

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93958

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

QUINTEN LINDSEY

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-515205-A

BEFORE: Blackmon, J., Gallagher, A.J., and Stewart, J.

RELEASED AND JOURNALIZED: October 7, 2010

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PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Quinten Lindsey appeals his sentence and assigns the following error for our review:

“I. Since the original sentence was null and void, defendant-appellant could not be found to be a community control violator.”

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court’s decision. The apposite facts follow.

{¶ 3} On September 5, 2008, a Cuyahoga County Grand Jury indicted Lindsey on six counts of criminal nonsupport for failing to pay court-ordered child support for his children. Lindsey pleaded not guilty at his arraignment, and several pretrials followed.

{¶ 4} On December 18, 2008, pursuant to plea agreement with the state, Lindsey pleaded guilty to two counts of criminal nonsupport. On January 29, 2009, the trial court sentenced Lindsey to five years of community control sanctions and ordered restitution in the amount of \$24,743.03 to be paid in monthly installments of \$361.28.

{¶ 5} On August 26, 2009, having failed to pay his monthly child support obligation and having tested positive for marijuana, the trial court determined that Lindsey was in violation of the community controlled sanctions. The trial court sentenced Lindsey to prison terms of 12 months on each count and ordered them served consecutively for a total of 24 months.

Postrelease Control

{¶ 6} In the sole assigned error, Lindsey argues his original sentence was null and void because the trial court failed to notify him either at the plea or sentencing hearings that he could be subject to postrelease control for violating probation.

{¶ 7} R.C. 2929.19, requires a trial court, when sentencing a felony offender to a prison term, to notify the offender about postrelease control both

at the sentencing hearing and by incorporating it into its sentencing entry. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864. The trial court must do so regardless of whether the term of postrelease control is mandatory or discretionary under R.C. 2967.28. *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, 844 N.E.2d 301, ¶18; *Jordan*, 104 Ohio St.3d at paragraph two of the syllabus.

{¶ 8} R.C. 2929.19 provides in pertinent part as follows:

“[I]f the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

“ * * *;

“(c) Notify the offender that the offender will be supervised under R.C. 2967.28 after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree * * *;

“(d) Notify the offender that the offender may be supervised under R.C. 2967.28 after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree * * *.” R.C. 2929.19(B)(3)(c)(d).

{¶ 9} In the instant case, Lindsey argues that the failure to notify him that he is subject to postrelease control voids his sentence. Consequently, he cannot be convicted of probation violation. However, a trial court that imposes community control sanctions is not required to inform the defendant that if he is later sentenced to a term of imprisonment for violation of the

conditions of his sanctions, then postrelease control may be imposed. *State v. Harris*, Cuyahoga App. No. 89971, 2008-Ohio-2175. See, also, *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837.

{¶ 10} Here, the trial court originally sentenced Lindsey to five years of community control sanctions instead of a prison term. Since Lindsey was not originally sentenced to prison, the trial court did not have to advise him that if he was later sentenced to prison for a violation of the community control sanctions, postrelease control could be imposed. Consequently, despite Lindsey's present assertions, his original sentence is not null and void. Accordingly, we overrule the sole assigned error.

Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. 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.

PATRICIA ANN BLACKMON, JUDGE

**SEAN C. GALLAGHER, A.J., and
MELODY J. STEWART, J., CONCUR**