

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio, *ex rel.*

MICHAEL SCHECK,

Plaintiff-Relator,

v.

HON. CHRISTOPHER J.
COLLIER, JUDGE,

Relator-Respondant.

Case no. 2010-1569

On appeal from the Ninth
District Court of Appeals,
Medina County, case no.
09CA0081-M

**MERIT BRIEF OF RESPONDENT-APPELLEE,
JUDGE CHRISTOPHER J. COLLIER**

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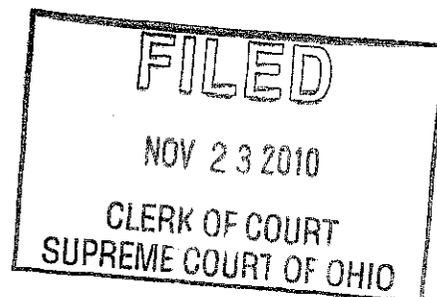


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Appellee's Proposition of Law: The extraordinary writ of mandamus is not an available remedy for an alleged sentencing error when an adequate remedy exists in the ordinary course of law.

Statement of the Case

On March 23, 2005, Relator-Appellant was sentenced by Respondent-Appellee to five years in prison each for rape, R.C. 2907.02(A)(2), and kidnapping, R.C. 2905.01(A)(4), in case 04CR0408. The judgment entry was filed March 31, 2005. The terms of imprisonment were to run concurrently. In addition, Appellant was advised of post release control “up to a maximum of five years.” On September 18, 2009, Appellant moved Appellee Court for an order correcting his judgment to reflect the correct term of post release control. Appellee Court granted Appellant’s motion and issued a *nunc pro tunc* entry without the “up to” language on October 9, 2009. Appellant did not appeal.

Relator claims his sentence is void because of an error in post release control. As explained below, the original sentence is not void. If *arguendo*, it is void, then the *nunc pro tunc* issued prior to *State v. Singleton*, slip op. 2009 Ohio 6434, corrects the error. If *arguendo* said *nunc pro tunc* does not correct the error, Appellant has an adequate legal remedy. He may simply appeal the *nunc pro tunc* entry, or request resentencing by motion.

On August 2, 2010, the Ninth District Court of Appeals denied Appellant’s petition for writ of mandamus.

Statement of the Facts

The Court of Appeals has previously detailed the underlying facts of this case.

On July 27, 2004, T.D., a nineteen year-old female, was working at Medina World Cars. T.D. arrived home from work at approximately 5:00 p.m. Once home, she returned an earlier phone call from Appellant, a thirty-nine year-old male who was a close friend of her father. Appellant invited T.D. to stop by his home that evening so that she could drop off an invitation to her impending wedding. T.D. agreed to come over and arrived at Appellant's Medina County home at approximately 7:30 p.m. T.D. brought a twelve-pack of beer along with her. A.J. Samhan, ("Mr. Samhan"), a nineteen year-old male, and a long-time friend of T.D., was present at Appellant's home at the time of her arrival, as were several other men who were performing construction work on the residence.

After T.D. gave Appellant her wedding invitation, the two began drinking and talking in private. About an hour after T.D.'s arrival, she and Appellant consumed a few lines of cocaine which Appellant supplied. Appellant then led T.D. to the basement where the two settled on a couch. Shortly thereafter, Mr. Samhan came downstairs. Appellant asked Mr. Samhan to supply him with some cocaine. Mr. Samhan eventually agreed and gave Appellant his cocaine which Appellant shared with T.D. By this time, the parties had consumed several beers. Appellant then offered T.D. more cocaine if she would remove her pants. She claims that she declined this offer while Mr. Samhan asserts that she agreed. T.D. asserts that when she refused his offer, Appellant pushed her onto the couch, digitally violated her and performed oral sex on her, despite her insistence that he stop. T.D. further contends that Mr. Samhan restrained her by holding her arms back and kissing her while Appellant was violating her.

Sometime after Appellant violated her, T.D. and Mr. Samhan went upstairs to one of Appellant's children's bedrooms. T.D.

recalls waking up in the child's bed with Mr. Samhan but does not recall how she got there. While in the bed, Mr. Samhan had forcible sex with her. Appellant again digitally violated her, performed oral sex on her and repeatedly urged Mr. Samhan to "f*** her." T.D. claims that she again told both men to "stop" and that neither of them complied.

