

ORIGINAL

IN THE SUPREME COURT OF OHIO

<p>STATE OF OHIO,</p> <p>Plaintiff-Appellee,</p> <p>v.</p> <p>ARMANDO SILGUERO,</p> <p>Defendant-Appellant.</p>	<p>: : : : On Appeal from the Franklin : County Court of Appeals, : Tenth Appellate District : : : Court of Appeals : Case No. 2011 AP-274 : : : 12-0123</p>
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MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT ARMANDO SILGUERO

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**EXPLANATION OF WHY THIS FELONY CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL
QUESTION**

This case presents a critical and novel question of law regarding the inclusion of postrelease control in the sentence of a defendant convicted of an *unclassified* felony such as murder. Specifically, the issue raised is whether a defendant's sentence is void, requiring a de novo sentencing hearing, when a trial court erroneously includes postrelease control as part of a defendant's sentence for an unclassified felony. This question has not been previously decided by this Court, and as further explained below, a conflict of law on this question exists between Ohio appellate districts.

In *State v. Fischer*, 128 Ohio St.3d 92, 2010 -Ohio-6238, 942 N.E.2d 332, this Court has held that “[a] sentence that ***does not include the statutorily mandated term of postrelease control*** is void . . . [and] the new sentencing hearing to which an offender is entitled under *State v. Bezak* is limited to proper imposition of postrelease control.” *Id.* at paragraphs one and two of syllabus (emphasis added). However, contrary to *Fischer* where the trial court either failed to include postrelease control in a defendant's sentence or did so improperly, the trial court in this case went beyond its statutory authority by including postrelease control where it did not apply. As such, the decision in *Fischer* does not apply to the present case as the trial court had no authority to impose postrelease control on the defendant.

Instead, as explained in Appellant's pending Motion to Certify conflict with the Tenth District as well as below in Appellant's Proposition of Law, this case is more similar to that of *State v. Young*, Slip Copy, 2011 WL 2149280, 7th Dist. No. 09 MA 100, 2011 -Ohio- 2646, *State v. Crockett*, Slip Copy, 2009 WL 1710750 (Ohio App. 7 Dist.), 2009 -Ohio- 2894 (“*Crockett P*”), *State v. Long*, Slip Copy, 2010 WL 5140785 (Ohio App. 1 Dist.), 2010-Ohio-

6115, *State v. Austin*, Slip Copy, 2009 WL 3861789 (Ohio App. 8 Dist.), 2009-Ohio-6108, and *State v. Wright*, Slip Copy, 2009 WL 3837615 (Ohio App. 9 Dist.), 2009-Ohio-6081.¹

In the present case, in overruling Appellant's assignment of error, the Tenth District held that the cases relied upon by the Appellant "predate the *Fischer* decision, and, therefore, we conclude they no longer constitute persuasive authority." *State v. Silguero*, Slip Copy, 2011 WL 6147057, 10th Dist. No. 11 AP-274, 2011 -Ohio- 6293, at ¶ 11 (citing *State v. Evans*, 8th Dist. No. 95692, 2011 -Ohio-2153, at ¶ 10 (after the *Fischer* decision, *Crockett* and *Long* "are no longer good law.")). However, the Tenth District's reliance on *Evans*, and, specifically its reliance on the Eighth District's discussion of postrelease control as it relates to unclassified felonies, was misplaced.

In *Evans*, the court mentioned postrelease control in the defendant's entry as "[p]ostrelease control is a part of this prison sentence *for the maximum period allowed for the above felony(s) under R.C. 2967.28.*" *Evans*, 2011 -Ohio- 2153, at ¶ 9 (emphasis added). The *Evans* court found that because R.C. 2967.28 does not provide for PRC for special felonies, no PRC was imposed. *Id.* In other words, the court found that the language used in the entry describing postrelease control did not actually impose any form of postrelease control because R.C. 2967.28 does not authorize postrelease control for unclassified felonies. However, in this case, postrelease control was actually imposed upon the Appellant *both in the judgment entry and orally at the sentencing hearing.* See Tr. at p. 9 (emphasis added).² As such, because the *Evans* court held that no postrelease control was ever imposed upon the defendant, its discussion

¹ On December 16, 2011, the Appellant filed a motion to certify conflict with the Tenth District Court of Appeals. As of the date of filing Appellant's notice of appeal with this Court, this motion remains pending with the Tenth District.

