

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

DAVID SHIE,	:	
	:	
Plaintiff-Appellant,	:	No. 110252
	:	
v.	:	
	:	
OHIO ADULT PAROLE AUTHORITY,	:	
	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 2, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-20-936462

Appearances:

David Shie, *pro se*.

David Yost, Ohio Attorney General, and George Horvath,
Assistant Attorney General, *for appellee*.

EILEEN A. GALLAGHER, P.J.:

{¶ 1} Plaintiff-appellant David Shie appeals, *pro se*, from an order of the Cuyahoga County Court of Common Pleas that granted defendant-appellee the Ohio

Adult Parole Authority's ("APA's") motion to dismiss Shie's complaint for a prohibitory injunction. For the reasons that follow, we affirm the trial court.

Procedural and Factual Background

{¶ 2} In April 2005, pursuant to a plea agreement, Shie pled guilty to four counts of sexual battery in Cuyahoga C.P. No. CR-04-458959-A ("Case No. 458959") and agreed to be classified as a sexual predator. Shie was originally sentenced to four years in prison on each count, to be served consecutively, and five years of mandatory postrelease control. The trial court's May 4, 2005 journal entry stated, with respect to the imposition of postrelease control: "Post release control is part of this prison sentence for mandatory 5 years for the above felony(s) under R.C. 2967.28" (the "initial sentencing journal entry"). Shie appealed his convictions and consecutive sentences. On appeal, this court affirmed Shie's convictions but vacated his sentences and remanded the case for resentencing in light of the Ohio Supreme Court's decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. *State v. Shie*, 8th Dist. Cuyahoga No. 86464, 2006-Ohio-2314, ¶ 1, 15-16.

{¶ 3} On remand, the trial court again sentenced Shie to consecutive four-year prison terms and five years of mandatory postrelease control. The trial court's August 14, 2006 sentencing journal entry stated, with respect to the imposition of postrelease control: "Mandatory PRC for 5 years. Post release control is part of this prison sentence for 5 years for the above felony(s) under R.C. 2967.28" (the

“resentencing journal entry”).¹ Shie appealed. This court rejected Shie’s arguments and affirmed Shie’s sentences.² *State v. Shie*, 8th Dist. Cuyahoga No. 88677, 2007-Ohio-3773, ¶ 1, *appeal not accepted for review*, 116 Ohio St.3d 1440, 2007-Ohio-6518, 877 N.E.2d 991.

{¶ 4} In the years that followed, Shie filed numerous postconviction motions, including a motion to withdraw his guilty pleas, a motion to enforce plea contract, a motion to correct void sentence and motions for relief from judgment of plea contract and sentence. None of his motions was successful.

¹ Neither the transcript from the initial sentencing hearing nor the resentencing hearing is included in the record on appeal. Accordingly, we must assume regularity with respect to the notifications Shie was given regarding postrelease control at the sentencing hearings. *See, e.g., State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, ¶ 20, citing *Natl. City Bank v. Beyer*, 89 Ohio St.3d 152, 160, 729 N.E.2d 711 (2000).

² On appeal, Shie argued through counsel, that the trial court had erred by imposing nonminimum consecutive sentences and that the trial court had no authority to impose consecutive sentences. He also filed a pro se appellate brief in which he argued:

- (1) the court erred by failing to hold a complete new sentencing hearing;
- (2) the court erred by failing to hold a complete hearing regarding his contention that he was convicted and sentenced for allied offenses;
- (3) the court erred by denying his motion to withdraw his guilty plea;
- (4) he was deprived of the effective assistance of counsel at the resentencing hearing;
- (5) the court erred by convicting him of four separate offenses;
- (6) the court erred by imposing consecutive sentences;
- (7) the sentence was not commensurate with the seriousness of his offense and was inconsistent with sentences imposed for similar crimes by similar offenders;
- (8) the court’s application of *Foster* violated his right to due process; and
- (9) the sentence imposed places an unnecessary burden on government resources.

{¶ 5} On August 12, 2020, Shie completed his prison sentences and was released from prison.

