NO. 08-1255

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 90042

STATE OF OHIO,

Plaintiff-Appellee

-vs-

JASON SINGLETON,

Defendant-Appellant

STATE'S MEMORANDUM IN RESPONSE TO JURISDICTION TO APPELLEE/CROSS-APPELLANT'S MEMORANDUM SUPPORTING JURISDICTION

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EXPLANATION OF WHY THE CROSS APPEAL DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION OR ISSUE OF GREAT PUBLIC INTEREST

In this matter, the appellate court ordered the trial court to conduct a complete resentencing, despite the clear dictate of R.C. 2929.191 that provides a mechanism by which error in the imposition of the sanction of postrelease control may be corrected. This error is compounded by the court's reasoning that *State v. Bezak,* 114 Ohio St.3d 94, 2007-Ohio-3250 requires this holding; however, this case was decided upon a case prior to the effective date of R.C. 2929.191. As this statute is now in force and applicable to Cross-Appellant/Appellee Jason Singleton, the trial court should be ordered only to correct the postrelease control sanction as Appellee did not complain of any other error in his sentence

The State asked that this court review and modify the appellate opinion in this matter to order the sentencing court to apply R.C. 2929.191 and give full force and effect to intent that provides a method to correct error where only the sanction of postrelease control was imposed in error and to determine R.C. 2929.191 provides a means to correct those sentences where the sentencing court did not properly impose the sanction of postrelease control. This case raises an important legal question that remains unclear: which branch of government crafts Ohio's felony sentencing procedures?

In contrast, in the cross-appeal, it is argued that this Court should forego resolution of this issue where the State did not raise as an issue the remedy imposed. However, the State argued that the conviction was proper and did not concede error. That the appellate court found error and imposed a remedy should not foreclose the State from asking this Court find legal error in the decision. Next, the cross-appeal argues that the issue is not important simply because R.C. 2929.191 is not a mandatory statute, but rather one of discretion. However, the court of appeals

placed the issue squarely before this Court when it ignored the applicability and effect R.C. 2929.191 has upon the felony sentencing process. Finally, the cross appeal argues that notwithstanding the propriety of the State's arguments regarding the applicability of R.C. 2929.191, this Court's prior decision in *State v. Bezak*, 117 Ohio St.3d 420 precludes the application of the statute.

The problem raised by the State is of great public interest because serious offenders such as Cross-Appellee with felony convictions should not be allowed to escape the sanction of postrelease control and the legislature has provided a mechanism that severs the sanction of postrelease control from sentences imposed. Further, in this case Singleton pleaded guilty to felonious assault and rape in the year 2000, eight years ago. Following the opinion in this case, he will now have the opportunity to litigate the sanctions imposed in 2000, sanctions not found to be in error. Because of this, R.C. 2929.191 fulfills the General Assembly intent that offenders like Singleton receive the postrelease control sanction that Ohio Law requires. Ohio Courts should enforce the General Assembly's plain intent and should not vacate a lawfully imposed sanctions of imprisonment due to an error in the imposition of a postrelease control sanction.

In his Cross-Appeal, Singleton first asks that this Court find the appellate court erred in its factual finding that the trial court did not err in informing him of the mandatory nature of postrelease control at the time of his plea. The appellate court thoroughly reviewed the record and found the trial court did inform Singleton of the mandatory sanction of postrelease control and Singleton's First Proposition of Law should not be considered by this Court.

STATEMENT OF THE CASE AND FACTS

On November 13, 2000, Appellee Jason Singleton pleaded guilty to felonious assault and rape and was thereafter sentenced to serve an aggregate prison term of ten years. On October

25, 2006, Singleton filed a motion to vacate his plea. The trial court denied the motion. On appeal, the Eighth District Court of Appeals affirmed the trial court's denial of the motion to vacate plea but found the sentence to be void due to error in the imposition of the sanction of postrelease control. The appellate court ordered that the resentencing in this matter be done in full, vacating sanctions not in error, despite R.C. 2929.191 that provides for resentencing the offender to impose only the postrelease control sanction.

LAW AND ARGUMENT

CROSS APPELLEE'S PROPOSITION OF LAW I:

> A GUILTY PLEA TO A SENTENCE CARRYING MANDATORY POSTRELEASE CONTROL IS NOT KNOWING, VOLUNTARY, AND INTELLIGENT WHEN THE TRIAL COURT TELLS THE DEFENDANT THAT HE OR SHE WILL BE SUBJECT TO DISCRETIONARY POSTRELEASE CONTROL DURING THE PLEA COLLOQUY

The Eighth District Court of Appeals found that the trial court did not misinform Singleton of the mandatory nature of the sanction of postrelease control. That Court found that, "We note that the trial court explicitly advised defendant that the parole authority "has the power to place conditions upon you when you are released [which] **will** last five years." (Emphasis added)." *State v. Singleton*, Cuyahoga App. No. 90042, 2008-Ohio-2351, at ¶ 40. Singleton asks this Court to correct a claimed error of fact. This Court has determined the issues to be considered in a Crim.R. 11 hearing. See, *State v. Sarkozy,* 117 Ohio St.3d 86, 881 N.E.2d 1224, 2008 -Ohio- 509; State v. Clark, --- Ohio St. 3d ----, 2008 -Ohio- 3748.