² The Appellant (unlike the defendant in *Evans*) was specifically informed at his sentencing hearing that he would be subject to PRC. Also, the language used in Appellant's sentencing entry is different from the language contained in *Evans*.

and interpretation of cases in which postrelease control was actually included in sentences for unclassified felonies is dicta and should not be used as persuasive authority by this Court.

Furthermore, neither the Tenth District in this case, nor the Eighth District in *Evans* addressed the Seventh District's decision in *Young* which directly conflicts with the present case and was decided post-*Fischer*. In *Young, supra*, the defendant was convicted of aggravated murder, an unclassified felony, and was sentenced to life without the possibility of parole. Both in the judgment entry and orally at the sentencing hearing, the trial court advised the defendant that when he is released he would be subject to a period of postrelease control for up to five years. *Id.* at ¶ 67. The Seventh District found the inclusion of postrelease control where it does not apply was erroneous and required a de novo sentencing hearing, even under the plain error analysis. *Id.* at ¶¶ 68-71. In doing so, the court stated “[a] void sentence must be vacated, placing the parties in the same position they would have been in had there been no sentence.” *Id.* at ¶ 70 (quoting *State v. Crockett*, 7th Dist. No. 07MA233, 2009 -Ohio- 2894, at ¶ 9 (citing *State v. Simpkins*, 117 Ohio St.3d, 2008 -Ohio-1197, at ¶ 22.)). As such, the court held that the trial court was required to “conduct a new sentencing hearing.” *Id.*

As will be shown in Appellant's Proposition of Law, the Tenth District erred in relying on *Evans, supra*, and *State v. Lawrence*, 2d Dist. No. 24513, 2011 -Ohio- 5813, and the analysis in *Young, supra*, should be applied by this Court as the facts of *Young* are more similar with the present case than *Evans* and *Lawrence*.

STATEMENT OF THE CASE AND FACTS

On or about January 15, 2002, Appellant was found guilty in a bench trial of one count of murder, an unclassified felony, and one count of kidnapping, a felony of the first degree. See Corrected Judgment Entry, dated Nov. 1, 2010. At sentencing, the offenses were merged and the

State elected that Appellant be sentenced on the charge of murder. *Id.* However, when the trial court sentenced Appellant, the court stated “[d]o you understand when you are released from prison, you will have to serve at least five years of parole or post-release control” Transcript of Sentencing Proceedings, at p. 9. Also, in its original judgment entry, and its more recent corrected judgment entry, the trial court stated “the Court notified the Defendant, orally and in writing, of the possibility of the applicable periods of post-release control pursuant to R.C. 2929.29(B)(3)(c), (d) and (e).” See Judgment Entry, at p. 2; also see Corrected Judgment Entry, at p. 2.

As a result of the erroneous inclusion of postrelease control in Appellant’s sentence, Appellant filed a Motion for Resentencing on February 4, 2011. On February 16, 2011, the State filed a Memorandum Contra to Defendant’s Motion for Resentencing. On March 17, 2011, the trial court filed a decision and entry denying Appellant’s Motion for Resentencing “[f]or the reasons set forth in the Memorandum Contra filed by the State of Ohio” Decision and Entry, dated March 17, 2011.

Appellant timely appealed the trial court’s decision to the Tenth District Court of Appeals and alleged as his sole assignment of error that the trial court abused its discretion in denying Appellant’s motion for a de novo resentencing hearing. In overruling Appellant’s assignment of error, the Tenth District stated “[p]ursuant to *Fischer*, and also *Evans* and *Lawrence*, it is clear that this does not render appellant’s entire sentence void, nor does it require a de novo sentencing hearing.” *Silguero*, 2011 -Ohio- 6293, at ¶ 16. It is the failure of the courts below to grant a de novo sentencing hearing that gives rise to this appeal.

ARGUMENT IN SUPPORT OF THE PROPOSITION OF LAW

Proposition of Law I:

When a trial court erroneously includes postrelease control as part of a defendant's sentence for an unclassified felony, the defendant's sentence is void, requiring a de novo sentencing hearing.

