

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY**

STATE OF OHIO	:	
	:	Appellate Case Nos. 10-CA-1
Plaintiff-Appellee	:	10-CA-2
	:	
v.	:	Trial Court Case No. 07-CR-207
	:	
ABRAHAM ISA	:	
	:	(Criminal Appeal from
Defendant-Appellant	:	Common Pleas Court)
	:	

.....

OPINION

Rendered on the 13th day of August, 2010.

.....

NICK A. SELVAGGIO, Atty. Reg. #0055607, Champaign County Prosecutor's Office,
200 North Main Street, Urbana, Ohio 43078
Attorney for Plaintiff-Appellee

ABRAHAM ISA, #566-878, Hocking Correctional Facility, Post Office Box 59,
Nelsonville, Ohio 45764
Defendant-Appellant, *pro se*

.....

FAIN, J.

{¶ 1} In these two appeals, defendant-appellant Abraham Isa appeals from the denial of his motion to correct his sentence. In appeal no. 2010-CA-1, Isa contends that his sentence was void due to the absence of a provision for post-release control. In appeal no. 2010-CA-2, Isa contends that his sentence

incorrectly aggregated his total sentence. We conclude that the record does not support Isa's appeal in case no. 2010-CA-1. In case no. 2010-CA-2, we conclude that trial court's construction of provision for consecutive versus concurrent sentencing is reasonable. Consequently, the orders from which these appeals are taken are Affirmed.

I

{¶ 2} Isa was charged by indictment with three counts of Rape and fourteen counts of Gross Sexual Imposition. One count of Rape and one count of Gross Sexual Imposition was dismissed before the jury began deliberating. In 2008, Isa was convicted on the two remaining Rape counts and the thirteen remaining Gross Sexual Imposition counts. He was sentenced. He appealed. We affirmed. *State v. Isa*, Champaign App. No. 07-CA-37, 2008-Ohio-5906.

{¶ 3} On December 2, 2009, Isa filed a "Motion for Re-Sentencing Due to Void Judgment," contending that his sentence was void because it lacked the provision for post-release control required by statute. The trial court overruled this motion by entry filed December 7, 2009. Isa's appeal from the trial court's order of December 7, 2009 is case no. 2010-CA-1 in this court.

{¶ 4} On December 21, 2009, Isa filed a "Motion to Be Re-Sentenced to Correct Sentence," in which he contended that the trial court erred in aggregating his sentence, so that it should be for a total of 23 years, not 24 years and six months. The trial court overruled this motion by entry filed December 24, 2009. Isa's appeal from this order is case no. 2010-CA-2.

{¶ 5} As a matter of clarification, both Isa's motion of December 21, 2009, and the trial court's order overruling that motion, are, in fact, contained in the record of our case no. 2010-CA-1, when they should, more properly, be contained in the record of our case no. 2010-CA-2, but we are obviously considering both appeals together, so that this is of no consequence to our decision.

{¶ 6} We have ordered the records in both appeals enlarged to include the sentencing entry filed in the trial court on December 4, 2007, and also the transcript of the sentencing hearing, which was filed in our court, in case no. 2007-CA-37, on April 11 or 14, 2008.¹ Both the sentencing entry and the sentencing transcript have been added to our record, and are before us.

II

{¶ 7} Isa's sole assignment of error in case no. 2010-CA-1 is as follows:

{¶ 8} "THE TRIAL COURT EXCEEDED ITS AUTHORITY IN REFUSING TO GRANT THE DEFENDANT'S MOTION TO VACATE AND MOTION TO BE RESENTENCED DUE TO VOID JUDGMENT, IN VIOLATION OF THE DUE PROCESS CLAUSES OF BOTH THE OHIO AND UNITED STATES CONSTITUTIONS."

{¶ 9} Isa contended in the trial court, and he contends here, that his sentence imposed in this case on December 4, 2007, is void because it does not contain provision for post-release control, as required by statute. Therefore, Isa

¹The second digit of the date stamp is hard to read. It may be a "1" or it may be a "4."

argues, the trial court erred by overruling his motion to correct his void sentence.

{¶ 10} Isa would appear to be on firm ground, based upon *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, if the record bore out his contention that his sentence does not provide for post-release control. But his sentence does so provide.

{¶ 11} Isa's sentencing entry provides: "After release from prison, Defendant is ordered to be subject to post release control for a maximum of five years, all subject to Parole Board determination." By statute, the Ohio parole board makes determinations of post-release control violations and sanctions. R.C. 2967.28.

{¶ 12} At the sentencing hearing, the trial court advised Isa of the fact that he would be subject to post-release control:

{¶ 13} "When you complete your sentence and you are released you're subject to post release control which is observed by state and local officials including the Court. It's a mandatory five-year time period because the offenses involved are sex offenses.

{¶ 14} "If you're on post release control and you're charged with not obeying post release control rules, you can be punished. Punishment can include loss of liberty. Loss of liberty means – includes curfew, house arrest or time behind bars. The time behind bars can either be in a local jail or a state prison. It can be as much as one-half of the original sentence.

