

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Plaintiff - Appellant,	:	Case No. 2010-0639
	:	
v.	:	On Appeal from the Franklin
	:	County Court of Appeals,
COREY HAZEL,	:	Tenth Appellate District,
	:	Case Nos. 09AP-1132, 09AP-1133,
Defendant - Appellee.	:	09AP-1156, 09AP-1157
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**Amicus Curiae The Office of the Ohio Public Defender's  
Memorandum in Opposition to Jurisdiction**

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**COREY HAZEL #546-846**  
 Chillicothe Correctional Institution  
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Defendant - Appellee, Pro Se

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**FILED**  
 MAY 10 2010  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

**I. This case does not present a question of public or great general interest.**

This case does not present a question of great public interest. Since the inception of Senate Bill 2, this Court has frequently discussed the contents of a judgment entry that properly imposes postrelease control. Because this case presents questions that have been answered by existing authority, this Court should decline jurisdiction.

This Court first began examining the imposition of postrelease control in *Woods v. Telb* (2000), 89 Ohio St.3d 504, 733 N.E.2d 1103, when it was confronted with a separation-of-powers challenge to R.C. 2967.28. In finding no violation, this Court recognized two prerequisites for the proper imposition of postrelease control: (1) at the sentencing hearing, the court must notify the defendant that his or her sentence includes postrelease control, and (2) the trial court must impose postrelease control by including it in the judgment entry.

Four years later, in *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, this Court held that the use of ambiguous language such as “up to” to describe the defendant’s potential sentencing term did not adequately alert the defendant to the sentence that he or she faced. While the case involved the consequences for violating community control, Ohio appellate courts have concluded that the rule also applies to postrelease control. See, e.g., *State v. Riggins*, 3d Dist. No. 1-09-56, 2010-Ohio-1254, at ¶16; *State v. Addis*, 12th Dist. No. CA2009-05-019, 2010-Ohio-1008, at ¶22; *State v.*

*Whitehouse*, 9th Dist. No. 09CA009581, 2009-Ohio-6504; *State v. Berry*, 4th Dist. No. 04CA2961, 2006-Ohio-244, at ¶29. In *Brooks*, this Court concluded that ambiguous, discretionary sentencing language does nothing to further the aims of sentencing, which include certainty and predictability. *Brooks* at ¶25.

Later that same year, in *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864 at ¶23, 25, this Court held that a sentence which lacks statutorily prescribed postrelease control is contrary to law, and renders the judgment void. Because the sentence is illegal, the judgment must be treated like it does not exist. *Id.* at ¶23.

In *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, 844 N.E.2d 301, this Court granted the petitioner a writ of habeas corpus. Because the judgment entry did not include any reference to postrelease control, the APA had no authority to place the petitioner on postrelease control. In fact, it would violate the separation-of-powers to do so, as it is the role of the judiciary to impose a criminal sentence. *Hernandez* at ¶20. Moreover, the separation-of-powers violation was not – and could not be – cured by notifying a defendant at sentencing hearing that the sentence would include postrelease control.

Later that year, *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78, was decided. Unfortunately, that decision has created a lot of confusion. The Court was confronted with a procedural question: when a judgment entry, albeit void, includes some reference to postrelease control, can the defendant challenge the sentence (and judgment) via a petition for habeas corpus? The answer was “no.”

In *Watkins*, the judgment entry wrongly stated that the petitioners' sentences included discretionary postrelease control. The sentences were contrary to law because mandatory postrelease control was required. Because the judgment entries included explicit references to postrelease control, the petitioners should have challenged their judgments on direct review. *Watkins* at ¶51. Following *Watkins*, one lingering question was whether the APA had authority to implement postrelease control based on a void judgment entry.

In *Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, this Court described the appropriate way for a court to remedy a void sentence. This Court held that because the judgment is void, the trial court retains jurisdiction to resentence the defendant, and may properly impose postrelease control, so long as the defendant has not finished serving his or her period of incarceration. *Id.* at ¶29. In *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, this Court clarified that because the judgment of sentence is a nullity, the resentencing hearing must be *de novo*. *Id.* at ¶16. The Court in *Bezak* also recognized that a criminal judgment is reviewed on an offense-by-offense basis. When a defendant is convicted of or pleads guilty to multiple counts, each sentence for each offense may be challenged if void. *Id.* And the defendant may be entitled to resentencing on all or one of the offenses. *Id.*

Next, this Court ruled that *res judicata* does not bar challenges to void judgments. *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568. In *Simpkins*, the trial court resentedenced the defendant almost

seven years after he pleaded guilty and was originally sentenced. This Court held that the resentencing was proper; the original sentencing judgment was void because it did not include postrelease control. This Court explained that *res judicata* is a doctrine of fundamental fairness and substantial justice that should not be applied rigidly. *Id.* at ¶25. Accordingly, because neither fairness nor justice is served by permitting a void sentence to stand, *res judicata* did not bar the resentencing. *Id.* at ¶30.

