

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio,

Appellee,

v.

Rusty Jordan,

Appellant.

:
: Case Nos. 2008-2172 and 2008-2119
:
: On Appeal and Certified Conflict from
: the Marion County Court of Appeals,
: Third Appellate District, Case No. 9-
: 08-11
:
:

SUPPLEMENTAL AUTHORITY OF APPELLANT RUSTY JORDAN

Brent W. Yager, 0033906
Marion County Prosecuting Attorney

Denise Martin, 0070825
Assistant Marion County Prosecutor
(Counsel of Record)

134 E. Center Street
Marion, Ohio 43302
(740) 223-4290
(740) 223-4299 - Fax
dmartin@co.marion.oh.us

Counsel for Plaintiff-Appellee
State of Ohio

Office of the Ohio Public Defender

Stephen P. Hardwick, 0062932
Assistant Public Defender

250 East Broad Street - Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 - Fax
stephen.hardwick@opd.ohio.gov

Counsel for Defendant-Appellant
Rusty Jordan

FILED
OCT 27 2009
CLERK OF COURT
SUPREME COURT OF OHIO

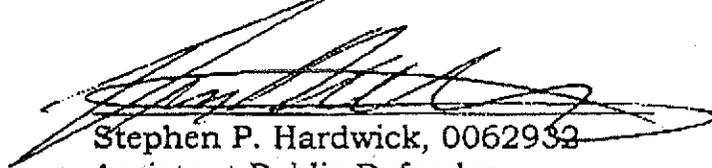
Supplemental Authority of Appellant Rusty Jordan

In support of his Appellant's arguments related to stare decisis,
Appellant submits the attached additional authority pursuant to S.Ct.Prac.R.
IX, Section 9:

Letter, October 26, 2009, from Austin Stout, Assistant Chief
Counsel for the Ohio Department of Rehabilitation and Correction,
explaining the Department's implementation of this Court's
decisions relating to errors in the imposition of postrelease control.

Respectfully submitted,

Office of the Ohio Public Defender



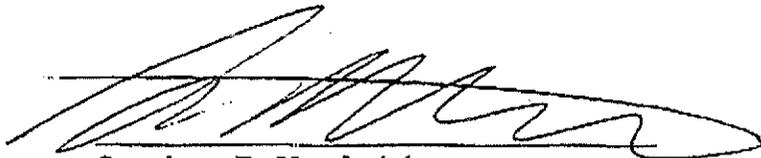
Stephen P. Hardwick, 0062932
Assistant Public Defender

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (fax)
stephen.hardwick@opd.ohio.gov

Counsel for Defendant-Appellant
Rusty Jordan

Certificate of Service

I certify that a copy of the foregoing was sent by e-mail to Denise Martin,
Assistant Marion County Prosecutor at dmartin@co.marion.oh.us, on October
27, 2009.



Stephen P. Hardwick



Ohio Department of Rehabilitation and Correction

Division of Legal Services
770 West Broad Street
Columbus, OH 43222-1419

Ted Strickland, Governor

www.drc.ohio.gov

Terry Collins, Director

October 26, 2009

Tim Young
Office of the Ohio Public Defender
250 East Broad Street - Suite 1400
Columbus, Ohio 43215

Re: Post-release Control

Dear Tim:

The below information was sent to the Administrative Judge for each County Court of Common Pleas and the Prosecutors for all 88 counties:

As you are no doubt aware, in June 2009, the Ohio Supreme Court announced its decision in *State v Bloomer* 122 Ohio State 3d 200 (2009). This case was consolidated for decision with two other cases, *State v Mossmeier* and *State v Barnes*. In that decision the Court re-affirmed the *Telb, Jordan, Hernandez, Bezak* line of decisions, in that it again held that in order to impose a mandatory term of PRC the sentencing court must notify the defendant of the mandatory nature of the PRC and the duration of PRC supervision. This notice must be on the record and contained in the sentencing entry. The Court described a sentencing entry that failed to comply with the statutory mandates as, not merely voidable, but void.