{¶ 15} "If you're charged with a new felony while you're on post release control, you not only have to face that new felony and its penalty, but you can also be sent back to prison on this original charge for either one year or the balance of your

post release control time period, whichever is greater.”

{¶ 16} Based upon the record, we find no merit to Isa’s contention that his sentence is void due either to a failure to provide for post-release control or a failure to advise him of post-release control. Isa’s sole assignment of error in case no. 2010-CA-1 is overruled.

III

{¶ 17} Isa’s sole assignment of error in case no. 2010-CA-2 is as follows:

{¶ 18} “THE TRIAL COURT ERRED TO THE PREJUDICE OF THE DEFENDANT IN REFUSING TO RENDER A DECISION ON HIS MOTION TO BE RE-SENTENCED TO CORRECT SENTENCE.”

{¶ 19} In support of this assignment of error, Isa contends that the trial court improperly aggregated his sentence to total 24 years and six months. He contends that it should total 23 years.

{¶ 20} The sentencing entry clearly states that a sentence of ten years is imposed upon each of the Rape counts, and a sentence of eighteen months is imposed upon each of the Gross Sexual Imposition counts. In this connection, Count Thirteen, for Gross Sexual Imposition, received an eighteen-month sentence. The sentencing entry then reads as follows:

{¶ 21} “**CONCURRENT OR CONSECUTIVE**

{¶ 22} “The sentences for Counts 1 through 4 are concurrent with each other. Counts 5 through 8 are concurrent with each other. Counts 9 through 12 are concurrent with each other. Counts 16 and 17 are concurrent with each other.

Each group of counts is consecutive to each other group making a total confinement of 24 years and 6 months.”

{¶ 23} At the sentencing hearing, the trial court pronounced sentence as follows:

{¶ 24} “Counts One through Four are each gross sexual imposition. Sentence of 18 months and \$200 fine on each is imposed.

{¶ 25} “Counts Five through Eight are concurrent with each other. Count Five is rape. Ten-year sentence mandatory and \$200 fine. Count Six, Seven and Eight, 18 months sentence, \$200 fine.

{¶ 26} “Counts Nine through Twelve are concurrent with each other. Counts Nine, Eleven and Twelve are gross sexual imposition. Fine of \$200 on each count. Count Ten, charge of rape, is ten year sentence, \$200 fine.

{¶ 27} “Count Thirteen, gross sexual imposition, 18 month confinement, \$200 fine.

{¶ 28} “Count Sixteen and Seventeen each an 18 month confinement, \$200 fine.

{¶ 29} “If I didn’t say it, Counts Nine through Twelve are concurrent with each other.

{¶ 30} “Counts Sixteen and Seventeen are concurrent with each other.

{¶ 31} “There are five groupings of sentences, and each of the five groups is consecutive to each of the other five groups. All of the fines are concurrent making a total fine of \$200.

{¶ 32} “The confinement that results is 24 and a half years. Wait just a minute. Yes. The Court stands by that statement – 24 and a half years.”

{¶ 33} Isa appears to be contending that the eighteen-month sentence on Count Thirteen should not be consecutive with the other sentences, which would result in an aggregate sentence of just 23 years, not 24 years and six months.

{¶ 34} In overruling Isa’s motion, the trial court dealt with this argument as follows:

{¶ 35} “Contrary to Defendant’s assertions, there were five groupings of sentences that were consecutive with one another, not four groups. See Sentencing Tr. pp. 18-19; Journal Entry of Judgment, Conviction and Sentence filed December 4, 2007. As previously explained, those groupings are: (1) Counts One through Four; (2) Counts Five through Eight; (3) Counts Nine through Twelve; (4) Count Thirteen; and (5) Counts Sixteen and Seventeen. Counts Fourteen and Fifteen had been dismissed. The sentences within each grouping are concurrent with one another while each grouping is consecutive to the other groupings. The total sentence is 24 years and 6 months.”

{¶ 36} There does appear to be some ambiguity in the sentencing entry, since the concurrent or consecutive nature of the eighteen-month sentence on Count Thirteen is not explicitly dealt with. At the hearing, the trial court explicitly refers to “five groupings of sentences,” which only makes sense if Count Thirteen is understood to constitute a single-count group. We are persuaded that the trial court did not abuse its discretion in construing its sentence as providing for five groups of

sentences, with Count Thirteen being a stand-alone group, which would aggregate to a total sentence of 24 years and 6 months. Therefore, we conclude that the trial court did not err in overruling Isa's motion to correct his sentence.

{¶ 37} Isa's sole assignment of error in case no. 2010-CA-2 is overruled.

IV

{¶ 38} Isa's assignments of error in both appeals having been overruled, the orders from which these appeals are taken are Affirmed.

.....

BROGAN and FROELICH, JJ., concur.

Copies mailed to:

Nick A. Selvaggio
Abraham Isa
Hon. Roger B. Wilson