While this Court in *Fischer* has clarified the law in terms of how to correct a defendant's sentence when postrelease control is either not imposed or improperly imposed in cases where it is required to be a part of the sentence, the question of how to correct a defendant's sentence when a trial court goes beyond its statutory authority by imposing postrelease control when it does not apply has yet to be resolved by this Court. As such, Appellant asks this Court to find that the inclusion of postrelease control in a sentence for an unclassified felony renders that sentence void and requires a de novo sentencing hearing.

Under Ohio law, "a sentence that is not in accordance with statutorily mandated terms is void." *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, at ¶ 8 (citing *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, at ¶ 14; *State v. Beasley* (1984), 14 Ohio St.3d 74, 75, 14 OBR 511, 471 N.E.2d 774.). In particular, a trial court cannot go beyond its statutory authority and impose a sentence that is greater than the maximum under the statute. See *State v. Hairston*, 2007 WL 3257331 (Ohio App. 10 Dist.), 2007-Ohio-5928, at ¶ 38 (holding that the trial court acted beyond its authority "when it imposed more than one sentence on the firearm specifications" related to an aggravated robbery where the statute required only one sentence).

When a trial court goes beyond its authority by disregarding statutory maximums, "the erroneous sentence is void." *Id.* (citing *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, at ¶ 27; *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, at ¶ 23); see also *City of Cincinnati v.*

Howard, 179 Ohio App.3d 60, 900 N.E.2d 689, 2008-Ohio-5502 (holding that a sentence of a \$150 fine and 30 hours of community service was void because the maximum penalty for the offense only a \$150 fine). As such, “[a] void judgment has no legal force or effect, and any party whose rights are affected may challenge its invalidity at any time and any place.” *Hairston*, at ¶ 36 (citing *Payne*, at ¶ 33 (Lanzinger, J., concurring)).

In the present case, the trial court specifically imposed five years of postrelease control at sentencing and also journalized the imposition in its judgment entry. It is undisputed that postrelease control is not applicable to defendants convicted of unclassified felonies and that the trial court has no statutory authority to impose postrelease control in those cases. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶35-36. The court below relied on the holding in *Evans*, *supra*, in finding that this imposition of postrelease control did not render Appellant’s entire sentence void.

However, *Evans* is clearly distinguishable from the present case because the court held that postrelease control was never imposed on the defendant. Instead, the court held that the language used by the trial court did not impose postrelease control because the trial court merely stated that “[p]ostrelease control is a part of this prison sentence for the maximum period allowed for the above felony(s) under R.C. 2967.28.” *Evans*, 2011 -Ohio- 2153, at ¶ 9. The court held that because R.C. 2967.28 does not authorize postrelease control for unclassified felonies, the statement by the trial court did not impose any form of postrelease control. *Id.* As such, the question of whether a defendant’s entire sentence is void when the trial court erroneously includes postrelease control in a sentence for an unclassified felony was moot and not before the court, and the Tenth District should not have relied on *Evans* as persuasive authority and neither should this Court.

Furthermore, the Tenth District's entire decision rested on the premise that the cases relied upon by the Appellant "predate the *Fischer* decision, and . . . no longer constitute persuasive authority." *Silguero*, 2011 -Ohio- 6293, at ¶ 11. However, as stated above, the court below failed to consider the Seventh District's decision in *Young*, 2011 -Ohio- 2646, which was decided post-*Fischer* and which specifically relied on *Crockett*, 2009 -Ohio- 2894, and *Simpkins*, 2008 -Ohio- 1197, in holding that a trial court's erroneous inclusion of postrelease in a sentence for an unclassified felony renders the defendant's entire sentence void requiring a de novo sentencing hearing. *Young*, 2011 -Ohio- 2646, ¶ 70 (quoting *Crockett*, 2009 -Ohio- 2894, at ¶ 9). The facts in *Young* mirror those of the present case, and it is therefore more persuasive authority for this Court to rely upon, as opposed to that of *Evans* and *Lawrence*, *supra*.