This decision also upheld the constitutionality of the resentencing provisions set forth in ORC 2929.191. Therefore sentencing entries that do not properly meet the requirements of ORC 2967.28 and ORC 2929.19 may be corrected by resentencing the defendant before he is released from prison. Once an inmate is released, however, he cannot be re-sentenced and the entry cannot be corrected.

The Court also addressed a legislative attempt to provide a remedy for situations in which the entry is deemed to be defective. This is expressed in ORC 2929.14 (F) (1). The Court did not view this statute as providing a basis for the imposition of post-release control independently of a valid judicially imposed sentence. It held that in the absence of a proper sentencing entry imposing post-release control, the parole board's imposition of post-release control cannot be enforced.

The Ohio Supreme Court has made it clear in these rulings that the Parole Board cannot place persons on even mandatory PRC unless the sentencing procedures and the sentencing entry comport with the statutory mandates as elucidated by the Court. It is neither in the interests of justice nor an efficient use of resources to place offenders on post-release control in circumstances where the legal efficacy of that placement is doubtful. The Parole Board will not place individuals on mandatory post-release control if at the time of release the sentencing entry does not meet the statutory mandatory criteria as established by the Ohio Supreme Court.

Therefore the Department of Rehabilitation and Correction is undertaking a review of the sentencing entries for offenders committed to its custody to determine whether the entry, on its face, meets the criteria established by the Ohio

Supreme Court. Specifically, the entries will be screened to determine whether the entries clearly state that the defendant shall be subject to a period of mandatory post-release control and state the duration of that period of post-release control.

- The Bureau of Sentence Computation has been instructed to begin reviewing entries on new admissions; in those instances where entries are modified; as well as the normal scheduled review prior to release. If an entry is found to be deficient, the sentencing court and county prosecutor will be notified by letter so that the court may initiate resentencing procedures prior to the inmate's release from prison.
- DRC is also undertaking a review of the sentencing entries of those individuals currently incarcerated with priority given to those individuals scheduled for release in the next 60 days. Again, if defective sentencing entries are found, the sentencing court and county prosecutor shall be notified so that the court may take steps to correct the entry prior to the inmate's release from prison.
- DRC is also undertaking a review of the sentencing entries for individuals currently under post release control supervision. Defective entries in this circumstance will result in the termination of supervision. The sentencing court and county prosecutor will be notified of the termination.

Hot Line/Point of Contact

The Department of Rehabilitation and Correction is establishing a "Hot Line" to assist with the arrangement for resentencing hearings. DRC has appointed staff from the Parole Board and the Bureau of Sentence Computation who can be reached at 1-877-553-6116, extension 2579, Fax number 614-877-0959 as the principal contact for questions regarding this process. For e-mail inquiries, contact Melissa.Adams@odrc.state.oh.us.

DRC requests that the court provide DRC with complete contact information including e-mail address for a designated contact person who will coordinate matters with the court and prosecuting attorney.

Video Conferencing

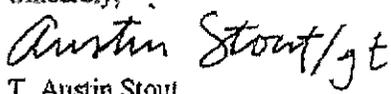
DRC will work with the courts to facilitate video conferencing for the purpose of conducting required hearings. When possible, DRC may provide access to its video conferencing facilities as necessary to assist the courts in conducting the hearings.

Lists of Affected Inmates

The Department of Rehabilitation and Correction will provide the court and prosecuting attorney with a list of the inmates currently committed from their county who are scheduled for release within the next 60 days. Although DRC staff members are in the process of reviewing the entries associated with the individuals on this list, you are urged to conduct your own review of those cases. A DRC staff member will attempt to contact the prosecuting attorney by phone regarding any deficient entries associated with inmates scheduled for release within the next two weeks.

Conclusion

The Department of Rehabilitation and Correction recognizes the seriousness of this matter, and the difficulty of addressing it. However, we are compelled to comply with the controlling legal authority; and are attempting to do so in a way which provides an opportunity to correct errors and minimize the possibility of felons being released without supervision.

Sincerely,

 T. Austin Stout
 Asst. Chief Counsel