

[Cite as *In re J.V.*, 2010-Ohio-71.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92869**

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**IN RE: J.V.  
A Minor Child**

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**JUDGMENT:  
REVERSED IN PART AND REMANDED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. DL 05103008

**BEFORE:** Jones, J., Gallagher, A.J., and Boyle, J.

**RELEASED:** January 14, 2010

**JOURNALIZED:**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Appellant-defendant, J.V.,<sup>1</sup> through counsel, appeals the decision of the lower court. Having reviewed the arguments of the parties and the pertinent law, we hereby reverse in part and remand to the lower court for resentencing.

### **STATEMENT OF THE CASE AND THE FACTS**

{¶ 2} This case involves an appeal from the Cuyahoga County Common Pleas Court, Juvenile Division, wherein J.V. initially had three cases pending: DL01105053, DL04102103, and DL05103008, totaling six counts. J.V. and the state subsequently entered into plea negotiations and, on June 17, 2005 a plea and disposition hearing was held, and an agreement was reached on all six counts.

{¶ 3} J.V. appealed to this court his juvenile disposition as it was reflected in the journal entries of the common pleas court, juvenile division. J.V. argued that the journal entries in the juvenile court differed from the disposition imposed at the recorded disposition hearing. This court vacated J.V.'s sentence as stated in the applicable journal entries and remanded the matter to the juvenile division to modify its journal entries to accurately reflect J.V.'s disposition as articulated at the June 17, 2005 hearing. See *In re: J.V. I*.

{¶ 4} Pursuant to the order of remand from *In re: J.V. I*, another dispositional hearing was held before the juvenile court on January 5, 2007, at

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<sup>1</sup>Appellant is referred to herein by his initials in accordance with this court's established policy regarding non-disclosure of identities in juvenile cases.

which time J.V.'s current sentence (including both juvenile and adult portions) was imposed. The events of the January 5, 2007 hearing were journalized in the court's January 16, 2007 entry.

{¶ 5} J.V. began serving the juvenile portion of his sentence. On October 16, 2008, the state filed a motion to invoke the adult sentence based on appellant's conduct while he was in the custody of the Ohio Department of Youth Services.

{¶ 6} The juvenile court held a hearing on the state's motion on January 13, 2009. At the conclusion of the hearing, the matter was deemed heard and submitted. In an entry filed on February 5, 2009, the juvenile court found "by clear and convincing evidence that the child has been admitted to a Department of Youth Services facility, and the child's conduct demonstrates that the child is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction."<sup>2</sup>

{¶ 7} Therefore, the court ordered the adult portion of appellant's sentence into execution. However, at no point did the lower court advise appellant of the mandatory five years of postrelease control associated with the adult portion of his sentence, nor did the court incorporate postrelease control in its journal entry. Appellant now appeals.

### **ASSIGNMENTS OF ERROR**

{¶ 8} Appellant assigns four assignments of error on appeal:

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<sup>2</sup>See February 5, 2009 journal entry.

{¶ 9} [1.] “The state failed to present sufficient evidence with respect to the findings necessary to invoke the appellant’s suspended adult sentence.

{¶ 10} [2.] “The trial court erred in invoking the adult portion of the appellant’s SYO sentence without making adequate findings on the record as required by R.C. 2152.14(D) and (E)(1).

{¶ 11} [3.] “The trial court erred in invoking the adult portion of appellant’s SYO sentence based on judicial fact-finding and based on a relaxed burden of proof in violation of the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 10 and 16 of the Ohio Constitution.

{¶ 12} [4.] “The juvenile court lacked the authority to invoke a void adult sentence.”

### **LEGAL ANALYSIS**

{¶ 13} Due to the disposition of appellant’s final assignment of error we shall address it first. Appellant argues in his fourth assignment of error that the juvenile court lacked the authority to invoke the suspended adult sentence because that sentence was void. For the reasons that follow, we agree.

#### **Serious Youth Offender Specification**

{¶ 14} R.C. 2152.13 allows for a juvenile court to impose a blended sentence upon a “serious youthful offender.” *In re Wells*, Allen App. No. 1-05-30, 2005-Ohio-6861. A “serious youthful offender” is defined as “a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to

the adult court under the mandatory or discretionary transfer.” Id., R.C. 2152.02(X).

{¶ 15} R.C. 2152.13(D)(1) involves sentencing of a serious youthful offender. R.C. 2152.13(D)(1) provides:

“If a child is adjudicated a delinquent child for committing an act under circumstances that require the juvenile court to impose upon the child a serious youthful offender dispositional sentence under section 2152.11 of the Revised Code, all of the following apply:

“(a) The juvenile court shall impose upon the child a sentence available for the violation, as if the child were an adult, under Chapter 2929 of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

“(b) The juvenile court also shall impose upon the child one or more traditional juvenile dispositions under sections 2152.16, 2152.19, and 2152.20, and, if applicable, section 2152.17 of the Revised Code.