{¶ 6} On August 26, 2020, Shie filed, pro se, a verified complaint for prohibitory injunction against the APA pursuant to Civ.R. 65 and the Ohio Supreme Court's decision in *State ex rel. McGrath v. Ohio Adult Parole Auth.*, 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526, ¶ 6, seeking to have the APA enjoined from continuing their exercise of postrelease control over him.³

{¶ 7} Shie alleged that after he completed his prison sentences and was released from prison, the APA began “executing [postrelease control] sanctions upon him as part of his sentence.” Shie contended that the APA was “not empowered or authorized to execute the PRC” because the trial court’s sentencing journal entries in Case No. 458959 were not “statutorily compliant” and did not include notification to Shie of “the details of the postrelease control and the consequences of violating postrelease control” as required by R.C. 2967.28(B), 2929.19(B)(2) and various decisions from this court and the Ohio Supreme Court. Shie requested that the trial court: (1) enjoin the APA by prohibitory injunction “from executing PRC in regards to [Shie] and from supervising [Shie] under PRC sanctions,” (2) direct that the [APA] “refund all supervisory and programming fees that [Shie] has been required to pay the [APA] since it began executing the PRC” and

³ On August 26, 2020, Shie also filed, pro se, a motion to terminate postrelease control in Case No. 458959. On October 5, 2020, the trial court denied the motion. Shie did not appeal the trial court’s ruling.

(3) order payment to Shie of the costs incurred in prosecuting the action. In support of the allegations of his complaint, Shie attached copies of the trial court's May 4, 2005 initial sentencing journal entry and August 14, 2006 resentencing journal entry in Case No. 458959 along with a "postrelease control reporting order" dated July 27, 2020 that showed the expiration of Shie's prison term on August 12, 2020 and a five-year period of APA supervision.

{¶ 8} On December 22, 2020, the APA filed a "motion to dismiss and opposition to plaintiff's request for injunction." The APA argued that Shie had "not demonstrated the necessary elements for an injunction" and that, therefore, "his action fails." Specifically, the APA argued that Shie's complaint should be dismissed pursuant to Civ.R. 12(B)(1) and (6) because (1) the trial court had properly notified Shie that he was subject to postrelease control in its sentencing journal entry,⁴ (2) Shie "did not timely appeal the terms identified in his sentencing entry," (3) Shie failed to properly caption his complaint in the name of the state as required for a writ of prohibition and (4) Shie "has not demonstrated the requisites for an extraordinary writ to issue." The APA also argued that to the extent Shie sought

⁴ In its motion to dismiss, the APA asserted that "[t]he language for the PRC Entry properly includes whether post-release control is discretionary or mandatory, the duration of the post release-control period, and *a statement to the effect that [APA] will administer the post-release control pursuant to R.C. 2967.28 and that any violation by the offender of the conditions of post-release control will subject the offender to the consequences set forth in that statute.*" (Emphasis added.) This statement is not correct. Neither the trial court's initial May 4, 2005 sentencing journal entry nor the trial court's August 14, 2006 resentencing journal entry contains any reference to the APA or to the consequences of violating the conditions of postrelease control.

programming costs, he had “filed in the wrong Court, e.g., Court of Claims,” and that such relief was beyond the trial court’s jurisdiction and should be denied.

{¶ 9} Shie filed an opposition to the APA’s to motion to dismiss. He asserted that the APA had “mischaracterized” his prohibitory injunction action as a writ of prohibition. He stated that his action was “an action for prohibitory injunction brought pursuant to the provisions of Civil Rule 65 and the remedy recognized by the Ohio Supreme Court in [*McGrath*, 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526, at ¶ 6], to prevent the execution of postrelease control * * * by the Ohio Adult Parole Authority” and that “any fatal defect” claimed by the APA was inapplicable to his action for a prohibitory injunction.

{¶ 10} On January 22, 2021, the trial court granted the APA’s motion to dismiss and dismissed the complaint with prejudice. The trial court did not explain its reasoning in granting the motion to dismiss.

{¶ 11} Shie appealed, raising the following assignment of error for review:

The Trial Court erred in granting a Civ.R. 12(B)(1)/Civ.R. 12(B)(6) motion to dismiss action for prohibitory injunction.