T.D. next recalls waking up at 4:00 a.m. next to Mr. Samhan in the child's bed. She recalls that the bed had maroon sheets. She gathered all her clothing, except her underwear which she could not locate, and departed for home. Once home, T.D. showered and sat on her couch crying. She stayed in bed all day on July 28, 2004. T.D. was afraid to tell her fiance, with whom she lived, about the assault and thus did not tell him at this time.

T.D. went to work on July 29, 2004. While at work, she recounted the assault to Rebecca Haller, a co-worker. Ms. Haller testified that T.D. was extremely emotional while telling her about the assault and was shaking and crying "hysterically." Ms. Haller explained that T.D. told her that she had been raped by "Mike" and "A.J." and that she felt disgusting. Later that morning, T.D. and her mother went to the Medina County Sheriff's office where she filed a police report. The Sheriff's office provided T.D. with a recording device for her telephone and instructed her to record any conversations she had with Appellant and/or Mr. Samhan. The officers instructed T.D. to let the men initiate the phone call.

An officer then took T.D. and her mother to St. Thomas Hospital in Akron where she was examined and interviewed by forensic nurses. The nurses took numerous photographs of T.D. and recorded her account of the assault. During the interview, T.D. admitted using alcohol and cocaine on the evening in question and stated that she was also taking Zoloft, an anti-depressant. She stated that she blacked out and could not remember portions of the evening. The nurses obtained a urine sample from T.D. which they discarded a few days later at the direction of Detective Kevin Ross of the Medina County Sheriff's Office.

On July 29, 2004, Detective Ross and a few other officers executed a search warrant of Appellant's residence. Appellant's wife and Mr. Samhan were present but Appellant was not at home when the police arrived. While the police officers conducted a search of Appellant's residence, Detective Ross interviewed Mr. Samhan. Although Mr. Samhan claimed that he had consensual intercourse with T.D., he acknowledged that Appellant forcefully performed oral sex on T.D. He stated that T.D. told Appellant to "stop." According to Mr. Samhan, he and T.D. had consensual sex three times on the evening of July 27, 2004. Mr. Samhan corroborated T.D.'s assertion that Appellant was urging him to "f*** her" while Mr. Samhan and T.D. were in the child's bedroom.

In the officers' search they located three condom wrappers and T.D.'s underwear, which had been stuffed into the pocket of Mr. Samhan's jeans. They also discovered the maroon sheets T.D. mentioned along with a dish towel that had been contaminated with semen. The sheets and dish towel had been washed and dried. When Appellant arrived home, the officers interviewed him.

Mr. Samhan called T.D. on July 30, 2004. T.D. recorded the conversation. She then called Appellant but disconnected once she remembered that the police had instructed her to let Appellant place the call. Shortly thereafter, Appellant returned the call and the conversation was recorded. In the conversation, Appellant admitted that he "touched" T.D. but denied committing rape and claimed to have made a videotape that disproved her account of the events. Appellant threatened to show the videotape to T.D.'s father. Throughout this conversation T.D. maintained that she had told Appellant to stop assaulting her. Appellant later admitted that he had lied about the videotape as there was no such tape in existence.

State v. Scheck (9th Dist.), 2006 Ohio 647, P.2; *appeal not allowed*, 109 Ohio St. 3d 1483, 2006 Ohio 2466; habeas corpus denied, *Scheck v. Wilson* (N.D. Ohio), No. 06-CV-1761, 2009 U.S. Dist. LEXIS 70654

Appellee's Proposition of Law: The extraordinary writ of mandamus is not an available remedy for an alleged sentencing error when an adequate remedy exists in the ordinary course of law.

A. Mandamus does not lie.

A proceeding in mandamus is a special proceeding created by statute. See R.C. Chapter 2731. In order for a writ of mandamus to properly issue, the relator must demonstrate:

- 1) He or she has a clear legal right to the prayed for relief;
- 2) The respondent is under clear legal duty to perform the unperformed act; and
- 3) There is no adequate remedy in the ordinary course of the law.

State, ex rel. Liberty Mills Inc. v. Locker (1986), 22 Ohio St. 3d 102, 103.