“(c) The juvenile court shall stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.”

### **Jurisdiction**

{¶ 16} As used in the Juvenile Court law, “child” means a person who is under the age of 18 years, with certain exceptions. These exceptions are found in R.C. 2152.02(C)(2) to (6). R.C. 2152.02(C)(2) to (6), provides the following:

“(2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a ‘child’ irrespective of that person’s age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

“(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not

taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

“(4) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code shall be deemed after the transfer not to be a child in the transferred case.

“(5) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to section 2152.13 of the Revised Code, and whose adult portion of the dispositional sentence is invoked pursuant to section 2152.14 of the Revised Code, *shall be deemed after the transfer* or invocation not to be a child in any case in which a complaint is filed against the person. (Emphasis added.)

“(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided in this division, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a “child” until the person attains twenty-one years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under this chapter, at any time after the person attains eighteen years of age, the places at which the person may be held under that disposition are not limited to places authorized under this chapter solely for confinement of children, and the person may be confined under that disposition, in accordance with division (F)(2) of section 2152.26 of the Revised Code, in places other than those authorized under this chapter solely for confinement of children.”

{¶ 17} J.V. was born on March 11, 1988, and therefore, under the age of 18 at the time of the offense. J.V. received a blended juvenile and adult sentence. He was confined to a juvenile institution until he obtained the age of 21, and given a *potential* six-year adult sentence. The potential adult sentence was based on a

two-year sentence for felonious assault and a three-year sentence for aggravated robbery. The felonious assault and aggravated robbery sentences were to be served concurrent to each other but consecutive to a single three-year firearm specification sentence of one year.

{¶ 18} J.V.'s alleged fighting and bad behavior occurred when he was 20 years old and in the custody of the juvenile court. J.V. was under the jurisdiction of the juvenile court at that time and had not yet reached the age of 21. The juvenile court had jurisdiction at the time of the alleged misbehavior of J.V. and that case is still active, through this appeal. The fact that J.V. is now 21 does not automatically transfer venue to the common pleas court in this particular situation.

Jurisdiction remains with the juvenile court for the *limited* purpose of conducting a new hearing; making any and all, required notifications to J.V.; and conducting any resentencing issues that become necessary.

### **Sentencing**

{¶ 19} The Ohio Supreme Court has stated, “when sentencing a felony offender to a term of imprisonment, a trial court is required to notify the offender at the sentencing hearing about postrelease control and is further required to incorporate that notice into its journal entry imposing sentence.” *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864.

{¶ 20} In *Jordan*, the Ohio Supreme Court provided the following:

“Because a trial court has a statutory duty to provide notice of postrelease control at the sentencing hearing, any sentence imposed without such notification is contrary to law. As a general rule, if an appellate court determines that a sentence is clearly and convincingly



contrary to law, it may remand for resentencing. See R.C. 2953.08(G)(2).<sup>3</sup> Furthermore, where a sentence is void because it does not contain a statutorily mandated term, the proper remedy is, likewise, to resentence the defendant. See *State v. Beasley* (1984), 14 Ohio St.3d 74, 14 OBR 511, 471 N.E.2d 774.”

{¶ 21} In cases in which a defendant is convicted of, or pleads guilty to, an offense for which postrelease control is required but not properly included in the sentence, *the sentence is void* and the state is entitled to a new sentencing hearing in order to have postrelease control imposed on the defendant unless the defendant has completed his sentence. (Emphasis added.) R.C. 2929.14(F), 2967.28. *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568.

{¶ 22} In *State v. Bezak*, 114 Ohio St.3d 94, 868 N.E.2d 961, the Ohio Supreme Court discussed the effect of a void judgment: “It is as though such proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment.” *Id.* at \_12, citing *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 267-268, 39 O.O.2d 414.

{¶ 23} At no time did the lower court ever advise J.V. of the mandatory five years of postrelease control associated with the adult portion of his sentence. Nor did the lower court properly incorporate postrelease control in its journal entry.

Accordingly, J.V.’s sentence is void.

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<sup>3</sup>R.C. 2953.08(G)(2) provides that if an appellate court clearly and convincingly finds that a sentence is contrary to law, it may “increase, reduce, or otherwise modify a sentence \* \* \* or may vacate the sentence and remand the matter to the sentencing court for resentencing.”

{¶ 24} J.V.'s fourth assignment of error has merit, and we hereby reverse in part and remand this case to the docket of the juvenile court for a new hearing.

{¶ 25} In view of our ruling on appellant's fourth assignment of error and the fact that another hearing will be held, appellant's remaining assignments of error are hereby rendered moot, pursuant to App.R. 12(A)(1)(c).

It is ordered that appellant recover from appellee 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.

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

LARRY A. JONES, JUDGE

SEAN C. GALLAGHER, A.J., and  
MARY JANE BOYLE, J., CONCUR