Also, other districts have agreed with the holding in *Young*, and required a de novo sentencing hearing when postrelease control is erroneously imposed in cases dealing with unclassified felonies. See *Long*, 2010-Ohio-6115, at ¶ 5 ("when a sentencing court has imposed postrelease control without the statutory authority to do so, and the matter has come to the attention of the trial court or a reviewing court, the sentence is void and must be vacated, and the defendant must be resentenced."); *Wright*, 2009-Ohio-6081, at ¶ 7 (Even under the plain error analysis, the court held that "a sentence that does not conform to statutory mandates requiring the imposition of postrelease control is a nullity and void.")

CONCLUSION

The Tenth District's decision relied upon authority which should not be considered persuasive by this Court. The *Evans* decision did not consider the question of whether the inclusion of postrelease control in a sentence for an unclassified renders the defendant's entire sentence void. As such, its discussion and interpretation of cases regarding that question was

merely dicta and should not have been relied upon by the Tenth District and should not be relied upon by this Court. The question before the Court has yet to be answered, and this Court should accept jurisdiction in order to clarify the issue, as the holding in *Fischer* only applies to cases where postrelease control is required to be imposed but is either not imposed or imposed incorrectly. As such, Appellant respectfully requests this Court accept jurisdiction to clarify this critical and novel issue.

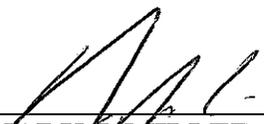
Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served upon counsel of record for appellee, Ron O'Brien, Prosecuting Attorney, Franklin County Prosecutor's Office, 373 South High Street, 13th Floor, Columbus, Ohio 43215, via hand-delivery, on January 23rd, 2012.



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STATE OF OHIO, Plaintiff-Appellee, v. ARMANDO SILGUERO, Defendant-Appellant.	: : : : On Appeal from the Franklin : County Court of Appeals, : Tenth Appellate District : : : Court of Appeals : Case No. 2011 AP-274 : :
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APPENDIX

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO

2011 DEC -8 PM 2: 20
CLERK OF COURTS

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 11AP-274
v.	:	(C P C No 01CR08-4399)
	:	
Armando Silguero,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 8, 2011

Ron O'Brien, Prosecuting Attorney, and Sarah W. Creedon,
for appellee.

Shaw & Miller, and Mark J. Miller, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Defendant-appellant, Armando Silguero, appeals from a judgment of the Franklin County Court of Common Pleas denying his motion for resentencing. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} In relation to the death of his wife, Ericka Silguero, appellant was indicted by a Franklin County Grand Jury on August 3, 2001, for aggravated murder and

kidnapping. Appellant elected to waive his right to a jury trial, and, after a bench trial, the trial court found appellant guilty of murder, a lesser degree of aggravated murder, and kidnapping. The two counts were merged for purposes of sentencing and the state elected to have appellant sentenced on the murder conviction. At a sentencing hearing held on January 16, 2002, the trial court imposed the mandatory sentence of 15 years to life in prison. A judgment entry reflecting the same was filed the following day.

{¶3} Appellant appealed to this court arguing that his convictions were not supported by sufficient evidence. On November 12, 2002, rejecting appellant's arguments, this court affirmed appellant's convictions in *State v. Silguero*, 10th Dist. No. 02AP-234, 2002-Ohio-6103. The trial court's January 17, 2002 judgment entry, however, stated that appellant was convicted of murder in violation of R.C. 2903.01. While R.C. 2903.01 pertains to aggravated murder, the offense for which appellant was indicted, the trial court found appellant guilty of murder, which is defined in R.C. 2903.02. Therefore, this court remanded the matter to the trial court with instructions to correct the clerical error.

{¶4} On September 1, 2010, appellant filed a pro se motion for a de novo sentencing hearing. In that motion, appellant argued that his sentence was void because it referenced post-release control in non-specific terms rather than stating appellant was subject to a mandatory five-year term of post-release control. The state filed a memorandum contra noting that because appellant was convicted of an unclassified felony, there should be no post-release control included in his sentence. Though this motion was not ruled on, the record reflects that on November 1, 2010, the trial court filed a "Corrected Judgment Entry." This entry, however, is identical in all respects to that filed

on January 17, 2002, as it does not correct the statute number or alter any other aspect of the entry.

