[Cite as *State v. Taylor*, 2011-Ohio-1158.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO Appellee v. MICHAEL TAYLOR Appellant	C.A. No. 10CA009904 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 06CR070891

DECISION AND JOURNAL ENTRY

Dated: March 14, 2011

WHITMORE, Judge.

{¶1} Defendant-Appellant, Michael Taylor, appeals from the Lorain County Court of Common Pleas' denial of his motion to correct his sentence. This Court reverses.

I

{¶2} In August 2006, a jury found Taylor guilty of felonious assault and two counts of attempted aggravated arson. The trial court later sentenced him to a total of nine years in prison. Taylor appealed, and we affirmed his convictions. *State v. Taylor* ("*Taylor I*"), 9th Dist. No. 06CA009000, 2008-Ohio-1462. In August 2009, Taylor filed a motion to vacate and correct his 2006 sentencing entry, arguing that it failed to impose the proper post-release control notification because it sentenced him to a mandatory five-year period instead of a mandatory three-year period. *State v. Taylor* ("*Taylor II*"), 9th Dist. No. 09CA009663, 2010-Ohio-814, at ¶3. We affirmed the trial court's decision because Taylor's 2006 sentencing entry was not a final, appealable order, as it failed to satisfy the terms of Crim.R. 32(C) as clarified by *State v. Baker*,

119 Ohio St.3d 197, 2008-Ohio-3330. In doing so, we concluded that "the trial court did not err in refusing to vacate the August 2006 non-final order as this was not Taylor's final sentencing entry." *Taylor II* at ¶6. We acknowledged that while *Taylor I* was pending on appeal, the trial court journalized a new sentencing entry in June 2007 which complied with Crim.R. 32(C) and served as the basis for Taylor's direct appeal. We further noted in *Taylor II*, however, that:

> "[E]ven if Taylor had asked the trial court to vacate the June 2007 entry due to an error in post-release control, Taylor would not have been successful[,] [b]ecause he was sentenced after July 11, 2006[.] [Therefore,] the trial court's improper post-release control notification does not result in a void sentence, [but rather a] sentence [that] could be corrected as stated in *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, at syllabus, ¶27." Id. at ¶7.

Following our decision, Taylor filed a motion to correct his sentence and requested resentencing based on his June 2007 sentencing entry. In his motion, Taylor did not argue that his sentence was void, but did assert that he was entitled to "a full de novo sentencing to correct the error in both [his June 2007] sentence and the colloquy" that occurred at his original sentencing hearing in August 2006. The trial court denied his motion. Taylor now appeals, asserting a single assignment of error for our review.

II

Assignment of Error

> "THE SENTENCE IMPOSED ON AUGUST 2, 2006 IS CONTRARY TO LAW, AND THE TRIAL COURT ERRED TO THE DETERIMENT (sic) OF APPELLANT WHEN IT DENIED HIS MOTION TO CORRECT SENTENCE, FILED ON SEPTEMBER 21, 2010."

{¶3} In his assignment of error, Taylor argues that the trial court erred by denying his motion for a corrected sentence because the June 2007 entry setting forth his sentence includes a mandatory term of five years of post-release control instead of a mandatory term of three years, based on his felony convictions. We agree.

{¶4} R.C. 2967.28(B)(2) provides that "for a felony of the second degree *** three years" of post-release control shall be imposed upon the offender. Taylor was convicted of one second-degree felony and one third-degree felony, so he should be subject to a mandatory period of three years of post-release control. R.C. 2967.28(F)(4)(c). In *Singleton*, the Supreme Court explained that, with the enactment of R.C. 2929.191 in July 2006, "the General Assembly has [] provided a statutory remedy to correct a failure to properly impose postrelease control." *Singleton* at ¶23. The *Singleton* Court held that, "[f]or criminal sentences imposed on and after July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts [can correct the sentence by] apply[ing] the procedures set forth in R.C. 2929.191." Id. at paragraph two of the syllabus. Consequently, a sentence imposed after that date which "lack[s] mandatory postrelease control, [is] not void[.]" *Singleton* at ¶61 (Lanzinger, J., concurring in part and dissenting in part). See, also, *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, at ¶63, 69 (concluding that the defendant's sentence was not void based on defects in his post-release control notification because he was sentenced after July 11, 2006). Accord *State v. Jones*, 9th Dist. No. 25254, 2010-Ohio-3850, at ¶7. The *Singleton* Court went on to explain that R.C. 2929.191:

> "[E]stablishes a procedure to remedy a sentence that fails to properly impose a term of postrelease control. *** [It] provides that trial courts may, after conducting a hearing with notice to the offender, the prosecuting attorney, and the Department of Rehabilitation and Correction, correct an original judgment of conviction by placing on the journal of the court a nunc pro tunc entry that includes a statement that the offender will be supervised under R.C. 2967.28 after the offender leaves prison and that the parole board may impose a prison term of up to one-half of the stated prison term originally imposed if the offender violates postrelease control." *Singleton* at ¶23.

The Court further clarified that the "hearing" dictated by statute "pertain[s] only to the flawed imposition of postrelease control [and] does not address the remainder of an offender's

sentence." Id. at ¶24. Thus, its is clear from *Singleton* that Taylor is entitled to a hearing limited to the proper imposition of post-release control, to be followed by a sentencing entry in which a three-year term of post-release control is journalized. Id. See, also, *State v. Fischer*, Slip No. 2010-Ohio-6238, at ¶29-31 (holding that defects in post-release notifications that occurred in sentences imposed prior to the effective date of R.C. 2929.191 are similarly limited in scope).

{¶5} Because the trial court's June 2007 sentencing entry fails to properly notify Taylor that he is subject to a mandatory three-year term of post-release control for his offenses, the trial court is required to apply the remedial measures set forth in R.C. 2929.191 to correct the post-release control portion of his sentence, leaving the remainder of Taylor's sentence intact. Accordingly, the trial court erred in denying Taylor's motion to correct his sentence. Taylor's assignment of error is sustained.

III

{¶6} Taylor's sole assignment of error is sustained. The judgment of the Lorain County Court of Common Pleas is reversed and this matter is remanded for further proceedings in accordance with this opinion.

Judgment reversed,
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 Lorain, 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

BELFANCE, P. J.
MOORE, J.
CONCUR

APPEARANCES:

MICHAEL TAYLOR, pro se Appellant.

DENNIS P. WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.