Recently, in *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, at ¶68-69, this Court considered the language that must be used to properly impose postrelease control. This Court explained that it is insufficient to tell a defendant that he or she “may” be subject to postrelease control, when postrelease control is mandatory. The trial court must notify the defendant at the sentencing hearing that the sentence includes a mandatory term of postrelease control, the length of the term, and the maximum sentence that the defendant could receive for violating postrelease control. *Id.* The trial court must also incorporate all of that information into its sentencing entry in order to impose postrelease control. *Id.* at ¶69. “[I]n the absence of a proper sentencing entry imposing postrelease control, the parole board’s imposition of postrelease control cannot be enforced.” *Id.* at ¶70.

In this case, consideration and resolution of the State’s propositions of law are controlled by the cases cited above. And each of the State’s specific arguments have already been rejected. See, e.g., *Bloomer* at ¶27; *Jordan* at ¶23. Moreover, this Court is well aware that a court cannot simply tack

postrelease control onto an existing sentence without violating the Double Jeopardy Clause of the United States Constitution. See *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, at ¶33; *Bloomer* at ¶27; *Jordan* at ¶24-25. See, also, *State v. Beasley* (1984), 14 Ohio St.3d 74, 471 N.E.2d 774. To prevent double-jeopardy violations, it is imperative that these judgments remain void and are not somehow transformed into being voidable. Otherwise, a flood of individuals, all of whom have been resentenced in accordance to this Court's mandates, will need to be released from postrelease control to cure the double-jeopardy violations.

Applying this Court's clear precedents, the court of appeals reached the right conclusion. And because this case raises no new question of law, this Court should decline jurisdiction.

**II. To the extent that this case may present any novel questions of law, those questions were not raised below, and this Court generally refuses to address issues not previously raised.**

Mr. Hazel was sentenced on March 1, 2007—after the July 11, 2006 effective date of Am. Sub. H.B. 137. That bill made several substantive changes to the sentencing laws, including amending R.C. 2967.28 and enacting R.C. 2929.191. See *Singleton*, 124 Ohio St.3d 173; *State v. Javen*, 3d Dist. Case No. 1-09-47, 2010-Ohio-1628, at ¶17. Those changes control this case, but the State's Memorandum in Support of Jurisdiction completely ignores them. Because this Court generally refuses to address issues not previously raised, see, e.g., *Sherman v. Haines* (1995), 73 Ohio St.3d 125, 652 N.E.2d 698, 699 fn.1, the Court should decline jurisdiction.

Respectfully submitted,

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**Certificate of Service**

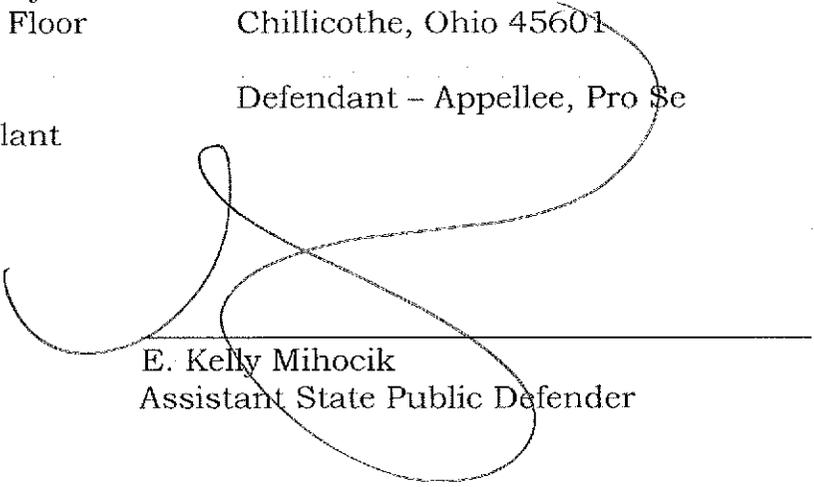
I certify that on this day of 10th May, 2010, a copy of the foregoing was sent by regular U.S. mail, postage-prepaid, on the following:

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