R.C. Chapter 2731. The **burden is upon the relator** to demonstrate all of the requisite elements for a writ of mandamus to issue. *State, ex rel. Harris v. Rhodes* (1978), 54 Ohio St. 2d 41, 42. Respondent-Appellee will demonstrate that Appellant has failed to meet his burden on each of these points.

The function of mandamus is to compel the performance of a present existing duty as to which there is a default. It is not granted to take effect prospectively, and it contemplates the performance of an act which is incumbent on the respondent when application is made.

State, ex rel. Willis v. Sheboy (1983), 6 Ohio St. 3d 167, paragraph two of

the syllabus. A writ of mandamus, moreover, will not lie to compel the trial court's discretion. R.C. 2731.03; *State, ex rel. Saunders v. Court of Common Pleas* (1987), 34 Ohio St. 3d 15.

1. Relator has no right to relief requested.

a. Appellant has no right to retroactive application of *State v. Singleton*.

Relator's direct appeal was adjudicated in 2006. The *nunc pro tunc* entry was filed October 9, 2009. *State v. Singleton*, 124 Ohio St. 3d 173, 2009 Ohio 6434, was not announced until December 22, 2009. Nothing in *Singleton* requires retroactivity of its holding to cases finally adjudicated. Further, *Singleton* interprets a statute that seeks to correct void sentences and does not rule that misapplication of R.C. 2929.191 as interpreted by *Singleton* results in a void sentence. Rather it is merely an appealable error. The trial court's judgment entry was correct under pre-*Singleton* law. See e.g., *State v. Johnson* (12th Dist.), 2008 Ohio 2004, P.7.

In reference to the transcript of Appellant's sentencing, Appellant has failed to include any case law to demonstrate that using the word "may" at the sentencing hearing renders the judgment void. Cases like *State v. Bedford* (9th Dist.), 2009 Ohio 3972, that ruled conditional language at sentencing were decided after Appellant's criminal case became final.

New state court rulings are not generally applied retroactively to

closed cases.

The United States Supreme Court has developed a categorical standard for determining the effects of subsequent changes in criminal procedures which expand the rights of the accused. The Court has pronounced that new rules always have retroactive application to criminal cases pending on direct review, see *Griffith v. Kentucky* (1987), 479 U.S. 314, 320-28 [...], **but they generally do not have retroactive application to criminal cases pending on collateral review.** See *Teague v. Lane* (1989), 489 U.S. 288, 305-310 [...]; see, also, *Mackey v. United States* (1971), 401 U.S. 667, 675 [...] (Harlan, J., concurring in judgments in part and dissenting in part). [Boldface added.]

State v. McCall (9th Dist.), no. 95CA006291, 1996 Ohio App. LEXIS 3506, 86. See also, *Bowling Green v. Boggs* (Bowling Green Muni., Wood Co. 1995), 74 Ohio Misc. 2d 133, *3.

b. Appellant's original sentence was not void.

Even if the *nunc pro tunc* in this case is void, his original judgment entry and sentence was not. Counsel for Respondent Court is aware of *State v. Bedford* (9th Dist.), 2009 Ohio 3972, and similar cases from the Ninth District concerning the use of the phrase "up to" at sentencing on mandatory periods of post release control (hereinafter "PRC"). The State respectfully submits that this Supreme Court of Ohio has never found the term "up to" to be error when notifying a defendant of mandatory PRC.

In *Watkins v. Collins* (2006), 111 Ohio St. 3d 425, the Supreme Court of Ohio ruled on a similar issue in the context of *habeas corpus*. When a

judgment entry indicates discretionary rather than the statutorily required mandatory PRC, it was still sufficient to put the defendant on notice of PRC. The primary issue is whether or not the defendant had notice, not that the sentence was exactly correct. The Supreme Court also found that procedural defaults precluded it from considering the matter.

The petitioners' sentencing entries, although they mistakenly included wording that suggested that imposition of postrelease control was discretionary, contained sufficient language to authorize the Adult Parole Authority to exercise postrelease control over the petitioners. Consequently, in accordance with our general precedent, habeas corpus is not available to contest any error in the sentencing entries, and petitioners have or had an adequate remedy by way of appeal to challenge the imposition of postrelease control. Accordingly, we deny the writ.

Watkins, P.53. See also, *Patterson v. Ohio Adult Parole Authority*, 120 Ohio St. 3d 311, 2008 Ohio 6147, holding that *habeas corpus* relief is unavailable where there is an error in PRC notification at sentencing because legal remedies were available.

