

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Supreme Court Case No. 06-1502

Plaintiff

v.

CLARENCE FRY, JR.

Appellant

NOTICE OF POST RELEASE CONTROL ERROR  
IN SENTENCING JOURNAL ENTRY

**SHERRI BEVAN WALSH**

Prosecuting Attorney

**HEAVEN DIMARTINO #0073423 (Counsel of Record)**

Assistant Prosecuting Attorney

Appellate Division

Summit County Safety Building

53 University Avenue, 6<sup>th</sup> Floor

Akron, Ohio 44308

Phone: (330) 643-7459

Fax: (330) 643 2137

Email: dimartino@prosecutor.summitoh.net

Counsel for Appellee, State of Ohio

**DAVID L. DOUGHTEN #0002847 (Counsel of Record)**

Attorney at Law

4403 St. Clair Avenue

Cleveland, Ohio 44103

(216) 361-1112

**GEORGE C. PAPPAS, JR. #0037374 (Counsel of Record)**

Attorney at Law

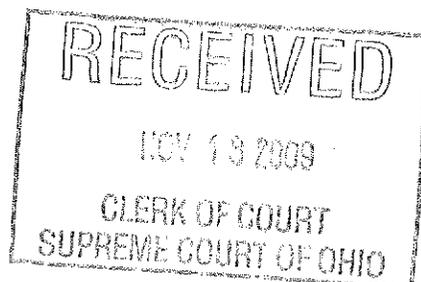
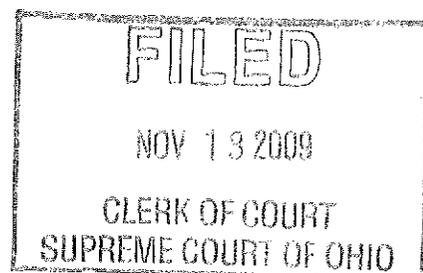
1002 Key Building, 159 South Main Street

Akron, Ohio 44308

(330) 535-6185

Counsel for Appellant

Clarence Fry, Jr.



**NOTICE OF POST RELEASE CONTROL ERROR  
IN SENTENCING JOURNAL ENTRY**

Please be advised that the sentencing journal entry in the above-captioned case fails to properly set forth the terms of appellant's post-release control.

On June 14, 2006, appellant was convicted of two counts of aggravated murder, special felonies, carrying specifications; one count of murder, a felony of the first degree; one count of aggravated burglary, a felony of the first degree, two counts of domestic violence, felonies of the third degree; tampering with evidence, a felony of the third degree; intimidation of a crime victim or witness, a felony of the third degree; and, menacing by stalking, a felony of the fourth degree.

Appellant was sentenced to death on one count of aggravated murder. The court declined to sentence appellant on: the second count of aggravated murder; murder; aggravated robbery; and, the domestic violence conviction that occurred on the date of the victim's death, finding that each of these offenses merged, as a matter of law into the first aggravated murder conviction for which appellant received a death sentence.

With regard to the remaining charges, appellant was convicted of felonies of the third and fourth degree. Based upon the third degree domestic violence conviction, during the commission of which appellant caused or threatened to cause physical harm, appellant is subject to post-release control for a mandatory term of three years. Appellant's sentencing entry, however, states that, "If the Defendant is released from prison, the Defendant is ordered to serve Ten (10) years of post-release control." This language failed to notify appellant of the proper length of his mandatory term of post-release control. This notification failed to comply with the mandates of R.C. 2929.191 and R.C. 2967.28(B).

When a sentencing journal entry contains improper notification of post-release control, it is void. *State v. Simpkins*, 117 Ohio St.3d 420; 2008-Ohio-1197. In *Bloomer*, the Ohio Supreme Court has held that the trial court failed to properly sentence a defendant regarding post-release control where it “failed to notify the offender of the mandatory nature of the term of postrelease control and the length of that mandatory term and incorporate that notification into its entry.” *State v. Bloomer*, 122 Ohio St.3d. 200, 2009-Ohio-2462 at ¶ 69.

Respectfully submitted,

**SHERRI BEVAN WALSH**  
Prosecuting Attorney



**HEAVEN DIMARTINO**  
Assistant Prosecuting Attorney  
Appellate Division  
Summit County Safety Building  
53 University Avenue, 6<sup>th</sup> Floor  
Akron, Ohio 44308  
(330) 643-7459  
Reg. No. 0073423

**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing Notice was forwarded by regular U.S. First Class Mail to Attorney David L. Doughten, 4403 St. Clair Ave., Cleveland, Ohio 44103, and to Attorney George C. Pappas, Jr., 1002 Key Building, 159 South Main Street, Akron, Ohio, 44308, on this 12th day of November, 2009.



**HEAVEN DIMARTINO**  
Assistant Prosecuting Attorney  
Appellate Division