Law and Analysis

{¶ 12} Shie argues that the trial court erred in dismissing his complaint pursuant to Civ.R. 12(B)(1) and/or 12(B)(6) because (1) he did not file a writ of prohibition, but rather, “clearly invoked” Civ.R. 65 by labelling his complaint as one for an injunction, (2) he “met the pleading requirements for his injunction,” (3) the Ohio Supreme Court held that a prohibitory injunction is “the proper remedy to

prevent the [APA] and its parole officers from continuing execution of PRC” in *McGrath*, 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526, and (4) the sentencing journal entry in this case lacks “the statutorily compliant statements” necessary to “empower the [APA] to execute PRC.”

{¶ 13} The APA responds that the trial court “did not abuse its discretion nor did it misapply [the] law when it dismissed the action below” because (1) Shie “remains mistaken that he is improperly subject to post-release sanctions,” (2) “the criminal trial court in its sentencing journal entries properly notified Shie that he was subject to [p]ost [r]elease [c]ontrol,” (3) Shie “has not demonstrated the necessary elements for an injunction to issue,” (4) Shie “did not timely appeal the terms identified in his criminal sentencing entry” and (5) Shie did not “bring the instant action in the name of the State.”⁵ The APA also contends that the issue is

⁵ The APA provides little explanation for its response (or any relevant, supporting legal authority) in its appellate brief. For example, with respect to its assertion that Shie did not satisfy the requirements for an injunction and that Shie’s complaint was properly characterized as a complaint for a writ of prohibition rather than a complaint for a prohibitory injunction, the APA simply states: “This matter was addressed in Defendant-Appellee’s Motion to Dismiss and the same is adopted as if fully rewritten. Ultimately, Shie’s argument fails. The lower court properly applied the Civil Rules and determined that Shie failed to present a case upon which relief could be granted.” With respect to whether the trial court’s statements in its resentencing journal entry were sufficient to impose postrelease control, the APA simply asserts: “Defendant-Appellee properly briefed the underlying issues as to notice of parole eligibility and adopts the Motion to Dismiss as noted above. Here, the sentencing court properly notified Shie that he was subject to post-release control.”

However, both appellants’ and appellees’ briefs must comply with App.R. 16. The APA’s attempt to incorporate by reference its prior motion to dismiss does not comply with App.R. 16. ““Parties cannot simply incorporate by reference arguments that they made to the trial court in their appellate brief.”” *Young v. Kaufman*, 2017-Ohio-9015, 101 N.E.3d 655, ¶ 44 (8th Dist.), quoting *State ex rel. Midview Local School Dist. Bd. of*

moot because Shie is “no longer on parole due to violation of parole rules and conditions, and is now back in the custody of the Ohio Department of Rehabilitation and Correction.”⁶

Standard of Review

{¶ 14} A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim tests the sufficiency of the complaint. *Widok v. Estate of Wolf*, 8th Dist. Cuyahoga No. 108717, 2020-Ohio-5178, ¶ 26. To prevail on a Civ.R. 12(B)(6) motion, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts that would entitle the plaintiff to relief. *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, 849 N.E.2d 268, ¶ 11, citing *O'Brien v. Univ. Comm. Tenants Union, Inc.*, 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975). If there is “a set of facts, consistent with the plaintiff’s complaint, which would allow the plaintiff to recover, the court may not grant a defendant’s motion to dismiss.” *High St. Props. L.L.C. v. Cleveland*, 8th Dist. Cuyahoga No. 101585, 2015-Ohio-1451, ¶ 16, quoting *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 145, 573 N.E.2d 1063

Edn. v. Ohio School Facilities Comm., 9th Dist. Lorain No. 16CA010991, 2017-Ohio-6928, ¶ 20, quoting *Deutsche Bank Natl. Trust Co. v. Taylor*, 9th Dist. Summit No. 28069, 2016-Ohio-7090, ¶ 14.