The brief acknowledgement that the phrase "up to" was erroneous in *Hernandez v. Kelly*, 108 Ohio St. 3d 395, 2006 Ohio 126, P.2, was simply recounting how the Eight District had ruled on direct appeal. The "up to" language was not the subject of the *Hernandez habeas corpus* action and this Court did not rule that such language rendered a judgment void where PRC is mandatory. In this case, Respondent Court wrote "up to" when

describing mandatory PRC. Nevertheless, that was sufficient to put O'Neal on notice that he would be under certain restrictions after he is released from prison. *Watkins*, P.53.

It should be noted that in an effort to make the Courts of Common Pleas comply with statutory requirements, this Supreme Court has never ruled on the effect of R.C. 2967.28(D)(2). The simple fact established by this section is that a defendant sentenced to a mandatory five years of PRC is not necessarily on PRC for that length of time. The Adult Parole Board may lengthen or shorten the period of supervision within the limits of (D)(2). The practical effect of this is that advising a defendant of a mandatory, specific length of PRC does not reflect that defendant's actual term of PRC. It also means that the executive branch of government is allowed to alter a lawful sentence of the judiciary. *See e.g., State v. Jordan*, 104 Ohio St. 3d 21, 25, 2004 Ohio 6085, P.19

The prudent course of action, consistent with legislative intent, would be to treat the inclusion of post release control at the sentencing hearing and in the judgment entry as advisory and in compliance with a specific statutory directive. As long as the defendant is advised about post release control generally, his sentence is not void. Such a finding would be consistent with the rulings of this Court which has never ruled that "up to" in reference to a

mandatory term of PRC makes a judgment void.

c. Appellant is barred by *res judicata*.

Relator did not challenge the propriety of the wording of the *nunc pro tunc* judgment entry on direct appeal. Consequently, that claim is barred by *res judicata*. The need for finality of judgment and substantial justice bars him from raising that issue in mandamus where Appellant failed to raise it in the ordinary course of law on direct appeal.

Res judicata is applicable in all postconviction relief proceedings. Our holding today underscores the importance of finality of judgments of conviction. “Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties.” [...] We have stressed that “[the] doctrine of *res judicata* is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, “of public policy and of private peace,” which should be cordially regarded and enforced by the courts. ***” [...]” [Citations omitted by the court.] [Underscore added.]

State v. Szefcyk, 77 Ohio St. 3d 93, 95, 1996 Ohio 337, quoting *Federated Dept. Stores, Inc. v. Moitie* (1981), 452 U.S. 395. Any failure to appeal within required time limits constitutes a waiver of the issue.

Since a trial court speaks through its journal entry, and this court’s journal entry was correct by a *nunc pro tunc*, there is nothing in Appellee Court’s final judgment that would make it void. Prison authorities should be

able to rely on a final judgment entry and not be expected to search a transcript to see if a word is out of place.

d. Mandamus does not lie

Relator has no issue pending before the Appellee-Respondent Court. Consequently, Appellee has had no opportunity to correct any error that may exist.

2. Respondent has no duty to perform the requested action.

State v. Simpkins, 117 Ohio St. 3d 420, 2008 Ohio 1197, is not apposite to the case *sub judice* because in *Simpkins* there was a complete failure to notify of post release control. Also, there was no correction under R.C. 2929.191. By 2929.191's language, the trial court correctly relied on a *nunc pro tunc* to correct the erroneous entry. As previously noted, the Supreme Court's ruling in *Singleton* is prospective in application only. Appellant does not have a right to have its ruling applied to his case.

As previously discussed, Appellant's sentence was voidable if not correct and the matter was not assigned as error on appeal. Further, Appellee-Respondent relied on a then-correct reading of 2929.191 to correct any error. Further, if *arguendo* this Court of Appeals decides that Appellant is entitled to relief, he is only entitled to a new and more complete judgment entry and not a full resentencing hearing as said hearing occurred prior to

Singleton. See e.g., *State v. Vargas*, 2007 Ohio 2264, P.7, noting that a *nunc pro tunc* is the appropriate remedy for a technically incomplete judgment entry. See also, *State ex rel. Alicea v. Krichbaum*, Slip Opinion no. 2010 Ohio 3234, ¶2.