Within his cross-appeal, Singleton argues that the trial court misinformed him of the nature o f postrelease conrol. The record is inapposite to this conclusion and the appellate court found that Singleton was properly informed of the mandatory nature of postrelease control. This factual issue has been decided and under this Court's decisions in Sarkozy and Clark, it cannot

be said that the appellate court committed error in its factual determination. For this reason, the State asks that this Court decline to hear the cross-appeal in this matter.

In addition to his claim of error, Singleton lists the following propositions of law in response to the State's memorandum of jurisdiction:

PROPOSITION OF LAW NO. I:

A LITIGANT CANNOT RAISE AN ISSUE IN THE SUPREME COURT OF OHIO IF THE LITIGANT HAS FORFEITED THE ISSUE BY FAILING TO BRIEF THE ISSUE IN THE COURT OF APPEALS.

Singleton argues that this Court should not consider the propriety of the remedy of a complete resentencing hearing imposed by the appellate court in this matter. In response to Singleton's appeal, the State argued that the judgment of the trial court should be affirmed where the plea and sentence should be imposed. As such, the State did not address any remedy the appellate court would impose upon the reversal of the sentence. Moreover, the State filed a motion to dismiss Singleton's assignment of error. For this reason, the State should not be precluded from contesting the remedy imposed by the court of appeals.

PROPOSITION OF LAW NO. II

REVISED CODE SECTION 2929.191 PROVIDES A DISCRETIONARY REMEDY THAT TRIAL JUDGES ARE NOT REQUIRED TO FOLLOW.

PROPOSITION OF LAW NO. III

NOTWITHSTANDING R.C. 2929.191, [I}N CASES IN WHICH A DEFENDANT IS CONVICTED OF, OR PLEADS GUILTY TO, AN OFFENSE FOR WHICH POSTRELEASE CONTROL IS REQUIRED BY NOT PROPERLY INCLUDED IN THE SENTENCE, THE SENTENCE IS VOID AND THE STATE IS ENTITLED TO A NEW SENTENCING HEARING IN ORDER TO HAVE POSTRELEASE CONTROL IMPOSED ON THE DEFENDANT UNLESS THE DEFENDANT HAS COMPLETED HIS SENTENCE." *STATE V. BEZAK*, 177 OHIO ST.3D 420, 2008-OHIO-1197.

Singleton asks that this Court find that R.C. 2929.191is irrelevant to the issue of determining the propriety of the remedy for the improper journalization of the postrelease control sanction by a trial court, arguing in essence that this Court has stated the proper remedy of resentencing in *State v. Bezak,* 114 Ohio St.3d 94, 2007-Ohio-3250. However, the issue of whether or not R.C. 2929.191 can be, and should be applied is not irrelevant in the determination of this case; the appellate court relied on this Court's decisions in *Bezak* and *State v. Simpkins,* 117 Ohio St.3d 420, 884 N.E.2d 568, 2008 -Ohio- 1197, to order a sentencing de novo. R.C. 2929.191, simply because it provides a mechanism that allows the court to impose the sanction of postrelease control without a full resentencing hearing, is not irrelevant to this case. R.C. 2929.191 does not exist in a vacuum, it is a law that has effect and this Court should determine the extent the statute has effect.

CONCLUSION

The State of Ohio respectfully requests that this Honorable Court grant jurisdiction and hear this case on its merits and upon its Proposition of Law. The Eighth District improperly vacated the sentence imposed and ordered the trial court to hold a de novo resentencing hearing. Further, the State asks that this Court decline jurisdiction to Singleton's cross-appeal in which he merely challenges the factual determination of the appellate court.

Respectfully submitted,

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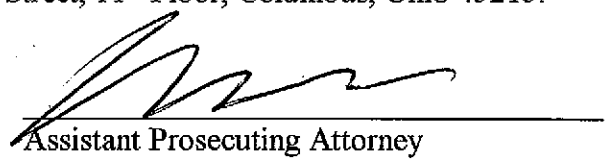
SERVICE

A copy of the foregoing State's Memorandum in Response to Appellee/Cross-Appellant's Memorandum Supporting Jurisdiction has been mailed this 27TH day of August 2008, to Stephen P. hardwick, 8 East Long Street, 11th Floor, Columbus, Ohio 43215.



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