



MOTION FOR RECONSIDERATION OF APPELLANT, JESSE J. LANGE

Now comes the Appellant, Jesse J. Lange, who moves the Court for reconsideration of the decision of the Court refusing to grant jurisdiction to hear Appellant's appeal. (S.Ct.Rule IX, S 2)

  
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Attorney for the Appellant

MEMORANDUM

By its decision filed on September 26, 2007, the Honorable Court declined to accept Appellant's appeal of the decision of the Third District Court of Appeals.

Factually, in this criminal case the Trial Court did not impose post release control at the Appellant's sentencing. While the Appellant was serving his prison term, the Trial Court issued a Nunc Pro Tunc Entry imposing post release control. On appeal, the Court of Appeals ruled that the Trial Court's use of a Nunc Pro Tunc Entry to impose Post Release Control was not proper. The Appellate Court remanded the case to the Trial Court for "resentencing." However, the Court of Appeals determined that the proper procedure to be followed would be to conduct a "hearing" solely to impose post release control:

"Thus we find the Trial Court's failure to first conduct a hearing to notify Lange of post release control rendered its nunc pro tunc entry imposing post-release control ineffective", (Opinion, paragraph 18) (underlining added)

and

"Moreover, R.C. 2929.191 authorizes a Trial Court to hold a resentencing hearing for the limited purpose of imposing post-release control, not altering a defendant's prison term." (Underlining added) (Opinion paragraph 19)

After Appellant had filed his appeal herein and Memorandum In Support of Jurisdiction, on July 11, 2007, this Honorable Court issued its decision in State v. Bezak (2007) 114 Ohio St.3d 114. In Bezak, Chief Justice Moyer, writing on behalf of the Court, stated::

(13) "The court of appeals remanded the matter to the trial court, stating that Bezak's case "must be remanded for resentencing **so that appellant may be advised that he is subject to post-release control.**" (Emphasis added.) However, in such a resentencing hearing, the trial court may not merely inform the offender of the imposition of postrelease control and automatically reimpose the original sentence. Rather, the effect of vacating the trial court's original sentence is to place the parties in the same place as if there had been no sentence. See Romito v. Maxwell, 10 Ohio St.2d at 267, 39 O.O.2d 414, 227 N.E.2d 223. Therefore, the decision to vacate Bezak's void sentence would require the trial court to resentence Bezak as if there had been no sentence. . . .

(16) We hold that when a trial court fails to notify an offender that he may be subject to postrelease control at a sentencing hearing, as required by former R.C. 2929.19(B)(3), the sentence is void; the sentence must be vacated and the matter remanded to the trial court for resentencing. The trial court must resentence the offender as if there had been no original sentence. When a defendant is convicted of or pleads guilty to one or more offenses and postrelease control is not properly included in a sentence for a particular offense, the sentence for that offense is void. The offender is entitled to a new sentencing hearing for that particular offense. (Underlining added)

(17) The decision of the court of appeals vacated Bezak's sentence but remanded the matter with this instruction: "the case must be remanded for resentencing so that appellant may be advised that he is subject to post-release control." The judgment of the court of appeals vacating the sentence is affirmed and the remand instruction is modified to inform the trial court that a new sentencing hearing is required in cases where postrelease control is not properly included in a sentence for a particular offense. In such cases, the trial court must impose a new sentence on the defendant."

Thus, the decision of the Court of Appeals is in direct contravention of this Court's pronouncement in State v. Bezak, id. The Court should accept jurisdiction to correct the obvious conflict between the Court of Appeals decision with the

pronouncement of this Court in Bezak.

Dated: \_October 4, 2007

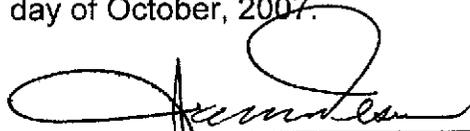


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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum was served on Matthew Fox, Asst. Prosecuting Attorney, 119 N. Walnut St., Celina, OH 45822, by regular U. S. Mail, this 4th day of October, 2007.



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James A. Tesno