3. Relator has an adequate remedy at law.

Relator had a right to appeal his original sentence, but declined to assign error based on the sentence. Appellant had a right to appeal the *nunc pro tunc* correction, but declined. A technical error in sentencing is not grounds for an extraordinary writ when appellate remedies are available. *Hughley v. Saunders*, 123 Ohio St. 3d 446, 2009 Ohio 5585. Regarding *State v. Baker*, 119 Ohio St. 3d 197, 2008 Ohio 3330, if *arguendo*, the *nunc pro tunc* entry was not sufficient for a final appealable order, the proper remedy is for a new *nunc pro tunc* with all the terms of the original sentence added to the now correct pronouncement of post release control. Appellant has not requested a new *nunc pro tunc* from Appellee. Relator has not simply moved Respondent Court to correct its entry. Neither has he resorted to declaratory relief.

In *State ex rel. Pruitt v. Cuyahoga County Court of Common Pleas*, slip opinion 2010 Ohio 1808, the Supreme Court of Ohio ruled that a sentencing entry that arguably contained an error in post release control still

constitutes a final appealable order capable of being resolved on appeal. *Pruitt* implicitly overrules the holding of the Ninth District in *Bedford*. Similarly, in *State ex rel. Thomas v. DeWine*, slip opinion 2010 Ohio 4984, the Supreme Court ruled that an extraordinary writ was unavailable to the relator because an adequate remedy existed at law. In particular, relator had a right to seek a direct appeal from a judgment that allegedly contained an error in PRC. The significant point is that the relator in *Thomas* can only have an appellate remedy if the judgment was a final, appealable order.

4. **Mandamus is discretionary.**

A writ of mandamus is not a writ of right. Rather, “a court, in the exercise of its discretion, may refuse to issue a writ of mandamus.” *State, ex rel. Bennett v. Lime* (1978), 55 Ohio St. 2d 62, 63, syllabus. The Ohio Supreme Court has consistently recognized the scope of judicial prerogative in **denying** a writ of mandamus:

The writ of mandamus is not a writ of right, and the issuance of a preemptory writ rests in the sound discretion of the Court.

* * * * *

... [I]t is apparent that mandamus will not be awarded in all cases, even where a *prima facie* right to relief is shown....

State, ex rel. Brown v. Board of County Commissioners (1970), 21 Ohio St. 2d 62, 64-65, quoting *State, ex rel. Mettler v. Straton* (1941), 139 Ohio St. 86, 88. In the instant case, however, it is clear that Appellant has failed to

even make out a *prima facie* claim in mandamus. Absent the showing of all of the requisite elements, Appellant's petition should be denied. See *Harris*, 54 Ohio St. 2d at 42.

Likewise, mandamus is not appropriate in every case. *Brown*, 21 Ohio St. 2d at 64-65. Even if *arguendo* this Court should decide that Appellant has established a case for mandamus, this Court should nonetheless exercise its sound discretion and deny the request pursuant to the long held authority of *Brown* and *Mettler*, 139 Ohio St. at 88. Appellant is a dangerous sex offender who has not suffered any substantive injustice. Any error is properly addressed in the ordinary course of law.

CONCLUSION

For all these reasons the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing merit brief was sent by ordinary United States Mail, postage prepaid, this 22nd day of November, 2010, to Michael Sheck, P.O. Box 644, Westfield Center, OH 44251.



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Appendix

Ohio Revised Code chapter 2731 app. 1
R.C. §2929.191 app. 4
R.C. §2967.28 app. 6

Ohio Revised Code chapter 2731

§ 2731.01. Mandamus defined

Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.

§ 2731.02. Courts authorized to issue writ; contents

The writ of mandamus may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made. Such writ may issue on the information of the party beneficially interested.

Such writ shall contain a copy of the petition, verification, and order of allowance.

§ 2731.03. Writ does not control judicial discretion

The writ of mandamus may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, but it cannot control judicial discretion.

§ 2731.04. Application for writ

Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit. The court may require notice of it to be given to the defendant, or grant an order to show cause why it should not be allowed, or allow the writ without notice.

§ 2731.05. Adequacy of law remedy bar to writ

The writ of mandamus must not be issued when there is plain and adequate remedy in the ordinary course of the law.