{¶5} On February 4, 2011, appellant filed through counsel a motion for resentencing arguing that his sentence was void and that he was entitled to a de novo sentencing hearing. Specifically, appellant challenged the following language from the judgment entry, "[a]fter the imposition of the sentence, the Court notified the Defendant, orally and in writing, of the possibility of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)." According to appellant, his entire sentence was void because the trial court added post-release control to his sentence for an offense that is an unclassified felony to which post-release control does not apply. Rejecting appellant's position that the entire sentence was void and that he was entitled to a de novo sentencing hearing, the trial court overruled appellant's motion for resentencing on March 17, 2011. That same day, the trial court filed a "2nd Corrected Judgment Entry" that was identical in all respects to the previous judgment entry except that the post-release control language was removed.

{¶6} This appeal followed and appellant brings the following assignment of error for our review:

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR A DE NOVO RESENTENCING HEARING.

{¶7} In his sole assignment of error, appellant contends the trial court's imposition of post-release control for a murder conviction was not authorized by law; therefore, appellant claims his entire sentence is void and that he has a right to a new sentencing hearing.

{¶8} It is not disputed that appellant was convicted of murder, which is an unclassified felony to which the post-release control statute does not apply. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶36; *State v. Gripper*, 10th Dist. No. 10AP-1186, 2011-Ohio-3656, ¶10. Accordingly, the inclusion of post-release control language in appellant's sentencing entry was in error. It is appellant's position that this renders his entire sentence void and that a de novo sentencing hearing is required to correct this error. We disagree.

{¶9} In *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, the Supreme Court of Ohio held that if a trial court failed to notify an offender about post-release control, pursuant to R.C. 2929.19(B)(3), the appellate court should vacate the sentence and remand the matter to the trial court for resentencing. *Id.* at paragraph two of the syllabus. Thereafter, the Supreme Court held that where an offender was not properly informed about the imposition of post-release control at the sentencing hearing the sentence for that offense is void and the offender is entitled to a new sentencing hearing. *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, syllabus.

{¶10} Recently, the Supreme Court decided *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, and reaffirmed that if a sentence does not include the statutorily-mandated term of post-release control, it is void. *Id.* at paragraph one of the syllabus. The court added that such a void sentence is not precluded from appellate review by principles of res judicata and may be reviewed at any time, on direct appeal or by collateral attack. The *Fischer* court also modified *Bezak*, holding "[t]he new sentencing hearing to which an offender is entitled under *State v. Bezak* is limited to proper imposition of postrelease control." *Fischer* at paragraph two of the syllabus. Accordingly,

when statutorily-mandated post-release control is not properly imposed, only that part of the sentence is void and must be set aside while the rest of the sentence remains in force. *Id.* at ¶26.

{¶11} In support of his position that he is entitled to a de novo sentencing hearing, appellant relies on cases that have held that a trial court's erroneous inclusion of post-release control for unclassified felony convictions renders an entire sentence void and requires a de novo sentencing hearing. See *State v. Crockett*, 7th Dist. No. 07-MA-233, 2009-Ohio-2894; *State v. Long*, 1st Dist. No. C-100285, 2010-Ohio-6115; *State v. Austin*, 8th Dist. No. 93028, 2009-Ohio-6108; *State v. Wright*, 9th Dist. No. 24610, 2009-Ohio-6081. These cases, however, predate the *Fischer* decision, and, therefore, we conclude they no longer constitute persuasive authority. *State v. Evans*, 8th Dist. No. 95692, 2011-Ohio-2153, ¶10 (after the *Fischer* decision, *Crockett* and *Long* "are no longer good law").

{¶12} In *Evans*, the Eighth District Court of Appeals reviewed the trial court's denial of the defendant's "motion to vacate void sentence." *Id.* at ¶5. The basis for the defendant's challenge was that the sentence imposed for his murder conviction erroneously included post-release control. Relying on *Fischer*, the *Evans'* court concluded that not only were *Crockett* and *Long* no longer good law, but, also, that the proper remedy for the erroneous inclusion of post-release control was to remand the matter for the trial court to correct the sentencing entry by eliminating the post-release control language.

