

[Cite as *State v. Ingels*, 2015-Ohio-1621.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| STATE OF OHIO, | : | APPEAL NOS. C-140312 |
| | | C-140313 |
| Plaintiff-Appellee, | : | C-140328 |
| | | TRIAL NOS. B-9800321 |
| vs. | : | B-9802147 |
| EARL INGELS, | : | |
| | | <i>OPINION.</i> |
| Defendant-Appellant. | : | |

Criminal Appeals From: Hamilton County Court of Common Pleas

Judgments Appealed From Are: Affirmed and Cause Remanded

Date of Judgment Entry on Appeal: April 29, 2015

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Philip R. Cummings*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

The Farrish Law Firm and *Michaela M. Stagnaro*, for Defendant-Appellant.

Please note: these consolidated cases have been removed from the accelerated
calendar.

CUNNINGHAM, Presiding Judge.

{¶1} Defendant-appellant Earl Ingels appeals the Hamilton County Common Pleas Court's imposition of postrelease control and its failure to correct claimed sentencing-enhancement errors. Because the trial court failed to determine whether Ingels had already served some of his prison terms before adding a term of postrelease control as a sanction for those particular offenses, and because it failed to impose the proper period of postrelease control for one of his gross-sexual-imposition offenses, we remand this matter to the trial court for the proper notifications concerning postrelease control.

{¶2} Following a jury trial in 1998, Ingels was convicted of multiple offenses contained in two indictments, including four counts of kidnapping, two counts of gross sexual imposition, one count of abduction, and a single count of attempted abduction. Those convictions were affirmed on direct appeal. *State v. Ingles*, 1st Dist. Hamilton Nos. C-980673 and C-980674, 1999 Ohio App. LEXIS 5788 (Dec. 3, 1999), *appeal not accepted*, 99 Ohio St.3d 1539, 2003-Ohio-4671, 795 N.E.2d 679. His challenges to these convictions in multiple postconviction motions have also failed. *See generally State v. Ingels*, 1st Dist. Hamilton No. C-130311, 2014-Ohio-363, ¶ 2.

{¶3} In February 2014, in reviewing yet another postconviction challenge, this court found that, at sentencing, the trial court had failed to inform Ingels of the postrelease control portion of his sentence, and had not incorporated the postrelease-control notification in the judgments of conviction. *Id.* at ¶ 7. Because Ingles' sentences were void to the extent that he had not been notified concerning postrelease control, we remanded the matter for correction of the offending portions of Ingles' sentences. *Id.* at ¶ 9.

{¶4} At the resentencing hearing, Ingels argued, as he has since 2010, that errors surrounding the imposition of indefinite, nine-year-to-life prison terms for

two of the kidnapping offenses rendered those judgments void. The trial court acknowledged that Ingels' argument had some merit, but refused to correct the challenged prison terms. The trial court then proceeded to inform Ingels, with respect to each offense, about the length and mandatory or discretionary nature of postrelease control to be imposed. The resulting judgment entries, however, did not reflect a postrelease control period for each offense. Ingels appealed.

{¶5} His first assignment of error, in which Ingels asserts that the trial court erred by failing to correct the claimed sentencing-enhancement errors, is overruled. A reviewing court's decision in a case remains the law of that case on the legal questions involved for all subsequent proceedings in that case. *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). Thus, when at a rehearing following a remand a trial court is confronted with the same issue that was involved in a prior appeal, the trial court must adhere to the appellate court's determination of the applicable law. *Id.*

{¶6} This court has fully reviewed and rejected Ingels' sentencing-enhancement argument. *State v. Ingels*, 1st Dist. Hamilton No. C-100297, 2011-Ohio-2901. Under the doctrine of law-of-the-case, the trial court did not err when it refused to vary from this court's determination that the claimed sentencing errors had not rendered Ingles' sentences void. *See Nolan* at 3.

{¶7} In his second assignment of error, Ingels contends that the trial court erred in imposing postrelease control. First, Ingels has been imprisoned for over 16 years. The prison terms imposed for several of his offenses are of substantially less duration. Ingels notes that those prison terms might already have been served at the time of his 2014 resentencing. *See R.C. 2929.41 and 2971.03*. Ingels argues that the trial court erred by adding a term of postrelease control as a sanction for each of his offenses without first ascertaining whether Ingels had already served the prison term for that offense. *See State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1

N.E.3d 382, paragraph three of the syllabus. The state joins Ingels in requesting the matter be remanded on the authority of *Holdcroft*. We agree.

{¶8} Next, Ingels argues that the trial court erred in failing to impose a mandatory, five-year period of postrelease control for the gross-sexual-imposition offense charged in Count Three of the case numbered B-9802147. See R.C. 2967.28(A)(3) and (B)(1). Understandably, the state does not dispute Ingels' argument. We again agree.

{¶9} The postrelease-control statutes in effect when Ingles was sentenced, required that, with respect to each offense, the sentencing court notify the offender, both at the sentencing hearing and in the judgment of conviction, of the length and mandatory or discretionary nature of postrelease control, of the consequences of violating postrelease control, and of the length of confinement that could be imposed for a violation of the sanction. See former R.C. 2929.14(F), 2929.19(B)(3)(c) and (d), and 2967.28(B) and (C); *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 77-79; *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 69; *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, paragraph one of the syllabus. Accord *State v. Smith*, 1st Dist. Hamilton No. C-120163, 2012-Ohio-5965, ¶ 10-11. To the extent that postrelease control is not properly imposed, a sentence is void, and the offending portion of the sentence is subject to review and correction at any time. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph one of the syllabus and ¶ 27. Accord *Smith* at ¶ 19. The second assignment of error is sustained.

{¶10} Thus, Ingles' sentences are void to the extent that he was not properly notified concerning postrelease control. We, therefore, remand this cause for correction of the offending portions of Ingles' sentences in accordance with the law and this opinion.

Judgment accordingly.

HENDON and FISCHER, JJ., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.

