony other than the one for which he was placed on PRC).

{¶ 11} The State interprets the statute to strictly require the court to terminate the PRC “*at the time of plea or the time of sentencing to a new felony*” or not at all. However, the statutory language provides the authority to terminate “upon” the plea or conviction. It is axiomatic that Quinn was on PRC at the time he committed the felony escape. He pled guilty and was convicted of escape, “a new felony,” thereby vesting the trial court with the authority to terminate the original term of PRC. Once Quinn pled guilty and was sentenced on the new felony the trial court acted within its authority under R.C. 2929.141 when it terminated Quinn’s PRC.

{¶ 12} The State relies upon *State v. Jones*, Montgomery App. No. 19978, 2004-Ohio-1698, in urging us to find that the trial court lacked authority to

terminate a mandatory term of PRC despite the provisions of R.C. 2929.141. However, the critical distinction between *Jones* and this case is that Quinn pled guilty to and was convicted of a “new felony” while Jones was not. In *Jones*, the Montgomery Court of Appeals correctly determined that R.C. 2929.141 did not apply. Specifically, the court held: “R.C. 2929.141 is inapplicable to this case, because it authorizes the court to terminate postrelease control ‘[u]pon the person’s conviction of or plea of guilty to the new felony,’ but Jones was convicted of a misdemeanor.” *Id.* at ¶16. Because R.C. 2929.141 did not apply, the trial court in *Jones* was left without authority to terminate the PRC term. In this case, R.C. 2929.141 does apply. Accordingly, the assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant his 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 Court of Common Pleas to carry this judgment into execution.

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

JAMES J. SWEENEY, JUDGE

**MELODY J. STEWART, P.J., and
LARRY A. JONES, J., CONCUR**