

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1079

Appellee

Trial Court No. CR0199901774

v.

Perry Helms

DECISION AND JUDGMENT

Appellant

Decided: December 30, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Rebecca L. West-Estell, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Perry Helms, appeals from his sentence entered by the Lucas County Court of Common Pleas in the above-captioned case. For the reasons that follow, we reverse the judgment of the trial court.

{¶ 2} Appellant was indicted in charges of aggravated burglary and kidnapping on May 10, 1999. On June 21, 1999, appellant withdrew his pleas of not guilty and

entered guilty pleas to one count of aggravated burglary and one count of attempted abduction.

{¶ 3} Before accepting the pleas, the trial court informed appellant that, upon his release from prison, he would be subject to certain postrelease control obligations. Included in the trial court's statement to appellant was notification that appellant would be subject to a mandatory term of five years of postrelease control. Thereafter, appellant executed a written plea agreement that expanded upon those postrelease control obligations—informing appellant not just about the mandatory term of five years, but also the applicable discretionary term of three years—and, further, indicated appellant's acknowledgment thereof.

{¶ 4} At sentencing on July 15, 1999, appellant was provided with a written notice of his postrelease control obligations stating that, following his release from prison, a term of postrelease control would be imposed, and that violation of those terms could result in appellant's serving additional time in prison. Appellant and his counsel acknowledged receipt and execution of the document, and appellant acknowledged reading the document and understanding it.

{¶ 5} The trial court then sentenced appellant to a term of nine years in prison on the aggravated burglary charge, to be served consecutively with a term of seventeen months on the attempted abduction charge. The relevant portion of the judgment entry stated that "[d]efendant has been given notice under R.C. 2929.19(B)(3) and of appellate

rights under R.C. 2953.08." Appellant was remanded to the custody of the Ohio Department of Corrections on July 15, 1999.

{¶ 6} On October 21, 2008, the trial court entered a nunc pro tunc judgment entry stating that appellant was "given notice of appellate rights under R.C. 2953.08 and post release control notice under R.C. 2929.19(B)(3) and R.C. 2967.28."

{¶ 7} Appellant completed his sentence in the above-captioned case on September 10, 2009. On February 23, 2010—while appellant was still in prison serving a sentence in an unrelated case—the trial court held yet another hearing in the current case to advise appellant of his postrelease control obligations. This time, the purpose of the hearing was to bring appellant's sentence into compliance with the requirements set forth in *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462. The related judgment entry stated in relevant part: "Defendant given notice of appellate rights under R.C. 2953.08 and five years mandatory post release control as to count 1 and three years discretionary post release control as to count 2, notice under R.C. 2929.13(B)(3) and R.C. 2967.28." It is from this judgment entry that appellant appeals, raising the following as his sole assignment of error:

I. "THE TRIAL COURT IS PROHIBITED BY LAW FROM RESENTENCING APPELLANT AFTER HIS SENTENCE TERM HAS BEEN COMPLETED."

{¶ 8} Appellant correctly argues, and the state does not dispute, that this court requires that postrelease control notifications be provided before the expiration of the prison sentence for the offense in question. See, e.g., *State v. Bristow*, 6th Dist. No. L-06-1230, 2007-Ohio-1864. Because the trial court's February 23, 2010 judgment entry was improperly entered after appellant's prison sentence had concluded, it is wholly without effect in this case.

{¶ 9} The state argues that, despite any ineffectiveness of the trial court's last entry, the notices provided in the original proceedings were sufficient to apprise appellant of his postrelease control obligations and to authorize imposition of postrelease control. We disagree.

{¶ 10} The Supreme Court of Ohio has held that "when sentencing a felony offender to a term of imprisonment, a trial court is required to notify the offender at the sentencing hearing about postrelease control and is further required to incorporate that notice into its journal entry imposing sentence." *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, ¶ 17.

{¶ 11} As indicated above, prior to entering his plea, appellant received written and verbal notice informing appellant of the postrelease obligations to which he would be subject if he were to enter the plea. At sentencing, he received another written notice, this one informing him that he would be subject to postrelease control and that violations of postrelease control could result in additional time in prison. It is undisputed that the trial court's judgment entry incorporated that notice in its sentencing entry.

{¶ 12} The Supreme Court of Ohio, in *State v. Bloomer*, supra, however, made clear that a trial court must both notify the offender of the length of the term of postrelease control that applies to his conviction and incorporate that notification into its sentencing entry. *Id.* at ¶ 69. Sentencing entries that fail to include the required notifications are void because they are contrary to law. *State v. Terry*, 2d Dist. No. 09CA0005, 2010-Ohio-5391, ¶ 16, citing *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197. Here, the trial court failed to timely notify appellant of the length of the term of postrelease control and, further, failed to incorporate that notification into any of its valid entries. "[I]n the absence of a proper sentencing entry imposing postrelease control, the parole board's imposition of postrelease control cannot be enforced." *Bloomer*, supra, at ¶ 71.

{¶ 13} For all of the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is reversed. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

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