

[Cite as *State v. Steidl*, 2009-Ohio-5053.]

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 09CA0010-M

Appellee

v.

EARL M. STEIDL

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 08-CR-0361

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 28, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Earl Steidl, appeals from his convictions in the Medina County Court of Common Pleas. This Court vacates his sentence.

I

{¶2} On September 10, 2008, Steidl was indicted on one count of rape with a victim under ten years of age in violation of R.C. 2907.02(A)(1)(b)(B), a first-degree felony; two counts of gross sexual imposition with the same victim in violation of R.C. 2907.05(A)(4), third-degree felonies; and one count of tampering with the evidence in violation of 2921.12(A)(1), a third-degree felony. Steidl initially plead not guilty to the charges, but later entered a change of plea. In exchange for his guilty plea, the State amended the rape count in the indictment to reflect that the victim was less than 13 years of age. Steidl then pleaded guilty to all counts in the amended indictment.

{¶3} On February 2, 2009, Steidl was sentenced to a total of twenty years in prison for his offenses and up to five years of post-release control. Steidl now appeals from his convictions asserting three assignments of error for our review, which we have rearranged for ease of review.

II

Assignment of Error Number Three

“THE TRIAL COURT ERRED IN SENTENCING MR. STEIDL.”

{¶4} In his third assignment of error, Steidl argues that the trial court erred in sentencing him because, among other things, it failed to advise him of the proper term of post-release control to which he would be subject upon his release from prison; it failed to sentence him to mandatory DNA specimen collection pursuant to statute; and it failed to include in his sentencing entry the requirements for him to register as a sex offender.

{¶5} Initially, we note that R.C. 2967.28(B)(1) requires, in relevant part, that:

“(B) Each sentence to a prison term for a felony of the first degree, for a felony of the second degree, [or] for a felony sex offense, *** shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender’s release from imprisonment. *** [The] period of post-release control *** shall be[,] *** [f]or a felony of the first degree or for a felony sex offense, five years[.]”

A “felony sex offense” is defined as “a violation of a section contained in Chapter 2907 of the Revised Code that is a felony.” R.C. 2967.28(A). Thus, in addition to his first-degree rape conviction, Steidl’s convictions for third-degree gross sexual imposition under R.C. 2907.05(A)(4) constitute felony sex offenses for the purposes of R.C. 2967.28. Accordingly, the trial court was required to impose a mandatory term of five years of post-release control on all three felony sex offenses. The record reveals that, while Steidl was correctly informed at his sentencing hearing that he was sentenced to “five years of mandatory post-release control” for his felony sex offenses, his judgment entry states that “post[-]release control is mandatory in this

case *up to a maximum of 5 years* for Counts I through III[.]” (Emphasis added.) Although the court correctly stated in its judgment entry that post-release control was mandatory based on Steidl’s felony sex convictions, it used discretionary language when stating the duration of the term for which he would be subject to post-release control. See, e.g., *State v. Preston*, 9th Dist. No. 24595, 2009-Ohio-4332, at ¶7 (noting that the language “up to one year” constitutes the discretionary imposition of a term of post-release control). The trial court was statutorily obligated to inform Steidl that he was sentenced to post-release control for a definite period of five years. R.C. 2967.28(B)(1).

{¶6} “When sentencing a felony offender to a term of imprisonment, a trial court is required to notify the offender at the sentencing hearing about post[-]release 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, paragraph one of the syllabus. “[A] sentence that does not conform to statutory mandates requiring the imposition of post[-]release control is a nullity and void, [and] it must be vacated. *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, at ¶8, quoting *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at ¶22. Moreover, “where a sentence is void because it does not contain [an accurate post-release control notification,] the proper remedy is *** to resentence the defendant.” *Jordan* at ¶23. Here, the trial court failed to properly inform Steidl that he was subject to a mandatory term of post-release control for a definite term of five years. To imply in his sentencing entry that his term of post-release control could last for less than a five-year period was contrary to statute based on his offenses. R.C. 2967.28(B)(1). Accordingly, his sentence is void and he must be resentenced. *Jordan* at ¶23.

{¶7} Because the trial court failed to sentence Steidl to a definite term of post-release control, his third assignment of error is sustained on that basis. Based on this error, Steidl's sentence is void and he must be resentenced. Because his sentence is void, we lack jurisdiction to consider the remainder of his arguments as set forth in this assignment of error. *State v. Bedford*, 9th Dist. No. 24431, 2009-Ohio-3972, at ¶14.

Assignment of Error Number One

“THE INDICTMENT IS DEFECTIVE.”

Assignment of Error Number Two

“THE TRIAL COURT ERRED IN ACCEPTING MR. STEIDL’S CHANGE OF PLEA.”

{¶8} In his first assignment of error, Steidl asserts that his indictment was defective because it failed to include a culpable mental state for each element of the offenses of rape and gross sexual imposition with which he was charged. In his second assignment of error, Steidl asserts that his plea was not entered into knowingly and voluntarily because the trial court failed to inform him of the maximum and mandatory prison terms based on his offenses. Having concluded his sentence is void, however, we lack jurisdiction to consider his second and third assignments of error. *Id.*

III

{¶9} Steidl's first assignment of error is sustained in part and his sentence is vacated. Because Steidl's sentence is void and must be vacated, we cannot reach the merits of his remaining two assignments of error. The judgment of the Medina County Court of Common Pleas is vacated.

Judgment vacated
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

BETH WHITMORE
FOR THE COURT

MOORE, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

MICHAEL J. CALLOW, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and RUSSELL HOPKINS, Assistant Prosecuting Attorney, for Appellee.