{¶13} Similarly, in *State v. Lawrence*, 2d Dist. No. 24513, 2011-Ohio-5813, the defendant was convicted of murder and the judgment entry provided that the defendant was subject to a period of post-release control if he were released from prison. The

defendant in *Lawrence* argued that the imposition of post-release control rendered his sentence void, but the trial court rejected his argument and denied the motion to vacate his sentence. The trial court, however, did bring the defendant back for resentencing "to simply correct that the defendant will be on parole, not PRC, upon his release from prison." *Id.* at ¶3. The following day, the trial court filed a nunc pro tunc entry reflecting that, upon release from prison, the defendant would be subject to parole, not post-release control.

¶14} The defendant's counsel filed an appellate brief, pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, and the appellate court stated that the issue before it was whether the trial court was correct in changing the judgment entry to reflect parole, rather than post-release control and whether there was any "arguable error" that occurred at the resentencing hearing. *Lawrence* at ¶5. The *Lawrence* court concluded that, pursuant to *Fischer*, only "the portion of Lawrence's judgment entry improperly imposing post-release control was void, and the remainder of his sentence was valid." *Id.* at ¶7, citing *Fischer* at ¶29 and *Evans*.

¶15} Importantly, the court went on to note that while a trial court is required to notify a defendant that he or she will be subject to post-release control, there is no similar requirement that a trial court notify a defendant about parole supervision. Because the court found no other authority requiring that the trial court inform the defendant that he would be subject to parole supervision if released from prison, the court stated, "it is questionable whether the trial court was required to hold a re-sentencing hearing to notify Lawrence that he was subject to parole, rather than post-release control, upon his release." *Id.* at ¶8. Notwithstanding, the court held that "[e]ven assuming that a re-

sentencing hearing was required," there was no issue with arguable merit arising from the same as the defendant was given the same sentence as that imposed in 2001 with the exception of the omission of post-release control language. *Id.* at ¶9. See also *State v. Russell*, 10th Dist. No. 11AP-108, 2011-Ohio-4519 (no reversible error in the erroneous inclusion of post-release control to a sentence for an unclassified felony).

{¶16} In the case sub judice, the trial court included post-release control language in appellant's sentence even though appellant was convicted of murder, an unclassified felony. Pursuant to *Fischer*, and also *Evans* and *Lawrence*, it is clear that this does not render appellant's entire sentence void, nor does it require a de novo sentencing hearing. Moreover, the record reflects that the superfluous post-release control language has been removed from the sentencing entry pursuant to the judgment entry filed on March 17, 2011.¹

{¶17} For these reasons, appellant's assignment of error is overruled and the judgment of the Franklin County Court of Common Pleas denying appellant's motion for a de novo sentencing hearing is hereby affirmed. However, other than deletion of the post-release control language, the March 17, 2011 judgment entry is in all respects the same as the original 2002 and the November 2010 judgment entries. That being said, we note that the judgment entry still contains the clerical error this court noted in its decision that affirmed appellant's convictions, i.e., the judgment entry states appellant was convicted under R.C. 2903.01 rather than R.C. 2903.02.

¹ The matter before us does not allege error in the March 17, 2011 judgment entry as this appeal challenged the trial court's March 17, 2011 decision denying his motion for resentencing.

{¶18} Accordingly, this case is remanded to the trial court to correct the clerical error in the judgment entry to reflect the offense for which appellant was convicted. *Silguero* at ¶14, citing *State v. Lattimore*, 1st Dist. No. C-010488, 2002-Ohio-723.

*Cause remanded with instructions;
judgment affirmed.*

BRYANT, P.J., and KLATT, J., concur.

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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FRANKLIN CO. OHIO

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CLERK OF COURTS

State of Ohio, :
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 Plaintiff-Appellee, :
 :
 v. : No. 11AP-274
 : (C.P.C. No. 01CR08-4399)
 Armando Silguero, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on December 8, 2011, this cause is remanded to the trial court to correct the clerical error in the judgment entry to reflect the offense for which appellant was convicted, appellant's assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

SADLER, J., BRYANT, P.J., and KLATT, J.

By 

Judge Lisa L. Sadler