⁶ In support of its mootness argument, the APA provides a link to an offender listing for Shie on the Ohio Department of Rehabilitation and Correction’s website. Although the listing indicates that Shie is currently incarcerated, it also lists an “Expected Release Date/Parole Eligibility Date” of November 15, 2021, at which point Shie would again, presumably, be subject to postrelease control. We also note that Shie has filed a mandamus action that is currently pending in the Ohio Supreme Court challenging the charges and sentence he received for allegedly violating conditions of his postrelease control. *State ex rel. Shie v. Ohio Adult Parole Auth.*, Ohio Supreme Ct. No. 21-0444.

(1991). The principal inquiry on a motion to dismiss a complaint under Civ.R. 12(B)(1) is “whether [the] plaintiff has alleged any cause of action that the court has authority to decide.” *Amalgamated Transit Union Local 268 v. Greater Cleveland Regional Transit Auth.*, 8th Dist. Cuyahoga No. 108883, 2020-Ohio-3120, ¶ 12.

{¶ 15} Both a trial court’s decision on a Civ.R. 12(B)(1) motion to dismiss for lack of subject-matter jurisdiction and a trial court’s decision on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim for which relief can be granted to dismiss are reviewed de novo, i.e., we undertake an independent review of the record and accord no deference to the trial court’s decision. *See, e.g., id.*, citing *Bank of Am. v. Macho*, 8th Dist. Cuyahoga No. 96124, 2011-Ohio-5495, ¶ 7; *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5; *Hendrickson v. Haven Place, Inc.*, 8th Dist. Cuyahoga No. 100816, 2014-Ohio-3726, ¶ 12.

Failure to Include Complete Postrelease Control Notification in Resentencing Journal Entry

{¶ 16} Shie argues that the trial court erred in granting the APA’s motion to dismiss his complaint because the trial court’s resentencing journal entry did not contain a complete, “statutorily compliant” postrelease control notification and that, therefore, the APA lacked authority to execute PRC upon him after he completed his prison sentences. Specifically, Shie contends that the trial court’s sentencing journal entry was deficient because it did not include a statement, pursuant to R.C. 2967.28(B) and 2929.19(B)(2), that “the [APA] will administer the postrelease

control pursuant to R.C. 2627.28” and that “any violation by the plaintiff of the conditions of the postrelease control will subject the plaintiff to the consequences set forth in R.C. 2967.28.” In support of his argument, Shie cites the Ohio Supreme Court’s decisions in *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, and *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, and this court’s decisions in *State v. Tolbert*, 2017-Ohio-9159, 103 N.E.3d 245 (8th Dist.), and *State v. Mills*, 8th Dist. Cuyahoga No. 100417, 2014-Ohio-2188.

{¶ 17} In *Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, the Ohio Supreme Court held that a trial court imposing postrelease control “is duty-bound to notify [the] offender at the sentencing hearing about postrelease control and to incorporate postrelease control into its sentencing entry.” *Id.* at ¶ 22. In that case, the trial court failed to notify the defendants at their sentencing hearings that mandatory postrelease control would be part of their sentences, but included mandatory postrelease control in their sentencing journal entries. *Id.* at ¶ 2-3. The court held that 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 and any such sentences must be vacated and the matter remanded to the trial court for resentencing. *Id.* at ¶ 27-28.

{¶ 18} In *Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, the Ohio Supreme Court stated that “a trial court must provide statutorily compliant notification to a defendant regarding postrelease control at the time of sentencing,

including notifying the defendant of the details of the postrelease control and the consequences of violating postrelease control” and that “a trial court must incorporate into the sentencing entry the postrelease-control notice to reflect the notification that was given at the sentencing hearing.” *Id.* at ¶ 18-19. The court held that “when a defendant is notified about postrelease control at the sentencing hearing, but notification is inadvertently omitted from the sentencing entry, the omission can be corrected with a nunc pro tunc entry and the defendant is not entitled to a new sentencing hearing.” *Id.* at ¶ 30.

