

[Cite as *State v. Ramos*, 2017-Ohio-2763.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105110

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAVIER RAMOS

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-03-445490-B

BEFORE: Boyle, J., Kilbane, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: May 11, 2017

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Javier Ramos, appeals the trial court's decision denying his motion to terminate postrelease control sanctions. For the reasons that follow, we reverse and remand with instructions.

{¶2} In February 2004, Ramos pleaded guilty to one count of drug trafficking in violation of R.C. 2925.03, a first-degree felony, and was sentenced to nine years in prison. The trial court's sentencing journal entry provided for "[p]ost release control of 5 years as part of this prison sentence for the above felony(s) under R.C. 2967.28."

{¶3} In August 2005, Ramos filed a motion seeking leave to file a delayed appeal and a notice of appeal. This court denied Ramos leave to file a delayed appeal and sua sponte dismissed the appeal. Likewise, the Supreme Court of Ohio denied Ramos leave to appeal.

{¶4} In January 2010, Ramos filed a motion to withdraw his guilty plea. In the motion, Ramos argued that his guilty plea should be vacated because the trial court failed to inform him of postrelease control prior to the plea agreement, and the sentencing entry did not state whether postrelease control was mandatory. "After consulting" with the Cuyahoga County Public Defender's Office, Ramos filed a withdrawal of his motion. The trial court, however, denied Ramos's motion to withdraw his guilty plea.

{¶5} In January 2011, Ramos filed a motion to correct the judgment of conviction and asked for a de novo resentencing hearing to properly impose postrelease control sanctions. The trial court denied the motion.

{¶6} In November 2012, Ramos was released from prison after serving his entire prison sentence. He then was supervised on postrelease control. His postrelease control was subsequently transferred to the state of Texas.

{¶7} In April 2016, Ramos was arrested in Texas and held as a postrelease control violator because, according to Ramos, he failed to provide the Texas authorities proper notification of a change of address. The authorities returned Ramos to Ohio and Ramos received a 90-day jail sentence. According to Ramos, he is currently supervised on postrelease control.

{¶8} On September 14, 2016, Ramos filed a motion to terminate his postrelease control contending that because the sentencing journal entry failed to reflect the consequences of violating postrelease control, the trial court improperly imposed the term of postrelease control. Without waiting for a response from plaintiff-appellee, state of Ohio, the trial court, without opinion, denied Ramos's motion.

{¶9} Ramos appeals, raising as his sole assignment of error that the "trial court erred in failing to vacate and/or terminate [his] improperly imposed term of postrelease control." Specifically, Ramos argues that the trial court improperly imposed postrelease control because it made no reference to the consequences for violating postrelease control in the sentencing entry.

{¶10} In response, the state acknowledges the law in this district regarding postrelease control, but contends that the trial court properly notified Ramos of postrelease control and the consequences of violating it at the sentencing hearing. And

since Ramos failed to file the transcript of the sentencing hearing in this case, the state argues that this court must presume the regularity of the sentencing proceedings. The state also argues that the trial court lacked jurisdiction to terminate Ramos's postrelease control. Finally, the state asks us to stay our decision until the Ohio Supreme Court renders its decision in *State v. Grimes*, Ohio Supreme Court Case No. 2016-0215. See *State v. Grimes*, 5th Dist. Muskingum No. CT 2015-0026, 2015-Ohio-2497, *discretionary appeal allowed*, *State v. Grimes*, 145 Ohio St.3d 1407, 2016-Ohio-899.

{¶11} As an initial matter, we note that “[a] sentence that does not include the statutorily mandated term of postrelease control is void, is not precluded from appellate review by principles of res judicata, and may be reviewed at any time, on direct appeal or by collateral attack.” *State v. Cooper*, 8th Dist. Cuyahoga No. 103066, 2015-Ohio-4505, ¶ 8, citing *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph one of the syllabus; see also *State v. Williams*, 8th Dist. Cuyahoga No. 96323, 2011-Ohio-3267 (despite prior appeals and motions, the issue of postrelease control was properly before the court). Therefore, Ramos's prior motions relating to his guilty plea and sentence do not bar the instant appeal. *Cooper* at ¶ 8.