§ 2731.06. Peremptory writ in first instance

When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus. In all other cases an alternative writ must first be issued on the allowance of the court, or a judge thereof.

§ 2731.07. Allowance of writ entered on journal

The allowance of the writ of mandamus, and an order that the defendant,

immediately upon service, do the act required to be performed, or, when an alternative writ is allowed, that he do the act or show cause before the court, at a specified time and place, why he does not do the act, shall be entered on the journal.

§ 2731.08. Service of writ

The writ of mandamus shall be served upon the defendant personally, by copy, by the sheriff or by a person specially authorized by the court or judge issuing the writ. Such officer or person must report his proceedings therewith to the court. When the service is made by a person not an officer, the return must be verified by his affidavit.

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§ 2731.09. Pleadings; effect

On the return day of an alternative writ of mandamus, or such further day as the court allows, the defendant may answer as in a civil action. If the writ is allowed by a single judge, said defendant may demur.

The plaintiff may demur to the answer or reply to new matter therein, and the defendant may demur to the reply, as in a civil action.

The pleadings have the same effect, must be construed, may be amended, and issues of fact made by them must be tried, and further proceedings thereon had, in the same manner as in civil actions.

§ 2731.10. Peremptory writ allowed on failure to answer

If no answer is made to an alternative writ of mandamus, a peremptory mandamus must be allowed against the defendant.

§ 2731.11. Recovery of damages

If judgment in a proceeding for a writ of mandamus is rendered for the plaintiff, the relator may recover the damages which he has sustained, to be ascertained by the court or a jury, or by a referee or master, as in a civil action, and costs. A peremptory mandamus shall also be granted to him

without delay.

Such recovery of damages against a defendant is a bar to any other action upon such cause of action.

§ 2731.12. Costs against relator

If judgment in a proceeding for a writ of mandamus is rendered for the defendant, all costs shall be adjudged against the relator.

§ 2731.13. Failure to obey writ

When a peremptory mandamus has been directed to a public officer, body, or board commanding the performance of a public duty specially enjoined by law, and the court finds that such officer, or a member of such body or board, without just excuse, refused or neglected to perform the duty so enjoined, such court may impose a fine not exceeding five hundred dollars upon such officer or member. Such fine shall be paid into the county treasury of the county in which the duty should have been performed, and its payment is a bar to an action for any forfeiture or fine incurred by such officer or member by reason of such refusal or neglect.

§ 2731.14. Writ to force tax levy; county auditor to levy and assess tax

When a peremptory mandamus has been awarded against a board of county commissioners, a board of township trustees, the legislative authority of a municipal corporation, or a board of education of a school district to levy and assess a tax to pay interest upon a debt or to create a sinking fund for the payment of a funded debt, and such officers have resigned, or refuse or neglect to levy and assess such tax, or their offices are vacant, upon the motion of an interested person and on being satisfied of the fact of such resignation, vacancy, or refusal or neglect to levy such tax, and of the right of such person to have it levied and assessed, the court may issue a special order to the auditor commanding him to levy and assess upon the taxable property of the county, township, or municipal corporation the taxes required by law, or by the judgment or order of such court, to be levied and assessed for such purposes, and to place such taxes upon the duplicate for collection by the county treasurer.

§ 2731.15. County auditor shall execute order

When a special order is issued to a county auditor under section 2731.14 of the Revised Code, he is responsible for its execution as if he were an officer of the court. He shall receive such fees for his services in executing the order as may be fixed by the court. He shall add such fees and all other costs of the

proceeding to the taxes levied in executing such order, and place them upon the duplicate for collection with such taxes.

§ 2731.16. Power of court

Sections 2731.14 and 2731.15 of the Revised Code do not limit the power of the court to carry its order and judgment into execution, or to punish any officer named therein for contempt or disobedience of its orders or writs.

R.C. §2929.191. Correction to judgment of conviction concerning post-release control

(A)(1) If, prior to the effective date of this section, a court imposed a sentence including a prison term of a type described in division (B)(3)(c) of section 2929.19 of the Revised Code and failed to notify the offender pursuant to that division that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include a statement to that effect in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(1) of section 2929.14 of the Revised Code, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison.

If, prior to the effective date of this section, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of section 2929.19 of the Revised Code and failed to notify the offender pursuant to that division that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include a statement to that effect in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(2) of section 2929.14 of the Revised Code, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison.