{¶ 19} In *Mills*, 2014-Ohio-2188, the trial court had properly advised the defendant regarding postrelease control at his sentencing hearing but the sentencing journal entry did not include a statement regarding the consequences for violating postrelease control. *Id.* at ¶ 13. This court held that the failure to incorporate the proper postrelease control notification in the sentencing journal entry rendered the postrelease control portion of the defendant’s sentence void. *Id.* This court further held that because Mills had already served his prison term for the charges to which the postrelease control attached, the sentencing error could not be corrected by resentencing. *Id.* at ¶ 14. The court stated that “because no postrelease control sanctions were lawfully included in [Mills’] sentence,” the APA “lacked jurisdiction to impose postrelease control” and that Mills could not be convicted of escape for violating the terms and conditions of his postrelease control. *Id.*

{¶ 20} In *Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, the Ohio Supreme Court considered “what information a trial court must include in a

sentencing entry to validly impose a postrelease-control sanction on an offender.”

Id. at ¶ 1. The court held that “to validly impose postrelease control when the court orally provides all the required advisements at the sentencing hearing,” the sentencing journal entry must contain the following information:

(1) whether postrelease control is discretionary or mandatory, (2) the duration of the postrelease-control period, and (3) a statement to the effect that the APA will administer the postrelease control pursuant to R.C. 2967.28 and that any violation by the offender of the conditions of postrelease control will subject the offender to the consequences set forth in that statute.

Id. at ¶ 1.

{¶ 21} In *Tolbert*, 2017-Ohio-9159, 103 N.E.3d 245, this court applied *Grimes* and held that sentencing journal entries that stated that “[p]ostrelease control is part of this prison sentence for 3 years for the above felony(s) under R.C. 2967.28” were “not sufficient to validly impose postrelease control” because they did not advise the defendant that he would be subject to consequences if he violated the conditions of postrelease control under R.C. 2967.28. *Id.* at ¶ 4, 28-30. In reaching this conclusion, the court rejected the state’s arguments that *Grimes* did not apply retroactively and that the postrelease control notification in the sentencing journal entries was sufficient to impose postrelease control based on the law in effect at the time the sentencing judgment entries were issued in 2007. *Id.* at ¶ 33. The court reasoned: “It is well established that when postrelease control is not properly imposed, the sentence is void and must be set aside. * * * Further, a void sentence can be attacked at any time.” *Id.* at ¶ 34. Because the portion of Tolbert’s sentence

that imposed postrelease control was “void” and “must be set aside” and could be “attacked at any time,” the state’s retroactivity argument was “without merit.” *Id.* at ¶ 34-35.

{¶ 22} It is clear that the trial court’s resentencing journal entry in this case (as well as its initial sentencing journal entry) does not comply with *Grimes* because it does not contain “a statement to the effect that the APA will administer the postrelease control pursuant to R.C. 2967.28 and that any violation by the offender of the conditions of postrelease control will subject the offender to the consequences set forth in that statute.” *Grimes* at ¶ 1.

{¶ 23} However, after *Grimes* and the other cases Shie relies upon were decided, the Ohio Supreme Court decided *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, and *State v. Hudson*, 161 Ohio St.3d 166, 2020-Ohio-3849, 161 N.E.3d 608. These cases control the result here.⁷

{¶ 24} In *Harper*, the defendant pled guilty to robbery in February 2013. The trial court sentenced Harper to three years in prison and imposed three years of

⁷ The APA does not address *Grimes* (or any of the other cases cited by Shie) in its appellate brief nor does it mention *Harper* or *Hudson*. On the issue of whether the APA had authority to impose postrelease control, the APA simply points to the postrelease control language in the initial sentencing journal entry and resentencing journal entry, asserts that “a court is not required to specify whether the respective inmate had mandatory community control sanctions or is ineligible for community control sanctions” and cites case law addressing whether a trial court substantially complies with Crim.R. 11(C)(2)(a) where the trial court did not specifically state, during the change-of-plea hearing, that a defendant’s sentence was “mandatory” or that the defendant was ineligible for community control sanctions. The availability of community control sanctions and compliance with Crim.R. 11(C)(2)(a) is not, however, the issue here.

mandatory postrelease control. 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, at ¶ 7-8. At the sentencing hearing, the trial court gave Harper the oral notices required by R.C. 2929.19(B) in imposing postrelease control and informed him of the consequences of violating postrelease control — i.e., that the APA could impose a prison term of up to one-half of the stated prison term — in a separate document. However, the trial court did not set forth the consequences of violating postrelease control in the sentencing journal entry. *Id.* at ¶ 8.