{¶12} Turning to the issue in this case, this court is bound to follow our unanimous *en banc* decision in *State v. Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-5036. In *Mace*, we were asked: “whether a sentencing journal entry that states that the appellant is subject to postrelease control for the ‘maximum period allowed’ for that felony is void, even if the court informed the defendant at the sentencing hearing of the specific period

of postrelease control imposed.” This court unanimously answered: “We agree with the panel that such a judgment entry is void. Further, the entry cannot be corrected after the appellant has completed service of his sentence. Therefore the appellant here is not subject to postrelease control sanctions.” *Id.* at ¶ 1.

{¶13} This court has repeatedly followed *Mace* finding that when a trial court failed to set forth the consequences for violating postrelease control in a sentencing entry and the defendant completed his sentence, the term of postrelease control was void and should be terminated. See *State v. Smith*, 8th Dist. Cuyahoga No. 104632, 2016-Ohio-7898; *State v. Bryant*, 8th Dist. Cuyahoga No. 102650, 2015-Ohio-3678, *discretionary appeal not allowed*, *State v. Bryant*, 144 Ohio St.3d 1505, 2016-Ohio-652, 45 N.E.3d 1050; *Cooper*, 8th Dist. Cuyahoga No. 103066, 2015-Ohio-4505; *State v. Martin*, 8th Dist. Cuyahoga No. 102336, 2015-Ohio-2865; *State v. Love*, 8th Dist. Cuyahoga No. 102058, 2015-Ohio-1461.

{¶14} This court also has held that merely referring to the statute in the sentencing entry is insufficient to advise the defendant of the consequences of violating postrelease control. *Martin* at ¶ 10, citing *State v. Mills*, 8th Dist. Cuyahoga No. 100417, 2014-Ohio-2188. Moreover, in *State v. Johnson*, 8th Dist. Cuyahoga No. 103225, 2016-Ohio-404, this court held that the trial court maintained jurisdiction to terminate the void postrelease control sanction.

{¶15} In this case, the trial court did not set forth the consequences for violating postrelease control in the sentencing entry. Rather, the trial court simply provided for

“[p]ostrelease control of 5 years as part of” Ramos’s prison sentence. Ramos completed his prison sentence. Pursuant to *Mace* and the other precedents set forth in our district, the trial court erred by not terminating Ramos’s postrelease control because the sentencing entry is void with respect to postrelease control.

{¶16} We also find that Ramos’s failure to submit the transcript from his sentencing hearing does not affect the outcome of our decision in this case. In *State v. Elliott*, 8th Dist. Cuyahoga No. 100404, 2014-Ohio-2062, this court had the opportunity to review the sentencing transcript and held that even though the trial court orally notified the defendant of the consequences of violating postrelease control at his sentencing hearing, the failure to subsequently include the notification in the sentencing journal entry rendered the imposition of the defendant’s postrelease control void. *Id.* at ¶ 12. Thus, pursuant to this court’s decision in *Elliott*, even if the trial court advised Ramos of the consequences of violating postrelease control at his sentencing hearing, the court was not relieved of its obligation to include the notification in its sentencing entry. *See also Martin*, 8th Dist. Cuyahoga No. 102336, 2015-Ohio-2865.

{¶17} The state asks this court to stay our decision pending the decision in *Grimes*, Ohio Supreme Court Case No. 2016-0215, where the proposition of law under review is: “[T]o impose valid postrelease control, the language in the sentencing entry may incorporate the advisements given during the sentencing hearing by referencing the postrelease control sections of the Ohio Revised Code and do not need to repeat what was said during the sentencing hearing.” In *Grimes*, the parties did not dispute that the trial

court orally advised the defendant at the sentencing hearing of postrelease control, its terms and the consequences for violating it. Likewise, the trial court's advisement was incorporated into the sentencing entry.

{¶18} In this case, we do not have the same stipulation; we do not have the transcript from the sentencing hearing; and the sentencing journal entry does not incorporate any advisement from Ramos's sentencing hearing. Given the different set of circumstances, we cannot say that *Grimes* will be dispositive of the specific substantive issue in this case. Moreover, we note that Ramos will complete his term of postrelease control by November 2017 and, therefore, we find no reason to delay our decision. Therefore, as in *Smith*, 8th Dist. Cuyahoga No. 104632, 2016-Ohio-7898, at ¶ 9, we decline to stay the proceedings in this case.

{¶19} Ramos's sole assignment of error is sustained.

{¶20} Judgment reversed, and the matter is remanded to the trial court with instructions to release Ramos from further postrelease control supervision.

It is ordered that appellant recover from appellee the 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.

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

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
SEAN C. GALLAGHER, J., CONCUR