

IN THE SUPREME COURT OF OHIO
Case No. 06-1973

STATE OF OHIO

Appellee

-vs-

MICHAEL SARKOZY

Appellant

On Appeal from the
Cuyahoga County
Court of Appeals,
Case No. CA 86952

REPLY BRIEF OF APPELLANT MICHAEL SARKOZY

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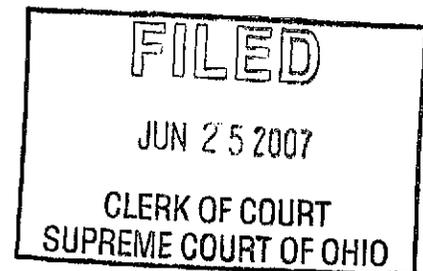


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ARGUMENT

In Reply to Proposition of Law I:

The failure during a plea colloquy to correctly advise a defendant of the length of post-release control that will be part of a sentence of imprisonment causes the plea to be invalid.

The State argues, inter alia, that Mr. Sarkozy has not demonstrated that the trial court's failure to advise him about post-release control would have affected his decision to plead guilty. The State relies in large part on three cases in this regard: *State v. Nero* (1990), 56 Ohio St.3d 106, *State v. Stewart* (1977), 51 Ohio St.2d 86, and *United States v. Vonn* (2002), 535 U.S. 55. These cases are distinguishable from Mr. Sarkozy's circumstances.

Nero and *Stewart* each concerned the issue of a defendant who claimed not to understand that his sentences were not probationable. In each case, this Court noted that there was evidence in the trial record that suggested that the non-probationable aspect of the sentence was not a new revelation to the defendant. Similarly, in *Vonn*, the United States Supreme Court noted that the defendant had been advised on numerous prior occasions by a judicial officer of the trial right that was omitted during the plea colloquy. Thus, in each case, the record supported the inference that the defendant knew that information that was not explicitly detailed in the plea colloquy.

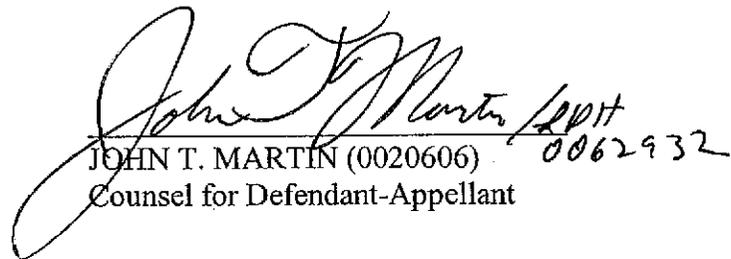
In contrast, Mr. Sarkozy was incarcerated from 1983 until 2005, and was arrested and charged with the instant offenses that same year. (T. 24). Thus, he had committed his prior offenses prior to S.B. 2, and thus prior to the advent of "post-release control." There was no demonstration that he understood what the trial court omitted from his plea colloquy – that, because of post-release control, sentences in Ohio do not end when a person completes serving the number of years imposed by the trial judge as punishment for the offense.

The State also relies upon this Court's recent decision in *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082 and claims that *Watkins* dictates that the trial court's omission of any mention of post-release control would not invalidate a sentence, and thus cannot invalidate a plea. The State is incorrect. *Watkins* involved mention of post-release control; in this case the trial judge made no mention of post-release control during the plea colloquy. Sentences that fail to include any mention of post-release control are void ab initio. *State v. Jordan* (2004), 104 Ohio St.3d 21, 2004-Ohio-6085. Thus, under the State's logic, Mr. Sarkozy's plea should be void.

CONCLUSION

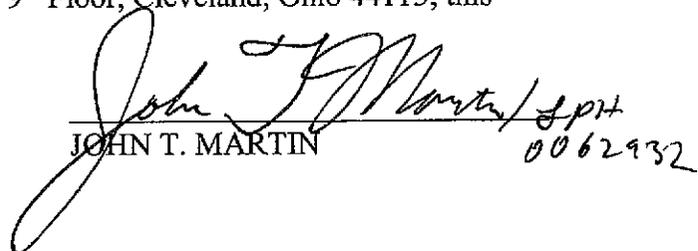
Wherefore, pursuant to the sole proposition of law posited herein, the pleas should be vacated and the case remanded for trial.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that one true copy of the foregoing Reply Brief of Appellant Michael Sarkozy was sent via U.S. Mail, postage prepaid, to Kristen Sobieski, Assistant County Prosecutor for Cuyahoga County, 1200 Ontario Street, 9th Floor, Cleveland, Ohio 44113, this 25th day of June, 2007.


JOHN T. MARTIN 0062932