{¶ 25} Harper did not appeal his sentence. *Id.* He was released from prison in September 2015 and placed on postrelease control. *Id.* In July 2017, after he was charged with violating the conditions of his postrelease control, Harper moved to vacate the postrelease control portion of his sentence, arguing that that portion of his sentence was void because the sentencing journal entry failed to state the consequences of violating postrelease control, as required by *Grimes*. The trial court denied the motion, and Harper appealed. *Id.* at ¶ 9.

{¶ 26} On appeal, the Tenth District affirmed the trial court’s denial of Harper’s motion to vacate. The Tenth District acknowledged that “a failure to properly impose post-release control renders a sentence void in relevant part and therefore open to challenge at any time, irrespective of finality or other principles of res judicata”; however, it held: “[A]lthough the imposition of postrelease control in the judgment entry was defective under *Grimes*, it stated enough information * * * to impose post-release control and permit the APA to begin administering it * * *. As a consequence, * * * Harper remains validly under sentence, even though it may

not have been perfectly imposed.” *Id.* at ¶ 10. The Tenth District remanded the matter to the trial court with instructions to enter a nunc pro tunc entry to include the “consequences” language required by *Grimes*. *Id.* The state appealed to the Ohio Supreme Court.

{¶ 27} The Ohio Supreme Court accepted the state’s discretionary appeal to address two issues: (1) whether *Grimes* applies retroactively and (2) whether the failure to provide notice of the consequences of a violation of postrelease control in the sentencing journal entry renders the imposition of postrelease control void ab initio and subject to collateral attack at any time. *Id.* at ¶ 11. Ultimately, the court addressed only the second issue, concluding that “resolution of the second issue makes it unnecessary to address the first issue.” *Id.* at ¶ 1.

{¶ 28} In *Harper*, the Ohio Supreme Court “realign[ed]” its “void-sentence jurisprudence” with “the traditional understanding of what constitutes a void judgment.” *Id.* at ¶ 4. The court held that so long as the trial court has subject-matter jurisdiction over the crime and personal jurisdiction over the defendant, the failure to properly impose postrelease control in a sentence renders that sentence voidable, not void, and that, therefore, it is not subject to collateral attack. *Id.* at ¶ 5-6, 39-42. Although the sentencing entry at issue did not include notice of the consequences of violating postrelease control as required by *Grimes*, the court stated that this failure rendered the postrelease control portion of Harper’s sentence voidable, not void, and, therefore, it was subject to the doctrine of res judicata. *Id.* at ¶ 41. The court explained:

[W]e overrule our precedent to the extent that it holds that the failure to properly impose postrelease control in the sentence renders that portion of a defendant's sentence void. We do this not because we reject the precept that courts lack authority to substitute a different sentence for that provided by statute but because noncompliance with requirements for imposing postrelease control is best remedied the same way as other trial and sentencing errors — through timely objections at sentencing and an appeal of the sentence.

* * * Any error in imposing the postrelease-control sanction in [Harper's] sentence was an error in the exercise of the trial court's jurisdiction that could have been objected to at trial and that may have been reversible error on direct appeal. However, such an error did not render any part of Harper's sentence void. And because Harper could have raised his argument that the trial court failed to properly impose postrelease control on appeal, it is now barred by the doctrine of res judicata.

Id. at ¶ 40-41.

{¶ 29} The Ohio Supreme Court reversed the Tenth District to the extent that it remanded the case to correct the sentencing journal entry imposing postrelease control. *Id.* at ¶ 44.

{¶ 30} In *Hudson*, the defendant was sentenced to an aggregate prison sentence of 19 years after a jury found him guilty of kidnapping and burglary, and the trial court imposed five years of mandatory postrelease control. 161 Ohio St.3d 166, 2020-Ohio-3849, 161 N.E.3d 608, at ¶ 5-6. Although the trial court had notified Hudson of the potential consequences of violating postrelease control at the sentencing hearing and in a separate document, the trial court did not include that notice in the sentencing journal entry. *Id.* at ¶ 6. Hudson appealed his convictions, and the Tenth District affirmed. *Id.* at ¶ 7.

