

[Cite as *State v. Sturgill*, 2009-Ohio-3647.]

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 08CA0069-M

Appellee

v.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 08-CR-0040

RYAN D. STURGILL

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 27, 2009

BELFANCE, Judge.

{¶1} Appellant, Ryan D. Sturgill, appeals his convictions from the Medina County Court of Common Pleas. We vacate the trial court’s sentencing entry and remand the matter for further proceedings.

I.

{¶2} On January 29, 2008, Sturgill was arrested on one count of theft of a credit card, a felony of the fifth degree. He subsequently pled not guilty at his arraignment and counsel was appointed to represent him.

{¶3} On March 19, 2008, a supplemental indictment was issued to add one count of burglary to the original indictment. The supplemental indictment was served on Sturgill on March 25, 2008. Sturgill pled not guilty to the burglary charge and appointed counsel continued his representation.

{¶4} Trial began on September 3, 2008. After the jury was empanelled and sworn in, Sturgill, through counsel, moved to dismiss the charges based on a violation of his right to a speedy trial. The trial court denied the motion and Sturgill entered a plea of no contest to the charge of theft of a credit card. The trial court found him guilty and sentencing was held in abeyance. The State presented the jury with witnesses and evidence on the remaining charge of burglary.

{¶5} Prior to the beginning of the second day of trial, September 4, 2008, Sturgill agreed to plead no contest to the burglary charge. The trial court found him guilty of the charge. Pursuant to the agreement between the State and Sturgill, the trial court sentenced Sturgill to two years of incarceration on both charges.

{¶6} In Sturgill's sole assignment of error, he argues that the trial court erred in denying his motion to dismiss the indictment in light of a violation of his speedy trial right.

II.

{¶7} Although Sturgill has not raised the issue on appeal, this Court concludes that Sturgill's sentence must be vacated due to an error in the trial court's sentencing entry with respect to post-release control. Recently, in *State v. Holcomb*, 9th Dist. No. 24287, 2009-Ohio-3187, we examined the precedent of the Supreme Court of Ohio relative to void and voidable sentences. In *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, the Supreme Court of Ohio held that “[d]espite the lack of a *motion for resentencing*, we still must vacate the sentence and remand for a resentencing hearing in the trial court. Because the original sentence is actually considered a nullity, a court cannot ignore the sentence and instead must vacate it and order resentencing.” (Emphasis added.) *Id.* at ¶12.

{¶8} R.C. 2967.28(B) requires that “[e]ach sentence to a prison term * * * for a felony of the second degree, * * * 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 term of post-release control for an offender convicted of a second-degree felony is a mandatory period of three years. R.C. 2967.28(B)(2).

{¶9} In the instant matter, Sturgill was convicted of, and sentenced to, one count of burglary, a felony of the second degree. Pursuant to R.C. 2967.28(B)(2), Sturgill is subject to a three-year, mandatory period of post-release control. With respect to post-release control, the trial court’s judgment entry states: “The Court has further notified the defendant that post release control is mandatory in this case *up to a maximum of 3 years* * * *.” (Emphasis added.) The trial court’s entry mistakenly states that Sturgill could be subject to less than, but no more than, three years of post-release control instead of notifying him that he in fact will be subject to the full term of three years.

{¶10} The Supreme Court of Ohio stated in *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at ¶22: “Because a sentence that does not conform to statutory mandates requiring the imposition of postrelease control is a nullity and void, it must be vacated.” Thus, the error in the trial court’s sentencing entry renders it void, as it does not conform to the statutory mandates with respect to post-release control, and we must vacate and remand for resentencing. See *Simpkins* at ¶22; *Boswell* at ¶12.

III.

{¶11} In light of our determination that Sturgill’s sentence is void, we may not address the merits of his appeal. Instead, we vacate and remand this matter to the trial court for a new

sentencing hearing. The judgment of the Medina County Court of Common Pleas is vacated and remanded for proceedings consistent with this opinion.

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.

EVE V. BELFANCE
FOR THE COURT

MOORE, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

JOSEPH F. SALZGEBER, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MICHAEL P. MCNAMARA, Assistant Prosecuting Attorney, for Appellee.