(2) If a court prepares and issues a correction to a judgment of conviction as described in division (A)(1) of this section before the offender is released from imprisonment under the prison term the court imposed prior to the effective date of this section, the court shall place upon the journal of

the court an entry nunc pro tunc to record the correction to the judgment of conviction and shall provide a copy of the entry to the offender or, if the offender is not physically present at the hearing, shall send a copy of the entry to the department of rehabilitation and correction for delivery to the offender. If the court sends a copy of the entry to the department, the department promptly shall deliver a copy of the entry to the offender. The court's placement upon the journal of the entry nunc pro tunc before the offender is released from imprisonment under the term shall be considered, and shall have the same effect, as if the court at the time of original sentencing had included the statement in the sentence and the judgment of conviction entered on the journal and had notified the offender that the offender will be so supervised regarding a sentence including a prison term of a type described in division (B)(3)(c) of section 2929.19 of the Revised Code or that the offender may be so supervised regarding a sentence including a prison term of a type described in division (B)(3)(d) of that section.

(B)(1) If, prior to the effective date of this section, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(3)(e) of section 2929.19 of the Revised Code regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control or to include in the judgment of conviction entered on the journal a statement to that effect, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of section 2929.19 of the Revised Code, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code the parole board may impose as part of the sentence a prison term of up to one-half of the stated prison term originally imposed upon the offender.

(2) If the court prepares and issues a correction to a judgment of conviction as described in division (B)(1) of this section before the offender is released from imprisonment under the term, the court shall place upon the journal of the court an entry nunc pro tunc to record the correction to the judgment of conviction and shall provide a copy of the entry to the offender or, if the offender is not physically present at the hearing, shall send a copy

of the entry to the department of rehabilitation and correction for delivery to the offender. If the court sends a copy of the entry to the department, the department promptly shall deliver a copy of the entry to the offender. The court's placement upon the journal of the entry nunc pro tunc before the offender is released from imprisonment under the term shall be considered, and shall have the same effect, as if the court at the time of original sentencing had included the statement in the judgment of conviction entered on the journal and had notified the offender pursuant to division (B)(3)(e) of section 2929.19 of the Revised Code regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(C) On and after the effective date of this section, a court that wishes to prepare and issue a correction to a judgment of conviction of a type described in division (A)(1) or (B)(1) of this section shall not issue the correction until after the court has conducted a hearing in accordance with this division. Before a court holds a hearing pursuant to this division, the court shall provide notice of the date, time, place, and purpose of the hearing to the offender who is the subject of the hearing, the prosecuting attorney of the county, and the department of rehabilitation and correction. The offender has the right to be physically present at the hearing, except that, upon the court's own motion or the motion of the offender or the prosecuting attorney, the court may permit the offender to appear at the hearing by video conferencing equipment if available and compatible. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender were physically present at the hearing. At the hearing, the offender and the prosecuting attorney may make a statement as to whether the court should issue a correction to the judgment of conviction.

R.C. §2967.28. Period of post-release control for certain offenders; sanctions; proceedings upon violation

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(D)(2) At any time after a prisoner is released from imprisonment and during the period of post-release control applicable to the releasee, the adult parole authority or, pursuant to an agreement under section 2967.29 of the Revised Code, the court may review the releasee's behavior under the post-release control sanctions imposed upon the releasee under this section. The authority or court may determine, based upon the review and in accordance with the standards established under division (E) of this section, that a more restrictive or a less restrictive sanction is appropriate and may impose a

different sanction. The authority also may recommend that the parole board or court increase or reduce the duration of the period of post-release control imposed by the court. If the authority recommends that the board or court increase the duration of post-release control, the board or court shall review the releasee's behavior and may increase the duration of the period of post-release control imposed by the court up to eight years. If the authority recommends that the board or court reduce the duration of control for an offense described in division (B) or (C) of this section, the board or court shall review the releasee's behavior and may reduce the duration of the period of control imposed by the court. In no case shall the board or court reduce the duration of the period of control imposed for an offense described in division (B)(1) of this section to a period less than the length of the stated prison term originally imposed, and in no case shall the board or court permit the releasee to leave the state without permission of the court or the releasee's parole or probation officer.