{¶ 31} More than ten years later, Hudson filed a “motion to vacate and release from post-release control,” asserting that the trial court had failed to properly impose postrelease control and that that part of his sentence was, therefore, void. The trial court denied the motion. *Id.* at ¶ 8. Hudson appealed.

{¶ 32} On appeal, the Tenth District affirmed in part and reversed in part. The court concluded that the trial court had not properly imposed postrelease control because notice of the consequences of a violation of postrelease control had not been included in the sentencing journal entry and that, as such, Hudson’s sentence was void in part and subject to attack at any time. It remanded the case to the trial court to issue a nunc pro tunc entry correcting the deficiency in the sentencing entry. *Id.* at ¶ 9. Hudson appealed to the Ohio Supreme Court, which accepted the following proposition of law for review: “Once the underlying prison term has been fully served, a trial court cannot correct the complete failure to reference the consequences for violating postrelease control in the judgment entry of sentence.” *Id.* at ¶ 10.⁸

{¶ 33} The court stated that *Harper* “control[ed] the resolution of this appeal.” *Id.* at ¶ 15. The court held that because the trial court had subject-matter

⁸ Hudson argued that he could not be subject to postrelease control because (1) his sentencing journal entry lacked the notice required to impose postrelease control and (2) the sentencing journal entry could not be corrected to add the notice because he had fully served the prison term to which the postrelease control attached. The Ohio Supreme Court stated that it did not need to consider whether Hudson had fully served the sentence that included postrelease control to resolve the appeal because, regardless, Hudson’s collateral attack on his sentence was barred by *res judicata*. *Id.* at ¶ 1, 10.

jurisdiction over the offenses at issue and personal jurisdiction over Hudson, “any error in imposing postrelease control was an error in the exercise of jurisdiction” that “could have been objected to in the trial court and may have been reversible error on direct appeal,” but that it “did not render any part of Hudson’s sentence void.” *Id.* at ¶ 15-16. Because Hudson did not challenge the trial court’s imposition of postrelease control in his direct appeal, the court held that the issue was “now barred by the doctrine of res judicata.” *Id.* at ¶ 16.

{¶ 34} In this case, as in *Harper* and *Hudson*, the sentencing journal entry at issue imposed a specific period of postrelease control and indicated that the postrelease control was mandatory. However, the sentencing journal entry did not include notice of the consequences of violating postrelease control. Because any error in the imposition of postrelease control rendered that portion of Shie’s sentence voidable, not void, and Shie did not challenge the imposition of postrelease control in his direct appeal following his resentencing, the issue “is now barred by the doctrine of res judicata.” *Hudson* at ¶ 16. Accordingly, (1) five years of mandatory postrelease control was part of Shie’s sentence, (2) the APA was authorized to place Shie on postrelease control upon his release from prison, (3) Shie was not entitled to a prohibitory injunction enjoining the APA from exercising postrelease control over Shie and (4) the trial court did not err in dismissing Shie’s complaint.

Prohibitory Injunction as a Remedy

{¶ 35} Shie also contends that the trial court erred in granting the APA's motion to dismiss based on the Ohio Supreme Court's decision in *McGrath*, 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526. Shie argues that in *McGrath*, the Ohio Supreme Court held that a prohibitory injunction⁹ is "the proper remedy to prevent the [APA] and its parole officers from continuing execution of PRC" and that he was entitled to a prohibitory injunction enjoining the APA from continuing to exercise postrelease control over him based on the trial court's failure to properly impose postrelease control in its sentencing journal entries in Case No. 458959.¹⁰

{¶ 36} This case is, however, distinguishable from *McGrath*. McGrath was sentenced to prison after a jury found him guilty of retaliation, falsification, menacing by stalking, aggravated trespassing and two counts of breaking and entering. McGrath appealed. This court affirmed his convictions but stated that "[p]ost-release control was not part of his sentence." *State v. McGrath*, 8th Dist. Cuyahoga No. 77896, 2001 Ohio App. LEXIS 3964, 1, 8 (Sept. 6, 2001). McGrath attempted an appeal to the Ohio Supreme Court, but the "appeal [was] not allowed." *State v. McGrath*, 94 Ohio St.3d 1432, 761 N.E.2d 47 (2002). The state did not pursue an appeal.

