

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

STATE OF OHIO,	:	Case No. 16CA11
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
EVELYN M. ROBINSON,	:	<u>JUDGMENT ENTRY</u>
Defendant-Appellant.	:	RELEASED 03/27/2017

APPEARANCES:

David A. Sams, West Jefferson, Ohio, for appellant.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and Robert C. Anderson, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

Hoover, J.

{¶1} This is an appeal by defendant-appellant, Evelyn M. Robinson, from a judgment of the Lawrence County Court of Common Pleas resentencing her following this Court’s remand for the proper imposition of post-release control. On appeal, Robinson contends that the trial court erred yet again in imposing post-release control. Robinson argues that the trial court erred because it did not notify her that a violation of her post-release control for committing a new felony could result in a prison sentence to be served consecutively to any prison sentence she might receive for the new felony. *See* R.C. 2929.141(A)(1). However, after Robinson submitted her appellate brief on this issue, this Court released *State v. Mozingo*, 2016-Ohio-8292, --N.E.3d-- (4th Dist.), which overruled previous precedent established by this Court, and explicitly held that the trial court has no duty to inform an offender of a possible consecutive sentence under

R.C. 2929.141. *Id.* at ¶ 29. Accordingly, Robinson’s argument on appeal is without merit; and we affirm the judgment of the trial court.

I. Facts and Procedural History

{¶2} Following a jury trial, Robinson was convicted and sentenced on one count of possession of heroin in an amount greater than 250 grams, with a major drug offender specification, and one count of trafficking in heroin in an amount greater than 250 grams. On appeal, this Court affirmed the convictions, but remanded the matter for resentencing so that, inter alia, the trial court could properly impose post-release control. *See State v. Robinson*, 4th Dist. Lawrence No. 14CA24, 2016-Ohio-905. At resentencing, several errors were corrected, and Robinson was advised at the hearing and in the resentencing judgment entry that she was subject to a five-year mandatory term of post-release control. The resentencing judgment entry also advised Robinson that if she violated post-release control, and the violation constituted a new felony, she “may be returned to prison for one (1) year or the remaining period of post-release control, whichever is greater, and receive a prison term for the new felony.”

{¶3} Shortly after the resentencing judgment entry was journalized, Robinson filed a timely notice of appeal.

II. Assignment of Error

{¶4} Robinson assigns the following error for our review:

THE TRIAL COURT ERRED IN NOT ADVISING DEFENDANT-APPELLANT THAT A NEW FELONY COMMITTED DURING POST-RELEASE-CONTROL COULD LEAD TO A MAXIMUM SENTENCE ON THE NEW FELONY WHICH MUST BE CONSECUTIVE TO THE GREATER OF ONE YEAR IN PRISON OR ALL OF ANY REMAINING TIME ON POST-RELEASE-CONTROL AS AN ADDITIONAL PRISON TERM.

III. Law and Analysis

{¶5} In her sole assignment of error, Robinson contends that the trial court erred in imposing post-release control because it failed to advise her of the consequences of violating post-release control. Specifically, Robinson argues that the trial court was required to notify her, pursuant to R.C. 2929.141(A)(1), that a court sentencing her for a subsequent crime committed while still on post-release control could impose a prison sentence for a post-release control violation to be served consecutively to a prison term for the new crime.

A. Standard of Review

{¶6} When reviewing felony sentences we apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Brewer*, 2014–Ohio–1903, 11 N.E.3d 317, ¶ 33 (4th Dist.). R.C. 2953.08(G)(2) specifies that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either that “the record does not support the sentencing court's findings” under the specified statutory provisions or “the sentence is otherwise contrary to law.”

B. *Mozingo*

{¶7} R.C. 2929.141 addresses sentencing for a felony offense committed while on post-release control and provides that the trial court may terminate the post-release control and may impose a prison term for the post-release control violation in addition to any prison term for the new felony. If the trial court imposes a prison term for the post-release control violation, it “shall be served consecutively to any prison term imposed for the new felony.” R.C. 2929.141(A)(1).

{¶8} In *State v. Mozingo, supra*, at ¶¶ 23, 29, we held that there is no constitutional or statutory requirement that a trial court imposing post-release control must notify the offender that a court sentencing the defendant for a subsequent crime can impose a prison term for a post-release control violation to be served consecutively to a prison term for a new crime. In doing so, we overruled prior precedent established in *State v. Pippen*, 4th Dist. Scioto No. 14CA3595, 2014-Ohio-4454; *State v. Adkins*, 4th Dist. Lawrence No. 14CA29, 2015-Ohio-2830; and *State v. Dixon*, 2016-Ohio-1491, 63 N.E.3d 591 (4th Dist.). *Id.* at ¶ 29. We reasoned that the plain language of R.C. 2929.141(A) did not place a notification requirement on trial courts; we distinguished the statute from the statutory notification requirements found in other post-release control statutes. *See id.* at ¶¶ 23-25 (“Unlike R.C. 2929.19(B), which expressly requires notifications concerning the parole board’s authority to impose sanctions for violations, R.C. 2929.141(A) addresses the trial court’s authority to do so, and is silent about notification in the original sentencing context.”) (Internal quotations omitted.) Finally, we noted that our holding was also supported by the prevailing weight of authority, as several other Ohio appellate district courts have similarly held that R.C. 2929.141 does not require that the trial court notify the defendant of the potential penalties at sentencing. *Id.* at ¶ 26, and cases cited therein.

{¶9} The *Mozingo* decision is dispositive of the case sub judice. We conclusively rejected the proposition that there is a duty to inform an offender of a possible consecutive sentence under R.C. 2929.141 at the time of imposing post-release control. Accordingly, Robinson’s sole assignment of error is overruled.

IV. Conclusion

{¶10} Having overruled Robinson’s sole assignment of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds that reasonable grounds existed for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Harsha, J., and Abele, J.: Concur in Judgment and Opinion.

For the Court

By: _____
Marie Hoover, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.