⁹ "A prohibitory injunction preserves the status quo by enjoining a defendant from performing the challenged acts in the future." *State ex rel. GMC v. Indus. Comm.*, 117 Ohio St.3d 480, 2008-Ohio-1593, 884 N.E.2d 1075, ¶ 12, citing *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, 824 N.E.2d 990, ¶ 50.

¹⁰ The APA does not address *McGrath* in its appellate brief.

{¶ 37} In December 2002, McGrath was released from prison, and the APA placed McGrath on postrelease control for a period of three years. *See McGrath*, 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526, at ¶ 2. In January 2003, McGrath filed a complaint with this court, seeking a writ of mandamus and/or prohibition to prohibit the APA from continuing to exercise postrelease control over him. McGrath claimed that the APA's exercise of postrelease control was unauthorized because postrelease control was not part of his criminal sentence. *Id.* The APA moved to dismiss the complaint, and this court granted the motion. *State ex rel. McGrath v. Ohio Adult Parole Auth.*, 8th Dist. Cuyahoga No. 82287, 2003-Ohio-1969. McGrath appealed to the Ohio Supreme Court. The Ohio Supreme Court affirmed the dismissal of McGrath's complaint. *McGrath*, 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526, ¶ 8. The court found that McGrath's mandamus claim was meritless "because his true objectives are a declaratory judgment (to declare the APA's actions illegal) and a prohibitory injunction (to prevent the APA and its parole officers from continuing their postrelease control of him)." *Id.* at ¶ 6. The court held that McGrath's prohibition claim was also meritless because "neither the APA nor its parole officers exercised judicial or quasi-judicial authority in imposing postrelease control on McGrath." *McGrath* at ¶ 7.

{¶ 38} McGrath then filed a declaratory judgment action against the APA in the Cuyahoga County Court of Common Pleas, *McGrath v. Ohio Adult Parole Auth.*, Cuyahoga C.P. No. CV-03-515910. Once again, the APA filed a motion to dismiss McGrath's complaint. The trial court dismissed the action, concluding that

“declaratory judgment is not the proper motion to challenge his sentence. Defendant must file an appeal of his sentence.” *McGrath*, Cuyahoga C.P. No. CV-03-515910 (Feb. 19, 2004). McGrath appealed. On appeal, this court reversed the trial court “[b]ased on the law of the case” and remanded for further proceedings.

The court explained:

This Court previously acknowledged that postrelease control was not part of McGrath’s sentence. * * * The State chose not to appeal, although it has done so from similar findings of this Court in other cases. * * * The Ohio Supreme Court essentially instructed McGrath that a declaratory judgment action is the appropriate means to address this matter.

McGrath v. Ohio Adult Parole Auth., 8th Dist. Cuyahoga No. 84362, 2004-Ohio-6114, ¶ 8.

{¶ 39} On remand, the trial court granted McGrath’s motion for judgment on the pleadings. The trial court declared that the APA had “no authority” to place McGrath on postrelease control pursuant to the sentencing journal entry entered in Cuyahoga C.P. No. CR-00-388833 and that, because he was “never subject to post release control,” he “could not be found in violation of any terms that [the] APA attempted to impose.” The trial court “permanently enjoined” the APA “from imposing any further post release control sanctions” upon him related to that case. *McGrath*, Cuyahoga C.P. No. CV-03-515910 (Oct. 25, 2005).

{¶ 40} The situation presented in *McGrath* is not the situation here. Here, there has been no prior determination that postrelease control was not a part of Shie’s sentence. Rather, for the reasons explained above, five years of mandatory

postrelease control is part of Shie's sentence. Accordingly, the trial court did not err in dismissing Shie's complaint based on *McGrath*, 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526.

{¶ 41} Shie's assignment of error is overruled.

{¶ 42} Judgment affirmed.

It is ordered that appellee shall recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County 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.

EILEEN A. GALLAGHER, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
EMANUELLA D. GROVES, J., CONCUR